

Publication Date: 8 September 2020
YSP Podcast Transcript: Episode 230. Service by email | prior notice of AGM |
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Intro: Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source. To access previous episodes and useful strata tips, go to www.yourstrataproperty.com.au.

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

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I am great. It is wonderful to have you here with me today to share our wins and our challenges for the week, as we like to do every now and then on the podcast. How's your week in strata been?

Reena Van Aalst: Very busy at the moment, Amanda. I think COVID is really adding some challenges with tenants moving in and landlords putting a lot of pressure when there's an application for pets and the tenant won't actually sign until they know they can have their pet. You have to try and get quick approval from their strata committees who on the most part are very punctual, but of course, they're volunteers, they've got day jobs and... yes, so and then you're getting 3 emails a day from the agent, phone calls and yes, it's really been a bit challenging.

Amanda Farmer: So this is because landlords are so eager to secure the tenant that there's a lot of pressure on you, guys, to process these applications and make sure that they don't lose the tenant? Interesting.

Reena Van Aalst: Yes. Also, the other thing that's been happening is that agents I think are overwhelmed, or maybe they're under-resourced. Someone's moving in on a weekend and then the Friday before, we're told "Oh, we need to block off the lift," and we have to obviously get a deposit from them as well, for some buildings might have a bond for such move ins and move outs. Again, I mean at 3:47 on a Friday afternoon, it's really hard to arrange someone to put the lift covers up or the building manager to arrange that and the bond to be paid. So yes, this in the last, I'd say 2 weeks I've had about maybe half a dozen such examples.

Amanda Farmer: Well, I'm sure there are many other managers out there listening in who are experiencing the same thing. Thank you for that insight. Let's jump in though, Reena, to the challenge that you did prepare for me today. I know that one's a challenge we've led with up the top, but I know there was something else you wanted to run past me for today's episode. Go ahead.

Reena Van Aalst: Yes. This occurred this week, Amanda, where an email was sent to our office because an owner had received an email from a building manager where they wanted access to their property to do some investigations in water penetration around the building. I just sort read the email just very quickly and it said, "Oh, how dare you send my email to this contractor?" Which was obviously a building manager, it wasn't a contractor. "And don't you know the laws of privacy? You should know this." Mostly, whoa. Anyway, and then I realised we hadn't done that. It was the strata committee who had done that and they've obviously got a copy of the strata roll. This owner has consented to correspondence being received by email. So that obviously would apply to agendas and minutes.

Now we responded to say that, we didn't do that. It was the strata committee. And then she obviously then writes to the strata committee. They have one of those email addresses where everyone can actually correspond with them directly. And so the owner wrote to the strata committee and says, I'm surprised you've done this. You know that this is privacy, blah, blah, blah. And the strata committee chairperson wrote back and said, but this person's actually given us their email address on the strata roll for consent to communicate by email.

And so I wanted to actually run this past you Amanda, because even though they can receive copies of agendas and minutes by email, does that mean that the strata community are really precluded from actually sharing their email addresses with the building manager, who I don't really believe is a third party as such, but in terms of that building manager going directly to an owner asking for consent for access.

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Amanda Farmer: Okay, what is the address for service listed on the strata roll? Because I know strata managers in your systems, you have a particular field, if you like in the electronic form where you fill in your strata roll and you put in there, the address for service of notices. What is that for this owner?

Reena Van Aalst: It is actually a physical address. It's I think the actual address is their apartment at the building. Although they have consented to receive agendas and minutes electronically.

Amanda Farmer: Okay. And you get that consent by and I have seen you do this Reena, you send out a form to any new owner and you ask them to fill it in. I imagine it says details for the strata roll address for service of notices. And you have a separate question. Do you agree to receive agendas and minutes by email?

Reena Van Aalst: I think we only refer to Section 263. I better have a look at that actually. And sometimes actually when we inherit schemes from the managers, they have a, what they call like an owner communication and preference list or they call it depends on what software is being used. For example, strata master calls it an owners list. So it'll tell you the address for service of levies, if it's to a physical address or by email. It'll say address for service of notices and they'll have physical address or by email. So in our formula, we refer to Section 263, I think from memory I've got-

Amanda Farmer: Yes.

Reena Van Aalst: Yes, I think it's 263.

Amanda Farmer: I'm looking at that section now. And that section in our New South Wales Strata Schemes Management Act is headed service of documents by owners corporation and others. And it applies to a notice or other document required or authorised under the act or the by-laws to be given by the owners corporation. If you are serving a notice on the owner of a lot, and there is an address for service of notices included on the strata roll, then the document should be sent to that address.

If it's a postal address, you put it in the post or you can leave it personally with somebody who is above the age of 16 years at the address and if it's an email address, then you send the email. Now the question that arises is what are notices? You've said Reena, this owner in particular has said that he'd like to receive agendas and minutes by email, but otherwise his address for service is a physical address or a postal address.

Reena Van Aalst: Well, I suppose this probably comes back down to how the question is asked, Amanda and also how the strata software and the strata roll is kept. So under the new legislation, even though an email address can be the only thing that can be an address for service, our strata software won't allow that. So we've had people where they haven't, they've just given us an email address and our software won't allow it. And so that's something that we've had to face in terms of if you have a physical address. But when we ask people to say, can we send it to you via email? I don't know if that then becomes their address as a substitute for the postal address. Because when we take on a scheme, the strata rolls would say from the prime manager and we did have one particular way, it's just an email address. There was no physical address.

Amanda Farmer: Yes. Well, Section 261 in our New South Wales Act expressly says that an address for service may be a postal address, or it may be an email address. So your software should be allowing email address only options for addresses, for service. I'm surprised it doesn't do it.

Reena Van Aalst: Yes. Yes. So we have to actually put a physical address in which is normally in our case is the address of the apartment, but then everything does go by email. So when people consent to receive documents by email, is that a substitute for...

Amanda Farmer: Yes, I suppose the question in this circumstance is was the building manager's communication a notice within the meaning of Section 263?

Reena Van Aalst: Yes.

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Amanda Farmer: If it was a notice that was being served on the lot owner, then it had to be sent to the address for service. And you're saying that that is a physical or a postal address.

Reena Van Aalst: Yes. The issue also, Amanda is, was this a query for access? So is that-

Amanda Farmer: That's right? It's a communication.

Reena Van Aalst: Is that deemed to be a notice? And if someone has given their email address and it's on the strata roll as an email address to receive documents, which is service of documents noted here under Section 263, does that mean because the email is already on the system and has been used, even if someone was going to do a strata search and then someone just got that email address and then would imagine then communicates, is that a really a breach of privacy as such?

Amanda Farmer: Yes. It's definitely not a breach of privacy because that owner has told you, please communicate with me by email when you're sending me agendas and minutes. So that email address is of course, on your records. They are the records of the owners corporation and any lot owner or their authorised representative can expect those records. I'm having a closer look at Section 263. And it says that the section applies to a notice or other document required or authorised under the act or the by-laws to be given. Now, a communication from a building manager to a contractor saying, please access this lot and here's the contact detail for the owner if you need it.

Reena Van Aalst: Oh no, he didn't actually include the contractors. He just said, I need to access your lot. He didn't even.

Amanda Farmer: So the building manager's emailed the owner saying, I need to access your lot and owner has complained that the building manager has got a hold of his email address?

Reena Van Aalst: Yes, and that basically that's a breach of privacy.

Amanda Farmer: Yes, no, it's not. And Section 263 in my view, doesn't apply to that communication. It is not. The email from the building manager to the owner is not a notice or document required or authorised under the act or the by-laws to be given. 263 is for the formal notices, notices to comply, for example. If there's a breach of by-laws, copies of minutes and agendas, of course, would be notices that are required to be issued. And for this particular owner, they've told you they want that by email, so that's fine. Yes, that's what I think.

Reena Van Aalst: Okay. That's what I thought too Amanda. I didn't think it was a breach of privacy as such. I thought the building manager who is also under the act allowed to perform certain functions for the corporation. If that email address was on our role as being given by that owner for communication purposes, then yes, it wouldn't be, but I just wanted to check that before I made any assertions and responded accordingly.

Amanda Farmer: Yes, I think it's important to remind that owner that their address for service on the strata roll is as follows and that is the address to which the owners corporation will send formal notices and documents required by the act to be sent to an address for service. However, you've also provided your email address in correspondence. You've told us the email address is fine for agendas and minutes. This was a communication in the course of the day to day management of the owners corporation that the building manager was sending you. There is no breach of privacy.

What I usually say is if you think there is, please point me to the law, the case, the section of the act that you believe has been breached.

Reena Van Aalst: Yes.

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Amanda Farmer: It is a common misunderstanding and anybody new to the podcast, maybe hearing this for the first time, but others who've been with us for years now will have heard me say this many times previously, it is a common misunderstanding that there is some privacy in contact details in a strata scheme when it comes to owners and their records that are held by the strata manager or the owners corporation. No privacy, you provide your email address, your contact details, your communications. They are on the records of the owners corporation and titled to be inspected. And in my view, to be used by employees, agents of the owners corporation to get the job done.

Reena Van Aalst: Thanks, Amanda.

Amanda Farmer: Pleasure. Well, Reena, my challenge for this week also relates to the issue of notices. This is something that has been a bugbear for owners for a long time, and I'm surprised that it hasn't yet been addressed in our legislation in New South Wales. I'd be very interested to hear whether this is dealt with in other parts of our country. Do get in touch with, listeners.

What I'm talking about is the notice of an Annual General Meeting. There is no requirement in New South Wales for owners to be informed of when that date is going to be, when the agenda is going out. There is no requirement for a strata manager, for example, to set a deadline and inform owners that there is a deadline to submit their motions for an AGM. It is often the case. I see it happen to owners, clients. I'm sure you see it to Reena on your side, that owners will receive a notice of Annual General Meeting. The AGM is happening on this date and they say, "Oh, I had no idea. I wanted to propose something for the agenda and I now cannot do that because the agenda's been issued. Why didn't they tell me?" And when I tell owners, there is no legislative requirement to inform or give the opportunity for motions to be added to the agenda, they're quite shocked. Have you had this experience, Reena?

Reena Van Aalst: Yes, we do actually. It is quite common, Amanda, especially when strata committees don't meet regularly and therefore if they do meet regularly then owners do have to receive the minutes, it might say that there's a date that's been scheduled for an AGM. More often than not that is really, it doesn't happen in most buildings, especially perhaps smaller buildings that don't meet regularly. And therefore your owners do get upset. And the legislation only says that you have to have an Annual General Meeting once in every financial year now. So there's no requirement even with the previous legislation where you had to have it at a certain time around the end of financial year.

So definitely that is an issue. And I think legislation maybe perhaps I can review might make some suggested amendments where perhaps owners need to be told maybe a month before. But sometimes the strata committees also don't decide these things to the last minute, even though the agenda is being prepared. And so they go, can we hold a meeting in 3 weeks time or even a month's time when we have to actually get something done, for example, all the special levies is required. Or sometimes there could be other factors that necessitate an AGM to be held very soon, obviously within the statutory guidelines and notice periods.

Yes, it is actually something that has been happening. What I try and tell owners is if they do have an issue, is to send their General Meeting motion beforehand, so you don't have to wait to know when the AGM's coming up. If you have seen that you do want to have considered by a General Meeting, it's in the motion to your manager because we always make sure that people actually include an explanatory note of no more than 300 words. So sometimes there is back and forth even on that before the motion can then be put on the agenda.

Amanda Farmer: Yes, so that is definitely what I advise my clients too. If they want something on the agenda, even if a general meeting has just happened, send your motion in straight away the next day so that you can be guaranteed it's going to be placed on the agenda of the next General Meeting, because if the owners corporation has your motion, they must put it on the agenda of the next general meeting. I'm interested, Reena, if they did change the law to say that there had to be prior notice given and an opportunity for owners to submit their motions, how would you as a strata manager feel about that? Do you feel that that's just one more thing for you, guys, to do, to handle, and that you're also going to end up with agendas that are much longer perhaps because owners feel then that they're receiving an invitation to contribute?

Reena Van Aalst: Yes, definitely.

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Reena Van Aalst: I think it's been more administrative burden that managers have to deal with amongst the many others that we already are dealing with. And I think especially during COVID at the moment with a sense of urgency around so many things, I think that it would be really another burden that strata managers don't require, and that's my personal opinion. On the other hand, if an owner does have a motion they want a General Meeting to consider and say, it's a renovation by-law, et cetera, manner. They can ask the strata committee to convene that meeting on their behalf or the secretary and they might have to pay for it.

So again, a lot of people's rights are extinguished because of the fact that they didn't have a motion considered. It just means that there's a cost, which it can be up to between doing on the size of the strata scheme, how many people received their communication again via email or by post. The costs can be between up to \$500, to a \$1000 even more, if it's a large scheme where the majority of owners receive their agendas by post, for example.

Amanda Farmer: Yes, and I do agree that best practices for strata committees to be having regular meetings and in the Strata Committee Meeting, deciding when the date of the AGM is going to be publishing that date in the minutes. And then, of course, sending a copy of the minutes to all owners. That way, if the owners are reading the minutes, they have indeed been notified of the date that the AGM is due and they can get their motions in quick smart.

Reena Van Aalst: Yes and that might be a better way of dealing with that requirement rather than having another notice being sent out and more letters, more paperwork. Just making sure that strata committee has a committee meeting, even if they'd just given an approximate time, it could be the next 3 months or something. So that means it's a bit of a trigger for people to get their motions sent to us in time to include on the agenda.

Amanda Farmer: Yes. I like it. All right, Reena, please do share your win with us this week.

Reena Van Aalst: Yes. Well, Amanda, you and I have discussed this on many occasions in relation to damage to common property from an insurable event resulting from lot owner properties, such as a hot water system. So we've had this discussion on numerous occasions and I wasn't aware as to why an insurance company would foot the bill when it was an individual lot owner's property that actually caused damage to common property and to other lot owners personal property. In most cases, especially in an instance, such as a water leak.

I spoke to an insurance broker about this and the answer was that first of all, a lot owner cannot insure for property that they don't own, which makes sense. But you can only insure your own property, your own contents. You can't insure the common property because you don't own common property outright. You obviously have an interest in common property, but it's not your property as such to insure.

And then I said, well, that's fine. Okay. I understand that. So, but then how come when there's so much damage that's been caused... I mean the last one I had just now was \$40,000 in damage. Floorboards, et cetera. This whole water system burst and was cascading down a number of floors below. I asked the broker, I said, well, how come the insurance company won't go after that owner and recover the cost like any other insurer would say in a car accident where if someone goes after them, then they try and go after the other person through their insurer or personally, if they don't have insurance. And she said, well, the insurer wants to a lot owner because they are also insured under the policy. So it's like suing your own client.

Amanda Farmer: Yes.

Reena Van Aalst: I thought, yes, that all makes sense. So for those managers out there and strata schemes who have asked this question said, "Reena, how come we can't because our premiums are all going up because every time this happens, if a large claim occurs, especially if there's water penetration, it's resulting in higher premiums, higher excesses in some cases. And now with the tide insurance market, it's actually resulting in one, the incumbent, usually offering terms for re-insurance." I think now for everyone out there, this is now the reason which makes perfect sense as to why the insurer must submit a claim and why it's actually ultimately stuck with that cost regardless of who actually was the cause of the actual event.

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Amanda Farmer: Yes, so you're talking about the building insurance policy, the lot owners individually are also beneficiaries under the building insurance policy together with the owners corporation. So yes, I really liked that explanation and a good way to also be explaining it to owners who I know I sit on a committee in my building and I've been asked that question, "Amanda, why are we having to pay this excess? And shouldn't our insurer be chasing the owner whose fault it was that their hose burst?" And yes, very good explanation there.

Reena Van Aalst: Thanks, Amanda. Yes I think now we can, at least with some certainty when we are queried about this issue, we can give a very plausible advice as to why the owners corporation is ultimately stuck with that cost.

Amanda Farmer: Excellent. Okay. Well thank you for sharing that win and my win for this week. Well, I am reminding everybody that next week from Tuesday, the 15th of September, the Shared Space Summit is happening.

Reena Van Aalst: Yes!

Amanda Farmer: It's so exciting. This is the world's first online summit for strata property owners. It is the first time that I have done anything like this. I am super excited to have Reena joining me as well as a special guest summit expert. We have 9 world-leading experts joining us for the summit. Experts on community, on property and on law. If you haven't registered for the summit, you can do that absolutely for free over at yourstrataproperty.com.au/summit. Reena, are you excited for summit week?

Reena Van Aalst: Yes, I'm really looking forward to it, Amanda. I think it's such a unique way of actually holding a seminar and having so many different people, different expertise and having it in the format that you're having it. It's really a very unique way of reaching out to all those people that live in strata and community associations.

Amanda Farmer: Yes. The beauty of online is that we can bring in quite a few international experts. So we have Charles Vogl speaking on the art of community. He is from the U.S. and he does a lot of work with the Yale Leadership Institute. We have Cat Carmichael from Community Associations Institute in California.

Reena Van Aalst: She's wonderful.

Amanda Farmer: She is. I know you've heard her speak before and she has been a previous podcast guest. We have Dr. Alex Morris, who is in London. She's a behavioral psychologist and she's going to talk to us all about virtual meetings. We also have few home grown heroes as well. As I mentioned, Reena van Aalst. Reena, You're sitting on a panel with Gordon Streight, a very experienced committee member, and we're talking all about renovations and value-add projects. Few other familiar faces that you might see there.

I do want to make sure that you know, in the afternoons during summit week, we will be over on the Facebook page debriefing, hearing from you. I would love to hear from you what you're enjoying about the summit, what your key takeaways have been. We will have live chat over on Facebook, more guests joining me over there too. It's going to be a pretty fun week. I've kept my greens up. I've been trying to get some sleep. I have been preparing, building my stamina. It's going to be full on, but I am so excited.

Reena Van Aalst: I'm sure you'll be up and ready, Amanda. I'm sure it'll be a fantastic event. I'm really looking forward to that. I'm sure many of our listeners are also.

Amanda Farmer: Yes. Looking forward to seeing you all there. I will put the link for the summit registration in the show notes under this episode. If you want to head over and make sure you are all registered. During summit week, you will get an email from me each day during the summit in the morning, giving you the link to access the summit sessions. So you do have to be registered to grab that link. And then if you head over to Facebook and you search Your Strata Property, you will find our increasingly popular Facebook page where you can join us for the afternoon sessions.

Reena Van Aalst: Sounds wonderful, Amanda.

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Amanda Farmer: Okay. Well, thank you so much, Reena. I will let you get back into the crazy world that is strata, solving problems, gaining some wins there that you can share with us in a few weeks time. I'll look forward to it.

Reena Van Aalst: Talk to you then, Amanda. Bye.

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