

Publication Date: 18 August 2020
YSP Podcast Transcript: Episode 227. Reopening gyms | new rules for abandoned vehicles | win for a pet owner

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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 good. I am having a fabulous week in strata. I'm very excited to hear your wins and your challenges for this week, and to share the same with you. Let's start with the challenge, what's going on, Reena?

Reena Van Aalst: Well, COVID is also being a big challenge, Amanda. I think from our last podcast, we talked about masks, but this time I've actually got another challenge due to COVID, and this is about gyms reopening in strata schemes. One of our strata schemes has had their gym closed during the whole COVID period, and even though the restrictions had been eased for a little while, we all know now that the virus is resurging and there are many hotspots around Sydney. This particular building is in a hotspot area, and some of the owners and residents are putting pressure on the strata committee and building manager, to reopen the gym. The committee asked me the question, "What can we do, because we're concerned about reopening. There's no supervision in the gym in terms of distancing, wiping, et cetera.? So I said, "Well, why don't you just get a quote from your current cleaner," who's obviously doing even extra disinfecting.

It's a large scheme and they've got extra times when the cleaner's disinfecting. More cleaning of lifts, all handles, everything, Amanda, there's a whole regime going on there. So we got a quote and it was like another \$30,000 per annum for us to open the gym and have the cleaning company going in every few hours and cleaning, et cetera. This isn't obviously budgeted, the extra cleaning costs. We had budgeted to have extra cleaning as part of the disinfection process because we were lucky we had an AGM coming up and that allowed us to pass that increase cleaning budget, but we did not obviously envisage this additional amount that is required to clean the gym. Now, what are the owners corporations rights in this instance, Amanda, where we can't supervise the gym and, therefore, how do we know that we are providing a safe place for residents to actually use?

Amanda Farmer: Yes, really great question and it's coming at a time when we're hearing that in New South Wales, at least, the government wants to clamp down a little bit more on gyms and require them to have their COVID safe plans and to have COVID marshalls that are wandering around making sure everybody's compliant. So it's a really good question to be thinking about. If we can't be doing those things in our strata buildings, we might not be required to do that, or we aren't... We aren't required to do that in New South Wales, but it makes sense that we would want to do that to be protecting our residents, and we don't have the resources to do that. We don't have the money to pay someone, to pay the cleaners, to be there to the extent necessary. Can we keep the gym closed, I suppose, is the question?

And as we've said throughout the pandemic, if an owners corporation wants to make that decision, it's important to be making that decision, I believe, in a general meeting to be engaging all of the owners in that conversation. And we know strata committees are making decisions on an urgent basis, so we've seen that happen earlier on in the pandemic that a strata committee would make the decision to close, but I think in this situation, as we're talking at the moment, there is no reason why a general meeting, electronic, couldn't be convened and put this question to owners. If we are going to keep the gym open, then this is what's required. Are we going to pay for that? Are we going to raise a special levy for that? Or are we going to resolve to keep the gym closed for the following reasons, and making sure those reasons are reasonable and make sense to the majority of owners who are there voting.

Reena Van Aalst: Great. Thanks. That's fantastic, Amanda. That's what I needed to hear.

Amanda Farmer: Yes. Common sense.

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Amanda Farmer: You know, common sense, and then always remembering to have that backed up, confirmed, authorised by meeting resolutions, is the important thing when we're talking about strata buildings. Different situations in different states, of course. We've seen Queensland, Victoria, where they have been mandated to close gyms; not as clear in New South Wales. It is something that committees need to keep thinking about regularly and reassessing, I think.

Reena Van Aalst: Yes, I totally agree, Amanda, and I think because of the fact that you can't monitor behaviours of people at a gym that you could do in a commercial situation, I think the owners corporations should pass resolutions, as you said, and have that documented so that, at least, all owners have a say in the fact that, do they want to pay more and are they comfortable having that facility being available during this time?

Amanda Farmer: Yes, indeed. Okay. I am going to talk about some legislation when talking about my challenge for this week. It is something that I have mentioned previously on one of our Facebook Happy Hour sessions. We do host Happy Hour over on the Your Strata Property Facebook page every second Friday, so if you haven't caught us for 4 o'clock Friday Happy Hour, head over to Facebook and find us and join us for next Happy Hour. I know Reena, you've joined me previously. Might be about time for you to come back for a Happy Hour, what do you think?

Reena Van Aalst: Yes, it has been awhile, Amanda, since I've been on the Happy Hour time at 4 o'clock.

Amanda Farmer: Looking forward to having you back very soon. But what I talked about a few weeks ago on Happy Hour was the changes to our legislation in New South Wales, for abandoned goods on common property, including motor vehicles. Cars that are not parked in the right spot, are parked so as to block an entrance or exit, or not otherwise properly parked on the common property. We used to have Section 125 in our New South Wales Legislation; that is gone. It is not there. If you look up the Act, you will see Section 125 has been repealed. This was the section that said we could place notices on abandoned goods, we could place notices on motor vehicles that weren't correctly parked, and if 5 days passed and they weren't moved, we could move them. We could consider ourselves the owner for the purpose of dealing with those goods and we could move them off the common property, and for abandoned goods, excluding motor vehicles, we could even sell them.

Now, what happened on the 1st of July, there was some legislation passed. It was some miscellaneous Fair Trading Legislation. It was not specific strata legislation, but it did cover this part of our Strata Schemes Management Act and repealed Section 125. The intention being, apparently, to simplify the law when it comes to the disposal of abandoned and uncollected goods and make sure that it was all dealt with under one piece of legislation, which is the Uncollected Goods Act of 1995. So that act has been amended to specifically refer to strata schemes, but it doesn't contain the same kind of notice provisions, and give owners corporations the same powers that we used to have under Section 125, and the regulations that were attached to that section.

In my view, it makes it much harder, if not impossible, to deal with abandoned motor vehicles, because you actually need an order of the Tribunal now, if a receiver is to be appointed and is to be able to deal with an abandoned motor vehicle, and I know many buildings were using that process that was in our regulation attached to Section 125, putting notices on the vehicle and referring to those sections of the legislation and warning people that vehicles could be moved. Those warnings for anyone who may be across the legislation will now be of no weight, no force and effect without that process being in place.

Reena Van Aalst: I recently had to use that legislation that was... it's now been repealed, because we had a car that had been left on common property for, I think, for like 4 months, and luckily we ended up getting it towed before 1 July, but I wasn't even aware that this had changed. This has been a really quiet change in the Act that hasn't really been brought to the forefront, not even on, I don't think, by any of our professional bodies either. I haven't seen anything come out from SCA or anything.

Amanda Farmer: Yes, I think something may have come out recently. It's been a couple of weeks since I started talking about it on social media, and one of my members inside our membership community... We have a forum where we post questions and answers, and someone had posted a question about dealing with motor vehicles, and this member had gone to, I think, link to Section 125 to say, "Hey, if you're in New South Wales, just be aware this is available to you," and the member who is also a strata manager said, "Oh my goodness," just as you did, Reena, "It's not there anymore."

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Amanda Farmer: That led me off to do some research and finding that the repeal had happened on the 1st of July.

Now I am very interested to hear that you actually used it because people will say to me, "Amanda, who really cares?" We couldn't really move vehicles. It wasn't all that helpful for the day-to-day problems with visitor parking, for example. It was only if you did have a car dumped. If you had a car dumped on the property, we've had this problem for some time where police, Council, often tow truck drivers, will say, "Oh no, private property, can't touch it. We can't come onto your common property and deal with that." So we've been able since Section 125 came in and the regulations attached, to point to a piece of legislation that did allow us to deal with abandoned vehicles quite quickly, quite promptly, quite effectively. And it sounds like you used that.

Reena Van Aalst: Yes, and what we also did, Amanda, in this case, was the building manager obviously was the onsite contact, but I asked him to put the notice also in the lifts and all the lifts of the building, just in case the person hadn't been down to the garage to see that their car has been dumped there for God knows 4 or 5 months. I said, "Put it under everyone's door, the notice put it in the lift," so that there can be no one saying that we didn't try and let everybody know the owner of the vehicle, whoever that may be, that we are going to take this action. So I sort of felt a bit more comfortable in that respect by taking every precaution I could, because that vehicle hadn't been moved for 4 months and, therefore, that person may have not come down to the garage; maybe they've moved out. I don't know, but yes, it was great, and we got on the street and it's no longer there. I don't know where it is now.

Amanda Farmer: Yes, so you could move it... What our legislation used to say is you could move the vehicle to the nearest legal place. I haven't gone back to have a look, but it was something along those lines to the place where it could be lawfully parked or lawfully left.

Reena Van Aalst: Yes. We didn't put it in a no standing or anything like that.

Amanda Farmer: Exactly. But the tricky part is now with... Yes, this is dealt with under the Uncollected Goods Act, but I've mentioned there, if there is what they call high value abandoned goods, and the high value abandoned goods is over \$20,000, I assume that must have been the estimate of the value, you need to have a receiver appointed and the receiver needs an order of the Tribunal to sell the goods. In relation to motor vehicles, in particular, I've just looked this up as we've been talking, Reena, Section 31 of the Uncollected Goods Act, says, "A person must not sell a vehicle unless the Commissioner of Police has issued a person with a certificate to the effect that the motor vehicle is not for the time being recorded as being stolen and the person has obtained a written search result in relation to the vehicle." My quick reading of that is you've got to actually keep the abandoned vehicle on your common property until the Commissioner of Police has issued you with a certificate that you can sell it. We don't have that provision to be able to move it anymore.

Reena Van Aalst: No, that's really going to cause a lot of problems, I think, in buildings who have had to use this part of the legislation, Amanda. I mean, I think for those that haven't had to, it's not an issue, but I think in larger buildings this does happen more often than not.

Amanda Farmer: Yes. It's interesting. What I've been talking about on my social media posts about this, drawing it to people's attention, is that I know so many buildings and I have one of these by-laws in my toolkit... So many buildings have a by-law that refers to Section 125, refers to the notice procedures that are available, and whether or not that by-laws had to be used, it is there; it is registered. Committees have found comfort in that, maybe giving it to tenants when they come in to say, "Hey, look, we've got some pretty strict rules about abandoned goods and about parking in the right spot, and if you don't comply with these rules we can actually take your car and put it somewhere else". Those by-laws have probably been effective for them.

Those by-laws now will not make any sense because those parts of the legislation don't exist and that's no longer the process. So they'll have to be revised, and I'm sure down the track, sometime soon, I'll be having a closer look at the Uncollected Goods Act and seeing how we can incorporate some of those provisions into our by-laws to help curb this unpleasant behaviour of dumping on our common property.

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Reena Van Aalst: That's great, Amanda. Thanks for alerting us managers to this whole new section that's been repealed now.

Amanda Farmer: Yes. That is it. Good to know, but as you said, it went through very quietly and we didn't have a say. I did see that from Karen Stiles at the OCN, when she commented on one of the posts and said it would have been nice. Would have been nice for owners to have known about this so that we could have a say and perhaps have the legislation amended in a different way or have some additional provisions popped into the Uncollected Goods Act for us.

Reena Van Aalst: Yes, exactly, Amanda. It would have been good to have some consultation.

Amanda Farmer: That was my challenge for this week. Reena, do you have a win for me?

Reena Van Aalst: Yes, so this is actually a win for some and not a win for others, I would say. We've touched base before, Amanda, where we have lot owner property, in this case, a hot water system that burst, and the person actually was away and it burst and it flooded, I think, 3 or 4 apartments cascading down the building, and the damage is quite extensive. It's floorboards, paint, furniture, so many things, but in particular, a lot of damage to the common property. The strata committee member said to me, "I mean, this is not an insurance claim because the hot water systems are lot owner property. Everyone's got their own individual system in their apartment and, therefore, this is not an insurance claim." I said, "No, I'll still put it through our broker, because if that's the case then they'll tell me and it'll be easier for us to then share that advice with those owners who are affected, to say, well listen, I've tried to go to the broker and the insurer has declined the quote."

In fact, the opposite occurred and the broker said, "No, it is covered," and I said, "Are you sure, because I need to be able to go back to the committee and say, this is included, and why." She did articulate the policy wording that showed that it was covered. It was lucky in a sense that all the other owners that were affected could then deal with the broker and get quotes and have the ability to come in and do all the remedial works and a specialist flooring company come in. But on the converse of that is that the renewal now is due in the middle of August and because this claim has now cost \$40,000, the ability now to get more than one company to provide terms for renewal has now been extinguished, because in a sense, the broker went out and said now because of other previous claims, which were minor in comparison, but this form, which is the most significant... As I said being \$40,000, only the incumbent insurer would offer renewal terms, of course, at a much higher premium.

I think, across the board, managers will be seeing buildings that are able only to get one quote, usually only the incumbent if there's been a claims history, or even in relation to whether or not there's been enough repairs and maintenance done. I might talk about this in a different episode, Amanda, but I think for insurance, this is a win for the building in terms of the residents and how they've been affected and having their property being fixed in a very prompt manner, as opposed to having to do with a lot owner, if that lot owner was irresponsible and how long that would take. But on the other hand, any claims that do go through the insurer, obviously will have an impact and now with the current climate with the bushfires, with the storms that we've had, the insurance market already is at a point where it's highly volatile. Now it's very hard to have more than one insurance company provide a quotation for reinsurance.

Amanda Farmer: Yes. It's something that I have seen, time and again, from buildings and committees concerned about this, that insurers will refuse to quote because of claims history. That's what they cite. So yes, great way to frame it there, Reena. A real win for those owners who haven't had to put their hands into their pocket to deal with the outcome of this lot property disaster, but a very generous insurer there, covering that aspect of the lot property. That's something that is often a surprise to strata buildings that our building insurance policies are, in fact, quite broad and do often cover lot property problems, so worth checking out. But when that claim is made, you are going to be impacting, of course, your claims history, and it is such a tight market at the moment.

Reena Van Aalst: Yes, Amanda. I think it's something that I think buildings should keep in mind in terms of whether or not it is always... Depending on the quantum of the damage, is it always best to put a claim in.

Amanda Farmer: Yes. Very, very good point. Yes. Think about that.

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Amanda Farmer: What's it going to cost to put our hands in our pockets and what is it going to cost over time, down the line, in our increased premiums or inability to have another insurer come in and quote. We will, as we do, keep talking about that issue on the podcast, Reena. Lots and lots of insurance scenarios that, as you've said, come up. I am going to share my win with you this week. I'm talking about pets, and as a pro-pets, strata lawyer, as you all accuse me of, and I don't know if it's an accusation if I-

Reena Van Aalst: Not again, Amanda.

Amanda Farmer: ...put my hand up and say that I am. We have had a win for one of our members inside the membership community. I had a member call with her, and that's a benefit that's available to members. They can book in for a one hour call with me, and we spoke about her application to keep a dog in her apartment building. It was a new home for her. She had bought in recently and she'd bought in on the understanding that the building was pet friendly; what she called pet friendly. Because it had a by-law that said animals are permitted with approval and approval can not be unreasonably withheld. When I see a by-law like that, I think that's great too, and I consider a building to be pet friendly because you have that opportunity to ask for approval, make your application. It is on the strata committee or the owners corporation, whatever level they're approving that at, to act reasonably in considering that application.

Now, this member, when she was sharing her story with me, said that she'd made her application and the committee had indeed refused her, and they had provided some reasons. Their reasons were that maybe the dog would be noisy, that maybe the dog would leave mess, that maybe the dog would damage property, and that they hadn't had any other animals in the building before. They were surprised that that by-law was there. They didn't know that it was there, and they were worried that now everybody would want to have dogs. I said to her none of those are reasonable reasons, to my mind, and that she had the opportunity to go to the Tribunal and make an application under Section 157 of our Act, to say that she had one of those by-laws that permitted animals with approval and that the owners corporation had unreasonably refused to give that approval.

Now I suggested to her that she kick off that process by filing an application for mediation. At that stage, she didn't have the dog. She was on a list to get the dog, had been approved, and then her application of course failed at the owners corporation level, so she'd lost the opportunity to get that particular dog. But I said, "Look, even though you haven't got another dog on the horizon, apply for mediation. At the moment it is taking about 3 months." I don't know if you've had this experience, Reena?

Reena Van Aalst: Yes.

Amanda Farmer: 3 months from the time you lodge a mediation application to get a mediation date.

Reena Van Aalst: Yes. Well, I've launched one about a month ago and I haven't even heard... the date.

Amanda Farmer: My latest one that I lodged took 3 months to get a date. We haven't even got there yet. And that's why I suggested to this member that she lodge that application for mediation and just start that discussion with the owners corporation so that they realised that was the path that she was heading down. She was determined to keep an animal and find a way to resolve this issue with the owners corporation. The win here is that upon a lodging her mediation application, Fair Trading served that on the owners corporation, strata committee sat down, had a discussion with her. She was able to give them comfort, resolve their concerns, and they have now said that if she applies again, when she's got her next dog lined up ready to come, then they will approve that application.

Reena Van Aalst: That's a great outcome, Amanda. I think it's one of those things where you understand both sides. The committee's concerns are valid to an extent, in terms of why they have those concerns, but I think until she actually has a pet, they really can't say maybe this might happen, and maybe-

Amanda Farmer: Indeed.

Reena Van Aalst: ... ifs and buts and pots and pans.

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Reena Van Aalst: End of the day we could always say... I could walk down the stairs and fall. There's so many maybes in life, you really can't just justify refusing an application on that basis.

Amanda Farmer: But what you can do is have conditions attached to an approval.

Reena Van Aalst: Correct.

Amanda Farmer: If there is a problem with the dog down the track, if there's noise, if there's mess, if there's damage, if there's complaints, then there's a process in place to deal with those, which could result in that in the approval being withdrawn. We do have buildings that have by-laws to that effect. It's about regulating those outcomes so that if there is a problem, the issue can be dealt with and not simply saying no, because you think there might be a problem. And in my view, the Tribunal is going to always see that kind of position as being unreasonable. She was very happy that she didn't even have to go to the mediation. Didn't have to go through the Tribunal process. Simply by showing the owners corporation that she was committed to this process and aware of her rights, and they were required to act reasonably, then they were able to resolve that issue between them. So happy news.

Reena Van Aalst: That's a great outcome, Amanda. I know that in other mediation applications that I've submitted in the past, sometimes just the application being submitted and a date being set, is all that it takes for, I think, sometimes people to come around, and that has been my experience in schemes over the years. So that was a great outcome that. I think also it's a bit stressful, I think, for owners having to deal with a strata committee and the whole mediation process. It can be quite daunting. If it can be avoided, it's a great outcome also.

Amanda Farmer: Yes, definitely. So don't let those long wait times put you off. I tend to say to clients these days, we should probably start that process earlier than maybe we might otherwise, because it is just taking so long to get a mediation date. The one that I have at the moment, which I may be talking about on the podcast in a future episode, has to do with some work that has been done within an apartment, and the owners corporation is seeking rectification. I'm acting for the owners corporation. At the moment there is work that's been carried out in a lot that is illegal, and we do have some concerns for the structural integrity of the building, and we're waiting for a mediation date.

It's not urgent enough for us to seek an urgent order from the Tribunal; we have thought about that. But this situation is just in limbo for this long amount of time. Committee's not sure how it's going to be resolved. The owner is not sure. I'm sure there's great stress on that side as well. I don't know whether it's the COVID effect. Everybody's at home and having disputes with each other or with their owners corporation, and backlogging our mediation process, or what's happening there.

Reena Van Aalst: Well, I think you're right, Amanda. I think that in terms of the capacity of Fair Trading, I'm sure that hasn't really been altered in terms of the number of people that they have available to do mediation. I think it is an increase and I'm finding that a lot myself with people. I think being at home and seeing things around they normally would not see if they're in the office or outside. When you're at home, whatever's wrong in your apartment and whatever's wrong in your building, is far more exaggerated because you're there more often than not. Even I think for people that they sort of going in some of the time to the office and some of the time I'm working from home, even that I don't think is changing that mindset where things that are bugging you are in your face or at the forefront, and I think perhaps there are more mediation applications.

I'd be interested to hear from Fair Trading about this if we ever get to have a chat with them about them, but I might speak to some of my mediators, actually, that I know personally, in terms of the number of times I've had to deal with them, not on a personal basis, but I might ask them what's going on.

Amanda Farmer: Yes, let us know how you go with that. I also wonder if it's the impact of people not having travel plans, not feeling as if they have a bright future on the horizon, something to look forward to, and thinking, well we're just going to knuckle down at home and solve some problems here rather than be distracted by this European holiday that we've got coming up. I know I'm finding that hard to stay focused.

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Reena Van Aalst: I think it's one of the first world problems where you can't cope because you haven't got a holiday planned.

Amanda Farmer: Hey, I have that problem. I feel it, and yes, it's difficult. What we are lucky enough to be able to do in this fabulous country that we're in, of course, is to travel some places, not all of them at the moment, but some places. That's definitely something that I'll be planning as someone who quite enjoys travel and enjoys having travel to look forward to, planning a trip somewhere reasonably local is a good idea.

Reena Van Aalst: I think, Amanda, we've always said to ourselves that why travel locally when you should do that when you get older because you might as well travel when you can, overseas. Whereas, now it's, in a sense, shifted that around. Now we should be traveling within our own country and spending more time locally, and trying to get our economy going as well, which is another benefit of traveling in Australia.

Amanda Farmer: And leaving our strata managers alone, and our Fair Trading mediators. There we go.

Reena Van Aalst: Exactly. Yes, definitely.

Amanda Farmer: Well, it's been lovely to catch up with you again this week, Reena, and I will set you free into the world of strata to come up with some more wins and maybe a few more challenges for us to cover next time.

Reena Van Aalst: Thank you so much, Amanda. Bye.

Amanda Farmer: Bye.

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