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YSP Podcast Transcript: Episode 205. Building email accounts | records handover | boundary lines

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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. Hi, Reena.

Reena Van Aalst: Hi, Amanda. How are you?

Amanda Farmer: I'm doing great. I am having a wonderful week in strata. I hope everybody out there is too, and I hope you are too, Reena. Yes, it's been pretty, pretty busy.

Reena Van Aalst: As always, and we are here to talk about our wins and challenges for our week in strata. What, Reena, has been challenging you this week?

This is not a new topic, Amanda. We've discussed this before. It's about records of owners corporations, and in this particular example I'm referring to committees where they actually have their own email address. So, in a scheme about 18 months ago, the strata scheme after about 3 or 4 months decided to add their own email address so that they could manage communications, which was fine. But what we've now discovered, Amanda, is that there's been an ongoing leak in one of the apartments and it hasn't been addressed properly. By the time we found out, it's gone too far. But the other issue I want to ask you, Amanda, in terms of your experience with this type of practice is the impact that this has on strata searches when the managing agent is not being copied in on all the emails, and not that necessarily you'd want to, emails are very voluminous in so many schemes where there's a lot of things happening, but in terms of a strata search, I mean, how is this going to be captured? I'm concerned that there could be some other things that we're not privy to, Amanda, that the committee didn't realise that they're important that we know about, yet we're sort of being not intentionally excluded, but perhaps not really seen to be integral to the whole email communication process.

Amanda Farmer: Yes, for sure. So, you are talking about an email address that might be secretarygreenhills@gmail.com.

Reena Van Aalst: Exactly, that's correct.

Amanda Farmer: Yes. Becoming more and more common. I see it too. You as the managing agent don't have access to that account. You don't know if... you're sometimes not included on emails that are sent through that account. Really good point and a difficult situation when you have, as you say, people coming to inspect the books and records, they aren't necessarily going to be seeing everything or the most important things because the secretary is the one who has ownership of that account. I'm just thinking out loud here, maybe that's the key to it. It is a record of the owners corporation. Shouldn't the record keeper, if that is the strata manager exercising their delegated authority as record keeper, shouldn't the strata manager be the person who has that administrative administrator access to the Gmail account?

Reena Van Aalst: That's a very good suggestion, Amanda, but I think also should we then tell people that come to do a strata search that we don't have all the records and that they should email that particular email address for anything else that could potentially be missing? We've done that before for a building where they had some physical files at the building. This is back in the paper days when we couldn't obviously hold everything for a search, and we said to the prospective purchaser, "We didn't have all the records, but most of them are at the building, so here's an address that you can make a time to inspect them." So, I think in a sense us having this conversation has prompted me to perhaps give that email address as part of the strata search and inform the searcher that there is another communication that perhaps we might not included all copies, and therefore that should be then referred back to the secretary or whoever is the administrator of that email address.

Amanda Farmer: Yes. I'm just having a look at our legislation in New South Wales, and we do have Section 176 which talks about the form of records and says that any record required to be made or stored by an owners corporation may be made or stored in the form determined by the owners corporation. That talks about form, not so much place, but I suppose some if your records are in the form of emails within a Gmail account and some of your records are within the form of PDF files within your strata managers filing software, then you're keeping those records in different forms, and on the face of our legislation that's permitted. I think that's a very good example. It isn't any different to a building that has some records kept on site and some kept within the strata manager's office. I don't think so, but it's important for the strata managers to be alert to that and make sure that they are telling the person inspecting the records exactly where they're located and what form they're in.

Reena Van Aalst: Yes, that's a great distinction, Amanda. Thank you for that.

Amanda Farmer: No problem. We love talking about records on the podcast. Anybody who is new to the show will find many past episodes where we talk about access to records, why you are entitled as lot owners to access your records, all of your records, why privacy is not a reason to deny you access. So, feel free to go back over those past episodes and educate yourselves in that area. It is an important one to be across. Okay. The challenge that I would like to bring to today's episode, Reena, relates to a recent pet case that we had in the tribunal, and we have talked about it before. It is the Cooper case that we talked about in Episode 197. The case is a decision of our New South Wales Civil and Administrative Tribunal delivered in November, 2019 at Strata Plan 58068 and Cooper.

It is the latest in a series of cases coming out of our Tribunal that says that blanket bans on pets may be harsh, unconscionable, or oppressive. I've said maybe there because it was the Cooper case that said a blanket ban is not necessarily harsh, unconscionable or oppressive. It may be. And there's been a little bit of discussion on the website under this episode. We have had some listeners weighing in with their thoughts, and I thought I would bring it to the table as a challenge, because we didn't delve that deeply into it in Episode 197, but I have since been looking at it closely for some clients and I've been delivering presentations to our local councils here in New South Wales on by-laws, and I've been talking a bit more about this case.

Amanda Farmer: But it's certainly been pointed out on the website that the case is an important one because it does say that there may be situations where a building is able to objectively justify a no pets by-law or a pet ban. And if you read the case, it does say that a building, for example, that has a lot of short term tenants, so maybe it's a serviced apartment building or a holiday let or a very small building, a 2 lot scheme or a four lot scheme, that may be the kind of building where a pet ban is appropriate because it's hard to regulate the comings and goings of pets when you have lots of short term tenants, or perhaps the impact in a 2 lot or a 4 lot scheme of 1 or 2 residents, having an animal is more significant.

So, my guidance to buildings who are looking at by-laws dealing with pets does remain that an application process, I believe, is the right way to go rather than a blanket ban. But if you are in a unique building and you can objectively justify a ban, then your ban may not necessarily be harsh, unconscionable, or oppressive.

Reena Van Aalst: I just want to add to your comments, Amanda, about perhaps a small building, because just recently I had a scheme, which is actually a company titles scheme, and they have obviously much stricter rules when it comes to pets normally. But what I wanted to raise was that there is a family that lives in the building, and the kids are quite scared of the dog, Amanda. So I think not everyone's a dog lover, I think, and that's something that I think has to be taken into consideration. Now, I have several dogs myself, and I know that you have a dog, so I know that it's sort of horses for horses, but I think that what you're mentioning perhaps should be taken into consideration by some buildings when they are looking at the whole pet policy.

Amanda Farmer: Yes. Well, I know through colleagues that the Cooper decision is under appeal. There has been an appeal lodged with the appeal panel, so it will be interesting to see what the appeal panel comes out with because we haven't had a decision at that level yet on this issue. But I was in particular drawing attention to the comments on the website under this episode, because Jo Cooper herself has weighed in and posted a couple of comments under the podcast. I do know Jo, and she is a regular podcast listener. She's just providing there in response to a comment from Steven some insight into her on the ground experience, if you like, and how she handled things within the building. So, if you wanted to go there and read some of Jo's comments, you are

more than welcome over at **yourstrataproperty.com.au/podcasts** and check out Episode number 197. But definitely a challenge in my camp for the time being, hard to know what direction we're going to see the appeal panel go in with this one. Stay tuned. We will keep you updated as always.

Reena Van Aalst: Thanks, Amanda. It's going to be a very interesting outcome, I think, because pets are a big issue in most buildings.

Amanda Farmer: Yes. Okay. Over to your win for this week, Reena.

Reena Van Aalst: Well, this is probably a win in the sense that we haven't yet got the outcome, Amanda, but I'm actually submitting for the first time an application under Section 188 of the Strata Schemes Management Act, and for our listeners, that is dealing with records from the previous managing agent. So, the Section of the Act is ordered to supply information or documents, and it says the tribunal may on application by person or an owners corporation, strata managing agent officer or former strata managing agent of an owners corporation to supply the applicant information that the tribunal considers that the owners corporation or managing agent, et cetera, has wrongfully withheld from the applicant and to which the applicant is entitled to under this Act. So, basically this relates to a building we took her over back in July where normally they say the books and records are ready, and then we got arranged for the collection and we just got the cheque and the CT and the common seal and nothing else.

I'm thinking, 'This is strange." So, we could have done email, then she sent us emails, so sending everything by email. I'm thinking, "But where are the books and records I need? You've only given me that document, this document, what about this?" "Oh, okay, you want that too?" and they sent me another dump of documents. This has gone from July last year to November where I tried to speak to the licensee-in-charge and they refused to let me speak to him and they even refused to tell me who he was in the first instance, which I thought was really strange. But anyway, so anyway, I ended up getting his email address. I wrote to him and said, "Obviously we're agents, we're both in the same capacity I think for our respective companies."

I said, "You've sent me some stuff by post that you've found, some invoices. Clearly from the volume that I had of documents, there was this missing that missing." The assistant wrote back to me prior to my email saying, "We don't give out US fees and documents. Just tell us what you want. But I'm not sure if we have it because we've deleted the building." What? Anyway, so has been, I'm not sure if any other managers out there have had to actually submit such an application, Amanda.

Amanda Farmer: Yes.

Reena Van Aalst: So, the committee has agreed to proceed on this basis, and I'll keep you informed as to how it goes, but this is not the first time we've had to deal with problems with managing agents handing over books and records, and unfortunately using, depending on what systems they use, means that you don't know what you don't have until you need a document, because going through copious amounts of documents is can be quite time consuming, and obviously costly for the owners corporation as well. So, yes, so this is probably a winner in the sense that we're going to go ahead now and lodge the application, and I'll keep you posted.

Amanda Farmer: Yes, please do. You've mentioned there Section 188, which is as well as the section that can assist you to obtain records from your former managing agent, it's the section that I most often quote to owners who are having trouble getting records from their current managing agent. The other section that jumps to mind, Reena, is Section 181. You might want to have a look at that. That says that if a strata committee gives a notice to a person who has possession or control of property, including records of the owners corporation, and requires that person to deliver the property, the records to the strata committee, the person must not later than 14 days after the notice is given, deliver that property to a member of the strata committee specified in the notice. That is a penalty provision maximum 20 penalty units, which is up to $2,000.

Just as you're talking about your experience there, I've just been looking up some relevant cases that have referred to Section 181, and it looks to me like they're usually run together with the Section 188 applications. So, I'm looking in particular for anyone who's

interested at the Owners Corporation SP 47027 and Peter Clisdell, 2017, appeal panel decision. I am also looking at the owners Strata Plan number 54026 and Phillipa Ternes, 2019, Supreme Court decision.

Reena Van Aalst: But, I mean, I've basically given them an email saying, "Deliver this within 7 days," or whatever, 14 days.

Amanda Farmer: Yes.

Reena Van Aalst: I gave them 14 days. I've already giving him that notice. To me-

Amanda Farmer: Hang on, but be careful about that because Section 181 refers specifically to the strata committee giving the notice, and the records, strangely, I think having to be delivered to a member of the strata committee.

Reena Van Aalst: Yes. Well, I mean, obviously that's not what they want. They want me to go and get the records.

Amanda Farmer: Yes, yes. From a lawyer's perspective though, my suggestion would be cover all your bases and maybe send out a Section 181 notice before you commence your proceedings so that you can throw that in as well simply because it's a penalty provision. So, they're exposing themselves to a fine.

Reena Van Aalst: Yes, okay. We can give it to-

Amanda Farmer: And quote the fact that it is a penalty provision of maximum penalty up to $2,000.

Reena Van Aalst: Yes, which I think never would ever happen anyway.

Amanda Farmer: Yes, Reena Van Aalst, so cynical.

Reena Van Aalst: But you want the records. You don't want the penalty.

Amanda Farmer: Sure.

Reena Van Aalst: I need the bloody information.

Amanda Farmer: Sure, sure, sure. But sometimes-

Reena Van Aalst: I want both, actually. I want $2,000 as well.

Amanda Farmer: Lawyers don't threaten people, of course not, but we might draw to their attention the consequences should they fail to comply.

Reena Van Aalst: Exactly.

Amanda Farmer: That's might assist you. Anyway, good chat, check out the cases that I have mentioned, and I will link to those in the show notes, and wrapping up with my win for this week. I had a question recently from a member inside our Your Strata Property membership community, and it was about whether or not the main entrance door to a lot is lot property or common property. Now, this one has a little twist, but Reena, your quick response to that would be?

Reena Van Aalst: Normally, without looking at the strata plan, it would be the owners corporation's responsibility.

Amanda Farmer: Correct.

Reena Van Aalst: Within the boundary of the lot.

Amanda Farmer: Correct.

Reena Van Aalst: Normally.

Amanda Farmer: Usually, yes. Nice one. Nice one. No, you're right. Normally the front door is part of the boundary between lot property and common property and is therefore common property. But this particular person was asking the question was able to send me a snapshot from their strata plan, and they pointed out to me that this is a townhouse development, and the main entrance door is actually within the garage.

Reena Van Aalst: Wow, that's interesting.

Amanda Farmer: Yes, and the boundary of the garage is the thick black line on the strata plan, and there either wasn't a line or there was a thin black line which showed the wall of which the door was a part. So, this person had a gut feel that, "Hang on a second, I think actually these doors are lot property because they are within the garage. They are a thin black line on the strata plan, not a thick black line," and I looked at it and said, "I think you're right."

Reena Van Aalst: Yes. That's a very unusual situation, as most of the time, I would say 99.9% of the time, the front door is usually common property and forming part of the boundary of the lodge.

Amanda Farmer: Yes, Reena. It is unusual, and the lesson in that is of course to never assume and to always check the strata plan. Make sure you're aware of where the thick black line is as well as any notations on the strata plan that might change the general rule or they set up that we're all used to. The other thing to check of course is always the by-laws because you never know when some time in the past, owners might've agreed that not withstanding the front doors are common property, we are going to agree by way of by-law to take responsibility for those. So, check the registered strata plan and check the by-laws, for sure.

Reena Van Aalst: Good advice, Amanda. Thank you for that.

Amanda Farmer: No worries. Little quick one to wrap up with there. I think we're going to leave it at that for this week, Reena. What do you think?

Reena Van Aalst: Yes, sounds good to me. See you next time, Amanda.

Amanda Farmer: Looking forward to it.

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