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Amanda Farmer: Hello and welcome. I'm Amanda Farmer, and I have with me today, Reena Van Aalst from Strata Central. Welcome, Reena.

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I'm doing well. You and I have just come back from a lovely week in Queensland together. Have you settled back in?

Reena Van Aalst: Yes, trying to get back into it. It's always hard after having such a nice time away, Amanda.

Amanda Farmer: Yes, we were both attending the Annual Conference of the Australian College of Strata Lawyers, and I'm going to share my highlights from the conference when we get to our wins section for the week. Look forward to that. But for now, let's jump into the hard stuff first: the challenges. What's been your challenge this week Reena?

Reena Van Aalst: The hot weather, Amanda, I think has been a challenge for so many people on a personal level. But in our strata schemes, a lot of owners are applying to install air conditioning units, and, as we know, that normally involves some sort of connection through a common property wall, being a boundary wall, so under the new legislation that is deemed to be a minor renovation and that would require general meeting approval. In some cases, strata committees have already passed a minor works by-law allowing them to take carriage of such applications. But the other challenge I think, Amanda, that we've had also is whether or not the committee does have the power to approve these because it affects the external appearance of the lot, which is also mentioned in the legislation. So what's been in your experience, Amanda, with lot owners of it is coming to you because we obviously have to give them guidance, and we've been telling them, "*Well, it depends on the location. It depends where it's being seen from.*" It's the same by-laws. But how are you dealing with your lot owners that come to you for advice for owners corporations?

Amanda Farmer: Yes. So just to give a little bit of background for our listeners who might not be familiar with this part of our legislation in New South Wales. Our Section 110 allows for air conditioning units to be installed with the approval at a general meeting by ordinary resolution, so a simple majority approving the air con installation at a general meeting. That's because it's classed as minor work in our legislation, and as Reena mentioned, the general meeting can also delegate to the strata committee the authority to approve minor work. So in some buildings you'll see strata committees reviewing applications for air con installations and approving those. But as you have rightly pointed out there, Reena, if an item affects the external appearance of a building, then it cannot be minor work. It's expressly excluded from the definition of minor work, and it then has to be approved by a special resolution at a general meeting. At least that's my view. Legislation is not that clear, but that's what most of the lawyers I find are saying.

So Reena, to your point about what we're doing in practice, definitely if the installation is likely to affect the external appearance, and... Look, that really depends on how high up the balcony is, where the compressor unit is going, whether it's enclosed or whether it's visible from the street, what's happening with the ducting and the piping, what it's going to look like. If it's going to affect the external appearance, then my advice is that it should have a special resolution and it is not minor work that can then be approved by an ordinary resolution or by the strata committee.

Reena Van Aalst: Yes. Thank you, Amanda, for that. That's what we've been saying, depending on the circumstances. But our other challenge that we have also is that general meeting has to be cold, and depending on your agency agreement and what

delegations you have... In our case, we only have partial delegation, so we don't have the authority to call any general meetings. So we have to either ask the secretary to call the general meeting on behalf of that lot owner or the strata committee to pass a resolution. And then by the time that happens, then you have to send that with the owner. That's obviously going to fit in with our schedule and their schedule, and then obviously the meeting notice period now being really 17 days for a general meeting when you include the extra postage.

So by the time this all happens, it's taking like sometimes over a month, sometimes up to 2 months for this installation to occur, and people are getting quite rightly disgruntled and disappointed with the whole process. And I think even though the legislation was redrafted to try and help these things pass more easily, especially having this minor works provision, I'm finding in practice, Amanda, it's still a challenge because of the whole convening of a general meeting. And also the lot owner having to bear the cost of that meeting, and there's now that general meeting that's occurring at the same time and he was saying, "*Why do I have to pay for this?*" Sometimes the cost of the meeting is just the same as the cost of the air conditioning.

Amanda Farmer: Yes, very good point.

Reena Van Aalst: Which is unfortunate if it's a large scheme, so yes, perhaps some feedback we can give to the revision of the Act in terms of how this can be dealt with in a more expedient manner.

Amanda Farmer: Yes, definitely. And I think there remains, as I just hinted at earlier, some confusion around items that don't fall under the definition of cosmetic work or minor work. Our legislation is not very clear about what then happens with what we're calling major work, which is waterproofing, items that affect the external appearance of the building, or items that affect the structure of the building. They seem to fall into this category then of requiring a special resolution. But I've been looking at that quite closely lately for a client, and the legislation ain't that clear cut.

So some buildings are saying, "*Well, we can pass a by-law that says even if a renovation affects external appearance, we can decide by way of by-law that the strata committee can approve that,*" because Section 111 in our Act says that one of the ways in which work can be approved is by any other means permitted under the by-laws. So the argument is "*Well if we have a by-law that says major work can be approved by ordinary resolution, well then that's okay, and we can avoid this need to keep going to a general meeting.*"

I understand the practicalities of that. If you look at the second reading speech when our Strata Schemes Management bill was considered in 2015, it does refer to a 3-tiered approach. It does refer to major work requiring a special resolution. So I think if you're going to have to look at legislative intent because the wording of the legislation is no clear, then you're going to end up with a conclusion that major work was always intended to be approved by special resolution and specifically recorded in a by-law. But yes, you're right. It's not clear. It's confusing a lot of people, and it is not the simplification of the process that perhaps was sold to us all.

Reena Van Aalst: Yes. Hasn't worked out in practice.

Amanda Farmer: Yes, exactly. Anyway, I am sure I'll hear from a few of you about that challenge. It is no doubt one that many others are facing as well, Reena, and happy to come back and keep talking about that one.

Shifting over to my challenge for the week, and I flagged this one in our recent YSP live event that we had with members, Reena: the issue of insurance claims and what happens when lot property is damaged because of an event. It's water penetration perhaps from the leaky dishwasher above. It is not a failure of the common property, but the lot owner below has been impacted. They've got peeling paint, or they've got dampness, or whatever it is, and they've said, "*Well, the owners corporation is insured under their building policy. It is a broad policy. It does cover these kinds of events, and we want the owners corporation to lodge an insurance claim and have the costs of fixing this up met by the insurer.*"

Now, Reena, you and I spoke about this back in Episode Number 186, and in that episode I said that there is no obligation on an owners corporation to actually lodge an insurance claim, and the owners corporation would be within its rights to say, "*Hey, this is*

not a common property failure. This is a problem that you've got with the lot owner above. It is their leaky dishwasher that's caused this. You sort it out with them. If you want them to meet your costs, then matter between the 2 lot owners."

Now since then we have had a comment on the website under Episode 186, and there's always facility there for listeners to make comments and enter into discussions with me. The person who's posted the comment hasn't left their name. They've called themselves "Strata Professional," but I can tell by reading it that this is a seemingly qualified person. I don't know if they're a lawyer or a strata manager or perhaps in the insurance sector, but they said here that this is an interesting concept that you and I have been discussing. And they have pointed to indeed Section 161, Subsection 3A of our Act in New South Wales, which requires an insurance policy to insure against damage to lot owners' fixtures and improvements forming part of the building. So as I said, these are items that are covered by the owners corporation's building insurance policy.

And a section that we didn't talk about in this episode... Strata Professional, here, has pointed it out. It is Section 174, which says that a person may make an application to our tribunal to order an insurance claim be made, and that is an order forcing the owners corporation to make the insurance claim and the person entitled to make that application is anyone who is entitled to the benefit of insurance. So, very good point, a lot owner could approach the tribunal and ask the tribunal to make an order forcing the owners corporation to lodge the claim.

And this person on the website points out that the tribunal probably would make that order because there is federal legislation, the Insurance Contracts Act, which would place the lot owner in the category of a third party beneficiary under the contract and therefore entitled to the benefit of the contract. So an educated lot owner may go before the Tribunal on a Section 174 application and say, *"Hey, because of these provisions in federal insurance legislation, I am actually a beneficiary under this contract, and the owners corporation should be ordered to make this claim so that I can receive the benefit of the policy."*

Reena Van Aalst: That's very interesting. In terms of the building insurance policy, all fixtures and fittings are included in the policy, and normally it is an insurable event that would then give rise to a claim being able to be submitted. So I suppose what Strata Professional is saying is that if, for example, there's a burst hot water system that belongs to an owner within their lot, then because that was an accidental damage, or a burst pipe, or whatever, therefore that other lot owner is the beneficiary, has suffered damage as a result of an insurable event. I suppose, in a sense, some of my strata schemes, Amanda, who may accept that view have taken the view that the person who is responsible for the claim is liable to pay for the excess. Now we've got some buildings where there's been bottles dropped away, for example, anything relating to a lot owner's failure to maintain their own property that results in damage to the common property causing an insurance claim to be lodged has made that owner, then, responsible.

Now, I think the other thing that people need to think about too is this is a very tight insurance market at the moment. So you'll find that even if your building has had very little claims that are not to do with lot owner issues, you're finally owning that the incumbent is willing to re-insure you. So I think, in a sense, some buildings think, *"Well, there's no point us lodging a claim."* I mean they're not, sort of, reimbursing the other owner either for their loss and damage. They're making the 2 owners deal with it together. So, yes. So, Amanda, what's your view now that this section's been brought to our attention? I mean, I haven't obviously said any cases about it, but...

Amanda Farmer: No, there's none that I am aware of, not to say that they don't exist. And I haven't had a close look at the Insurance Contracts Act, and, politely, Strata Professional has said, *"Look, this is a summary, and this is not the place to get into the workings of that Act"*, which is quite, as I understand it, a complex piece of legislation. So look, I don't have a particular firm view on that. It is a very good point to raise and to consider for lot owners who may be in the position where their owners corporation has said, *"No, we're just not going to lodge that claim."* It is a significant event, and you're looking at quite a bit of money. Have a close look at whether you are indeed a third party beneficiary, may have those rights, but absolutely, Reena, I agree with you.

We mentioned in my chat with Frank Higginson last week in Episode 201 the difficulty at the moment with getting insurance right across the country, and I took the view that our strata insurers have been generous for so long, and now we really are seeing them clamp down. And buildings that do have a big long claims history are finding it hard to get second and third quotes, definitely.

Reena Van Aalst: But even, Amanda, if their claims history is rather small in magnitude, so it may not be that they've had big payouts. We're not talking about loss of rent claim that's half a million or... We're talking about just the occasional burst pipe that might cost a few thousand dollars under the access. We're not talking about big dollars. It's just anything that they can see. You're lucky now just to get the incumbent to re-insure you. That's now been prevalent across so many of our buildings.

Amanda Farmer: Yes. Interesting. Well, good discussion to be having, and thank you, Strata Professional, for drawing that to our attention. Feel free to come out of the woodwork. You won't offend me or Reena or anybody. You're welcome to drop me an email, many of my colleagues do, either to say thank you and that they're on the same page or just saying, *"Hey Amanda, you might've missed this"*, which I really do appreciate. So if you haven't checked out the comments section on the podcast page of the website over at yourstrataproperty.com.au/podcast, if you click into whatever episode you're interested in, have been listening to, want to get into a debate with me about, and scroll down, you can absolutely post a comment there, and we'd love to hear from you. All right, moving on. Your win for this week, Reena.

Reena Van Aalst: This is actually quite an unusual win, Amanda, because I think in most cases this would not be considered to be a win: being appointed as a compulsory manager for a scheme. So while I've been in this building... I think we've mentioned it in a recent episode. An owner had not had her apartment. There was water penetration for many years, and there was some issues with how the scheme was being run. And therefore we were appointed as compulsory managing agent, pursuant to Section 237 of the Act. Anyway, so people are always apprehensive. Compulsory manager has all the power, which obviously we need to exercise judiciously, and with due care, and without sort of fear of failure to anyone, even the person that was instrumental in our appointment.

So when we considered all the financials, we did realise that this building for many years has not had enough money. They've had 4 consecutive years where managing it has raised a deficit in the admin fund. And even though there was money in the capital fund, it was not enough money to really do anything. And they had raised a special levy to do some painting, but of course all that money was being used to fund both the capital fund expenses and the admin fund deficits. So we provided a comprehensive 2-page talking about the history, providing a table of the financial history. We also advised people why we had to be appointed, what our purpose was for the next 12 months. And we also asked owners to come to the meeting because even though we are the compulsory managed agent, we want to listen to owners' feedback and get their thoughts and ideas on what we were proposing. And we were sort of concerned because we were basically tripling the levies, which is quite an ask for any building.

But we were quite surprised that this was actually received with not any opposition, which I had been sitting, expecting, and worrying about. And people were actually quite happy that for the first time ever they were provided with a comprehensive budget that provided all the explanations. We had an Excel table, showed the basis of all our calculations. We explained the historical reason and why the owners corporation was where it was in its current financial position. And, lo and behold, they said to us, *"Can you continue to be the compulsory manager even after your period compulsory manager expires?"* And Sarah Knight, my colleague, just burst out laughing. They were so grateful. So that was the best agent they've ever had.

And I just thought that I would like to share that with our listeners. There's a lot of people at times think, *"Oh, being a compulsory manager, people don't like that."* And of course no one likes power to be taken away from them. That's understandable. But as we know, Amanda, working in this field there are so many dysfunctional owners corporations where people just don't get along. There's a lot of issues. Some people want to spend money. Some people don't want to spend money. There's personality clashes. And I just thought I'd share, in the sense, that they said, *"Can we have this dictatorship?"* That's what they want.

Amanda Farmer: Isn't that interesting? They've never had so much disclosure and engagement and information as when they had a compulsory manager who was exercising all of their powers.

Reena Van Aalst: Exactly, I know, so I just thought I'd share that with all our listeners today, to think that, hopefully, if this does happen to you, it's not the end of the world. If you have a compulsory, good strata managing agent, it may actually work out to be the best thing that's ever happened to the building in terms of having enough money for it to function and preserve its value.

Amanda Farmer: Well, that's the key. You just said it. It's about being managed by a good managing agent. And when I have

clients come to me or even just people telling me stories about compulsory management, *"It's terrible. Avoid it at all costs."* I always say, *"Look, it depends on who gets appointed. And if you are the applicant, and you are the one putting forward your suggested strata manager, your preferred strata manager, then it's for you to make sure that that is the right person. It's somebody who you know is competent and experienced and used to compulsory appointments and understands their professional obligation to act in the owners corporation's best interests at all times."*

And if you have someone like yourself, Reena, who still conducts whether you call them meetings or you call them information sessions, still records all decisions, still takes into account the views of owners, even though they don't have to, then you're right. It can absolutely end up in a situation where you finally have the money to do the things you've always wanted to do. Owners and residents are more educated about what their rights and their responsibilities are. And after that 12 months or 2 years, I see it happen to you time and again, you're asked to stay on.

Reena Van Aalst: Yes, it's funny, I've only had two compulsory managements prior to this one, and both of them, now I'm their regular manager. And I think the way that I look at it... I sort of impart the view that I'm just the custodian of your building for a set time. So this is still your building. We still want to do the best for you. We're just here for a short time to get you from A to B. So, yes, that's been working quite successfully to date.

Amanda Farmer: Nice one. Good message there for strata managers and committee members alike. Okay. Let's wrap up with my win for this week. And it's kind of a joint win, isn't it, Reena, because I want to talk about the highlights from the Australian College of Strata Lawyers' Annual Conference, which we both attended in Noosa, Queensland just last week. I thought it was a great conference. I do attend every year. I usually speak at the conference. I do sit on the council of the college. Not only is it a great opportunity to catch up with strata lawyers from across the country, this year we had, like yourself, Reena, a strata manager or 2 in the room, not too, too many. But definitely academics who are doing a lot of important research in this area. And other stakeholders who support all of us and do their best to make sure we're all living as peacefully in apartments as possible.

A highlight for me, Reena, was Dr Cathy Sherry's presentation on greening cities: how we can get productive green space into our cities and on our buildings. Now, Cathy is from the University of New South Wales. She has been a past podcast guest. She is always a fabulous presenter and enlightens us all with her views on how we can do strata better. And she's been doing a fair bit of research into this concept of green cities and she told us how this is not just a design concept. Incorporating gardens and landscaping and trees and green areas is not just a concept that architects have come up with because they think it sells more apartments. There is actually research that shows that as humans we thrive in green environments. And there is this concept... Do you remember the name, Reena, that she raised?

Reena Van Aalst: Yes. Biophilia. She mentioned that, and that was relating to the human bond with other species, which is E.O. Wilson in the Harbor 984 paper that she was referencing.

Amanda Farmer: Yes. So we have this need to enter green spaces, and it helps us to survive and thrive. And even after this period of urbanisation, these millions of years of evolutionary biology, has not changed that predisposition, I suppose, to green spaces, outlooks, views, water. All those things that we think are just nice places to live, there is a biological reason why we feel that way.

Reena Van Aalst: Yes, and also, Amanda, I think some of her research that she was examining showed that impact on mental health for people when they do live in green cities versus people that live in concrete jungles, so to speak. So in terms of the mental health impact on people living... Because in a sense, multi-unit dwellings are living in very close proximity. So in a sense, you go from an office tower where you work, then you come home to at apartment tower, so to speak, and then having that greenery helps with mental health issues and being able to sort of deal with life. And it's all sort of been documented in many, many research papers on this subject.

Amanda Farmer: Yes, and she did make clear that in that research they did control for factors like education and wealth and all the other things that you might think have an impact on general happiness and mental health. When you control for all of that, it is still the fact that living in these green spaces is just producing happier people, which is good to hear and important for our planners,

our developers, our architects to understand as they are building our communities of the future.

Reena Van Aalst: Yes, and I think you'll find, Amanda, a lot of new developments have what are called green walls where possible, which I think particularly are hard to maintain, but aesthetically are very pleasing and engaging. And also a lot of rooftop gardens now in terms of if you haven't got the ability to have green space in your immediate surroundings, having rooftop gardens with beautiful plants and recreational areas where people can relax also is another way of trying to achieve that outcome by just using the space that the owners corporation might have that's not being used at all.

Amanda Farmer: Yes. Very lucky if you can be in a building that has that kind of space and able to use it in those creative ways, but if you are perhaps looking for a new building to invest in or to live in, then bearing in mind the importance of green space is a good idea. Other highlights for you, Reena?

Reena Van Aalst: Amanda, I think I'm going to save some of my highlights for a future episode because there were some very topical things that I've learned, being able to attend such a fantastic conference, I'd like to share with our listeners at future sessions that we have.

Amanda Farmer: Okay, a bit of a teaser there for us. Sounds good. Looking forward to it. All right, Reena, but it was lovely to catch up with you in person, and I know many of our listeners approached us, and so it was good to meet us in person, to see us together. We said, "Yes, *actually we do hang out.*"

Reena Van Aalst: We do try.

Amanda Farmer: We do like each other.

Reena Van Aalst: Not just over a podcast.

Amanda Farmer: Exactly. No. Lots of fun. Alright. Well, nice to chat to you again, and I will catch you next time.

Reena Van Aalst: See you later, Amanda. Bye.

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