

Publication Date: 1 June 2021
**YSP Podcast Transcript: Episode 266. Committee member tag team & beware
outdated agency agreement**

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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.

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

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I am good. I am looking forward to diving into our strata wins and challenges as we like to do every couple of weeks or so here on the podcast. Thank you for joining me, being my co-host, co-pilot here.

Reena Van Aalst: Yes, it's a pleasure.

Amanda Farmer:

Let's jump straight in to your challenge for this week, Reena.

Reena Van Aalst: Yes. So my challenge for this week, Amanda, was through one of our owners who owns an apartment in another building which we don't manage, and they've been having problems with their strata managing agent. They've had a lift upgrade, and there's been so many delays, and there's a lot of elderly people. So, therefore in that case, it does make it harder when people have to use the stairs and the lift is unavailable.

So anyway, so she wanted to terminate the agreement, and she asked me, "What do we do to get rid of the agent?" And I said, "Well, let me look at your agency agreement to see the term, etc." And when I looked at it, it actually was a 2016 version of the agency agreement, which is pre the new legislation. And it also is an SCA agreement, which is our professional bodies Strata Community Australia. And we've been advised by SCA that you have to use a current version of the agreement that no member can use an older version.

And also references obviously different sections of the Act, etc. And then the other thing that was really interesting was that in the column where you have to fill out your delegation, there was nothing filled out. So, basically what it said was that if there's nothing ticked, that means the agent has the full authority and delegation under the Act. It was really interesting because she didn't even know that that's what they had done. So, when they had actually approved the agency agreement, I think about 6 months prior, they didn't even realise that they were giving the strata managing agent all this power. And the other issue is also, they didn't realise that the agency agreement, that version, was actually also out of date.

So, I think it's really important for listeners and perhaps managing agents that shouldn't be doing this, but you need to use the current version of whatever agreement you're using, whether it's an REI, one SCA, one... REI, for those that don't know is a Real Estate Institute that also have a strata chapter and they have an agreement. And also, looking at delegations because in a sense, if as an agent you have all this authority, then pretty much you have all this responsibility if something goes wrong. So, I don't know why an agent would want to actually have full delegation apart from say a compulsory situation. But yes, I'd raise it Amanda it's something I'm not sure... Have you ever come across that in your experience when you're dealing with disputes between agents and owners corporation?

Amanda Farmer: Not recently, it certainly was common in the couple of years after our new legislation. You mentioned that, Reena, came into effect in New South Wales and that's our 2015 legislation that commenced on the 30th of November 2016. There were quite a few changes there in relation to agency agreements, terms of agency agreements. We now have maximum 3 year terms. We can't have automatic rollovers. I'm wondering Reena, if in this agreement, did you notice, was there an automatic rollover or was there a fixed expiry as we should be having?

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Reena Van Aalst: Expiry at all because that type of agreement doesn't exist anymore. So, therefore it doesn't expire. So yes, that wouldn't. Yes, very interesting. I think that a company, which is actually quite reputable and is quite involved with SCA actually, is it using an agreement that's out of date? I'm not sure what SCA really wants... has to say about members doing this, but yes, it's actually quite a concern.

Amanda Farmer: So, if you're not in the loop on these template agreements and what Strata Community Association offers to its members, if you are a member and Reena correct me if I'm wrong here, you do have access to the latest version of the agency agreement and Reena's urging you to make sure that you are using that. If you're not a member, then certainly making sure that you have an up-to-date agency agreement that you may be using as your template. I know I'm sometimes engaged to draft bespoke agreements for strata managers, and then they use those going forward. And the Real Estate Institute of New South Wales also has its template agreement for members as well.

So, good reminders there to make sure our agreement terms are up to date and certainly compliant with the current legislation. There's been changes to the Property and Stock Agents Act as well within the last year or so. I think Reena, there's been a name change there. I'm not sure if I've quoted that act correctly.

Reena Van Aalst: That is correct, actually Amanda. That is the new name.

Amanda Farmer: Yes. So, I'm not sure if the latest version of the SCA agreement reflects that yet, but indeed, if you have the benefit of getting those updates, then they will be filtering through. It's always a good idea.

Okay. I shall move on over to my challenge for this week Reena and not necessarily a personal challenge of mine, but a very good question that has popped into my inbox from a listener. And it is about the constitution, the conduct of a strata Committee.

Now this is a committee where I am told one co-owner, and this is a husband and wife co-ownership was elected to the committee at the AGM. However, the other co-owner, the wife, is attending meetings, purporting to vote at Strata Committee Meetings and insert herself into the decision-making processes of the strata committee.

Now, this frustrated owner who is also a committee member has said to me, "Amanda, I've pointed this out to the strata manager, I've pointed this out to the other committee members, I've pointed it out to the husband and wife tag team themselves, and they don't agree with me that the wife who is not a strata committee member, shouldn't be engaged in the decision-making processes of the strata committee." I think he has managed to get an acknowledgement somewhere along the lines that she's not entitled to vote, but she's certainly sending emails and making suggestions and giving directives that the other committee members in the strata manager are following.

Have you come across this before Reena, the husband and wife committee members?

Reena Van Aalst: Actually only once. So, we've actually got it currently happening in one of our schemes, but yes, the husband actually he's on the committee, but the wife is always in the background. And we actually had... It wasn't myself it was my colleague at a recent meeting. And basically it was a Zoom, which was actually probably easier in a sense because we could actually hear her in the background. So, sometimes when they're there, it's a bit different. I mean, you can obviously you need a... The chairperson, needs to really to take control of this situation. I believe Amanda was the managing agent or the chairperson on the strata committee because they're the ones that have the authority in a sense to control the meeting. You can't have 2 people in the same lot voicing their opinions and directives, as you've said on the strata committee.

I mean with strata committee, it's like a board of directors. It's like someone turning up to a board meeting and their wife or husband being involved. This doesn't happen. So, I think people need to understand that even though it's a residential context, there are rules that apply. And therefore... It's very hard when those situations too, I think probably for the strata manager, they don't feel comfortable in sort of asserting the rules, but really you have to because otherwise there's an extra committee member or an extra voice and it just takes longer.

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Reena Van Aalst: And it's not really conducive to a good working relationship between committee members if there's one person that, like I said, tries to insert themselves into the decision making process.

Amanda Farmer: Yes. And of course this other person was not elected by the other owners to be a committee member at the AGM. Important to note here Reena that under our New South Wales legislation, Section 34 provides that we can have acting members of a strata committee.

And I do see this come up from time to time where we may have co-owners maybe it's a husband and wife, wife can't attend the meeting. She is the elected committee member. And instead, husband comes along and says, "Well, I'm here as the acting member in place of my wife." If you have a close look at Section 34, it does say that a member of a strata committee may, with the consent of the strata committee, appoint an owner or a company nominee who is eligible to be a member to act in that person's place at any meeting of the strata committee.

Amanda Farmer: Now keywords here, I think Reena, eligible to be a member. The person who you are appointing as your acting member must themselves be eligible to be a member. Now co-owners are not eligible to both be on the strata committee at the same time. That is a restriction in Section 31, of our Strata Schemes Management Act, have a look at Subsection 4. Only one co-owner of the same lot may be a member of a strata committee at the same time.

So, a husband and wife co-ownership could never together serve on the strata committee. And for that reason, the co-owner cannot step in as an acting member. They are not otherwise eligible for appointment. So, I love those brain twists in our Strata Schemes Management Act. It often comes up when we're talking about eligibility for committee positions.

If there's any one visor on that, Amanda, is that if they own more than one lot in the scheme, then they can be because they can nominate one person for each. So, they have a car space over there and 2 lots, and that other person could be. They're not from the same lot.

Amanda Farmer: Correct. And then you're not there in your capacity as co-owner of the same lot, you're there in your capacity as the owner of the other lot. Fair enough.

Great question there from a listener. And I do know from a couple of additional emails that he's still struggling to get that message across to his strata manager and chairperson, but hopefully getting this message out will help others who are in a similar situation to remember that the law is there, the rules are there, and they should be followed.

Reena Van Aalst: Exactly.

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

Reena Van Aalst: Well, this is a really lovely win, better for us because we've been managing this company title building for some years now. And basically after 7 years and the fire order that it was imposed on this company title scheme, finally, we've managed to have all the work completed, raise all the levies, had all the work done. And it's just one of those things where when you're getting emails from the City of Sydney Council chasing up fire orders for so many years, and you kind of like saying, "Where's this, where's that." And trying to get resident access, trying to get the consultants to sort of submit the paperwork in time. So yes, it's just a great thing. No matter in terms of the insurance premium now will be reduced for the scheme. You know, the safety of the building is now intact. So, it's just sort of those schemes that have undergone a fire order.

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Reena Van Aalst: It's a real accomplishment at the end of the whole period to be able to have it all completed and signed off. So-

Amanda Farmer: And for everybody to be safe.

Reena Van Aalst: Yes.

Amanda Farmer: And fire compliant. How much money are we talking here? Was this a-

Reena Van Aalst: Hundreds of thousands of dollars.

Amanda Farmer: Hundreds of thousands. And in new builds or-

Reena Van Aalst: It's a pretty old scheme, it's actually in Glebe and very old scheme and it's coming, titles still, so it's not has been changed since it's, it's still coming title building. They haven't converted to being a strata scheme, but obviously if they want to, now that they're in a much better position and have been talking about converting to a strata scheme, but until a fire order was completed in any of those, is there a chance that happening because one of the missions of council approval is that everything we provide fire services are compliant. That's one of those, one of the criteria when you're submitting an application or conversion as part of the DA, etc. So, yes.

Amanda Farmer: Well, congratulations. Did this come about because they looked into converting to strata title or just-

Reena Van Aalst: No, it didn't. It was, Ruby mentioned it for about 3 years now, and this was sort of in person, 4 years before that. So, no, it wasn't part of it. But since we've been talking about various items and some owners have raised converting the building to strata title, that's when this became more of an issue in terms of time away from doing other conversions. That one of the criteria is that council that you submitted such an application is that any of Annual Fire Safety Statement in the building. But you're right. That would, that could potentially trigger fire order, if the building is looking at converting from company title to strata title. Somebody coming to council without the fire services would probably trigger that when they come out and have a look.

Amanda Farmer: Yes. Good one to remember. Well, thank you for sharing that win Reena. I'm going to share my win for this week, which unlike my challenge is a personal win. Now, some loyal listeners who also follow my regular Friday live over on Facebook may already have heard this, but I am, today at least, broadcasting from a new location. I am in my new office in Mudgee.

Reena Van Aalst: Wow.

Amanda Farmer: Do I pretend you didn't know about this, Reena Van Aalst?

Reena Van Aalst: I would say, well it's a big change.

Amanda Farmer: Engaging in the excitement. If you do not know where Mudgee is, I forgive you. It is in central west New South Wales. It's about an hour and a half from Bathurst. Next big town.

This is an exciting move for my family. My husband has taken up a new role as the head brewer at Mudgee's newest brew pub. It's called 'Three Tails Brewery and Smokehouse'. This move has been in process for the last couple of months. Anyone who's ever moved towns will know that there's a little bit involved, especially when you have a young family. Our 8 year old little boy has had to change schools. He's in year 2. He's settling in really well in his new school. And Mudgee is a fab town. I am pleasantly surprised. I had not actually been here aside from our visits to work out how we were going to get all set up.

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Amanda Farmer: And it is incredibly popular on a weekend. I've been joking that I think half of Sydney is here on a weekend. This weekend in particular, there's a big concert on, there's always something going on here in wine country. It is indeed wine country. I've landed on my feet there. And I'm looking forward to seeing a number of you when you're coming through Mudgee. Let me know that you're here. We'll have a coffee, if not a wine. I am splitting my time between Mudgee and my Sydney office back and forth. It helps that there is a great little airport here with a few morning flights, which is convenient and enjoying the twin city living.

Reena Van Aalst: That's wonderful, Amanda. So, in terms of, I think I've heard there are pretty good restaurants also in Mudgee.

Amanda Farmer: Yes, we do have a Hatted restaurant that has been booked in for my birthday celebrations coming up in a little while. Yes, very lucky. Great food, great wine, really good town. Just as a local. I'm doing the grumpy local thing now where I can't get a coffee at my favorite cafe on a Saturday morning because all the tourists are here.

Reena Van Aalst: Yes, that's like Sydney side.

Amanda Farmer: That's it, exactly doing the... I'm the one grumbling in the background.

Reena Van Aalst: I don't think I've been to Mudgee, since I think 2002 was the last time. I might've been there once actually, so now I'll have a real reason to come down to Mudgee. Sorry.

Amanda Farmer: Absolutely.

Reena Van Aalst: I'll come down.

Amanda Farmer: Absolutely. We need to do a, one of our live YSP lives here in Mudgee. That'll be fun. Find a nice pleasant location, but yes, it is good times. A number of you will know that over the last few years, I have been shifting my practice to be able to work from anywhere. And I have had my fair share of various locations, including Europe, America, the UK. I did think that perhaps we would choose one of those places. My husband would take up perhaps a brewing job in Belgium I thought was a good idea. And we would settle there and I would deliver Your Strata Property Podcast from Belgium, not quite how 2020 and 2021 has worked out, but Mudgee is an excellent start. I think.

Reena Van Aalst: Yes wish we're in the same time zone Amanda.

Amanda Farmer: All that is true. Yes. See there you go. Didn't think of that. Well, I'm looking forward to continuing to share my adventures here with everybody. The next chapter in the grand adventures of a roving strata lawyer with a microphone.

Reena Van Aalst: Fantastic, Amanda.

Amanda Farmer: At the moment, I seem to be back in Sydney every couple of weeks or so. I was just there with you last week, Reena at our Women in strata event, our huge, giant, magnificent event. We enjoyed trivia hosted by our gorgeous drag Queens at the Kitty Hawk in Sydney. How much fun was that?

Reena Van Aalst: Oh, that was a fabulous evening. And I think I've had some feedback and one of my colleagues is a strata manager. He's actually a man, didn't realise that men can come to it as well. And I said, "No, of course men are allowed to come and we encourage men to come."

So next time, if any of the male managers are listening out there, we would love you to come to one of our events.

Amanda Farmer: Absolutely. And you don't have to be in drag. That is not a requirement.

Reena Van Aalst: That's right.

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Amanda Farmer: We will be letting you know when our next Women in Strata event is happening. For sure. This one was sold out over a hundred people attending, and we are conscious that many missed out. So, if you're not on our Women in Strata mailing list, make sure you do that so you're the first to find out. The website is womeninstrata.com.au. Lovely chatting with you this week Reena.

Reena Van Aalst: You too, Amanda. Have a good week.

Amanda Farmer: You too. I'll catch up with you next time.

Reena Van Aalst: Bye.

Amanda Farmer: Bye-bye.

Outro: Thank you for listening to Your Strata Property, the podcast, which consistently delivers to property owners, reliable and accurate information about their strata property. You can access all the information below this episode by the show notes at www.yourstrataproperty.com.au. You can also ask questions in the comments section, which Amanda will answer in her upcoming episodes. How can Amanda help you today?