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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. How are you, Reena?

Reena Van Aalst: Hi Amanda. How are you?

Amanda Farmer: I'm doing well. I am powering through my week in strata, as I know you like to do too, Reena. Let's dive right in. What has been challenging you this week, Reena?

Reena Van Aalst: This question was put to me by one of my committee members and in this particular development, the security system is administered by the BMC because there's a number of plans that actually look after the shared facilities. It includes a pool and a gym, and there's a recreational area, and there are security cameras that are obviously recording what's happening in those areas. And the question as well, who is allowed to actually view that footage?

Now, I think the concern comes from whether it's the building managers permitted to, whether it's a security company, children are there. Is there anything that perhaps could be legally an issue for the owners corporation if the footage were to be used in a way that's not intended? And I said to her, "*That's a very interesting question.*" So, I didn't think that the Strata Schemes Management Act could really deal with that, and the Strata Management Statement which governs the BMC was registered back in 2000. So, it's obviously a document that didn't contemplate the current security surveillance legislation that's in place at the moment. So, yes, what are your thoughts on that, Amanda, in terms of who would be allowed to view the footage?

Amanda Farmer: Yes, excellent question. I suppose it comes down to who owns the footage, and we're talking about... This question comes up all the time in the context of CCTV, I call it. You've called it security surveillance footage. There is often a question within owners corporations, "*Is the footage a record of the owners corporation, and if so, do I, as an owner, have a right to go and inspect it?*" And my answer to that question is always, "*Yes, it is a record of the owners corporation. You do have a right to go and inspect it.*" I do preface that with the question, "*Is there a by-law that deals with how this system operates and how access for inspection might be arranged?*" Because that's always a good place to start, but this is the situation where you have the system, as I understand it, within the ownership of the BMC.

Reena Van Aalst: Yes, ownership and control.

Amanda Farmer: Okay. And is this an installation that happened after the development was constructed? So, it's something that has been retrofitted if you like?

Reena Van Aalst: I think so, Amanda. Yes, I haven't looked at the SMS, but that's what I believe, yes. It's a retrofit.

Amanda Farmer: Yes. So, I'd be looking at what you've just called the SMS, the Strata Management Statement, and checking that the system is not listed as a shared facility.

Reena Van Aalst: Oh no, it's been added as a shared facility.

Amanda Farmer: Okay. So, it's been added as a shared facility and then the SMS will have provisions for how shared facilities are repaired and maintained.

If the shared facility is within the ownership if you like, and I'm sure that term's not used in the Strata Management Statement, it wouldn't be that easy. The ownership of the BMC members, then it may be that it is the BMC members who have the right to

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access this footage. How many BMC members are there?

Reena Van Aalst: There's like 10 members of the BMC, but only 3 members that have access to this area which is a shared facility, which is the recreational area because the commercial don't have access as far as I'm aware.

Amanda Farmer: There is a much bigger question here about whether somebody who is in a residential owners corporation and contributes to the shared facility that is the CCTV system, why shouldn't they be entitled to inspect footage from that system for an area that is completely unrelated to their building? I think they'd have a good argument that they are. They contribute to the cost of that system.

Reena Van Aalst: Yes, that's why we're trying to ascertain in terms of, obviously, you've got the cost issue and the ownership issue, and then, on the other hand, you've got surveillance legislation and who is allowed to view things. So.

Amanda Farmer: Yes, in terms of surveillance legislation, I don't know any provision that would be relevant here in terms of access to that footage. It probably does come back to who owns it. And we have these unique entities that are building management committees. They're not legal entities in and of themselves. They're made up of 2 or more in your case, it sounds like, Reena, 10 different entities and then are governed by the provisions of their Strata Management Statement.

So, I think what's you've flagged here is an issue that may be getting some specific legal advice on is a good idea, if not just for the present concern, but for the future, because this is going to continue to come up, who can access records of the building management committee, number one, and then in particular, the footage from the CCTV system. I agree with you that our legislation doesn't deal with that in the same way that it does for access to owners corporation records, and if your Strata Management Statement doesn't deal with that, then it seems like that's a missing piece that perhaps should be drafted in, and that's easier said than done.

Reena Van Aalst: Yes. No, it's a good idea, Amanda. I think legal advice is the best thing I think in this instance because, in terms of when you've got a number of members involved, it can become quite complex, and I think if things aren't particularised in writing and agreed upon, then I think later on when there's a problem, it could become much larger than it would need to be, had these things been put in place. I mean, at the time, as you can imagine, when schemes are adding shared facilities, normally they don't think of the things outside, just the cost and percentage allocation and perhaps the location of the cameras. They don't think about any other sort of extenuating circumstances that may arise in terms of access to footage, et cetera. So, yes. Thank you, Amanda.

Amanda Farmer: it's not a clear cut, but it is a good reminder for everybody who has or is thinking about installing CCTV. It's something that I often recommend in my webinars and in my education sessions that if you have CCTV in your building, it is a great asset. It is not so that you can go and spy on people, but it is so that if there is a problem or an allegation or a need to enforce a by-law, you have excellent evidence there already of by-law breaches or bad behaviour. But also because I do believe that if people know they're being watched in common facilities in places like garbage rooms and when we have problems perhaps with illegal dumping on the common areas, the fact that there is a camera there does change behaviour I think, for the better.

Reena Van Aalst: Behaviour modification, Amanda, I think is definitely the term to be used when some people know they're being watched.

Amanda Farmer: Yes, exactly. And making sure that if you're installing that system or have it installed that you then have that by-law that goes hand-in-hand with the operation of that system to regulate all of these confusing and difficult issues that Reena and I are talking about and getting that professionally drafted bespoke to your community and your system is always a good idea. Okay. Thank you for sharing that challenge, Reena.

My challenge for this week relates to the quorum provisions in our New South Wales legislation. Now, we do need to have a quorum at a general meeting in order to consider the motions that are on the agenda, and our legislation tells us that we have a quorum if we have at least 25% of the unit entitlement present and eligible to vote, whether that's in person or by proxy, and when our 2015 Strata Schemes Management Act commenced, we had a new provision that allowed for a chairperson to exercise their

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discretion if there wasn't a quorum after 30 minutes from the commencement of the meeting, the chairperson could decide whether they wish to adjourn the meeting to another date or proceed in the absence of a quorum.

Now, I was chatting with a client very recently and she explained to me that she is the chairperson. She's also the secretary. The building has a strata manager and my client had convened, in her capacity as secretary, a general meeting to consider some motions to do quite significant repair works, raise money for those works, sign contracts with engineers and contractors to do the work. It's a small building. My client was actually the only one who turned up to the meeting, and she took advice from her strata manager, who was there and I thought, at that time, a sensible advice, that she should adjourn the meeting because there wasn't a quorum. These were serious issues to be considered and it was appropriate to allow other owners the opportunity to attend an adjourned meeting.

The adjourned meeting was then held, and once again, my client, the chairperson was the only one who attended the meeting. The strata manager was there, and surprisingly, I was told, the strata manager said to the chair, that she should adjourn the meeting once again. So, what happened was an adjournment of an adjourned meeting. I said to my client, "That is not a thing. That is not something that can legally be done." And in fact, the legislation required her to go ahead in the absence of a quorum. She no longer had that discretion to decide to adjourn or decide to continue. Our legislation in New South Wales says that you must continue in the absence of a quorum and whoever is there, financial, eligible to vote, constitutes the quorum. So, I thought I'd bring this to the podcast because it left this particular person in a bit of a pickle, and I was very surprised that an experienced strata manager was not aware of this, and in fact, advised her as the chairperson to adjourn an adjourned meeting.

Reena Van Aalst: That's actually definitely a first, Amanda. I think I've never heard of that one before. I think what's a bit worrying in this context is that the strata manager wasn't aware of the rules. I mean, of course, lot owners and a chairperson, they're voluntary people. They exercise their functions in the best of their abilities and knowledge, and obviously, when you engage a strata manager, you expect them to be able to give you advice, but for a strata manager to say that you can adjourn an adjourned... I mean, perhaps in hindsight, I would have to say, she should have just gone ahead the first time. If these matters are urgent, it's a small building, and obviously, you don't get to a point of having all this stuff on an agenda have there not been sufficient background and things happening and complaints being made perhaps by owners or...

Amanda Farmer: Yes, well, it was a situation where there are a couple of owners who had been opposing the work going ahead, and she did have some concerns that there would be future proceedings trying to invalidate the resolutions. She wanted to make sure that she gave every opportunity for owners to attend the meeting. So, that's why she adjourned the first meeting. As for adjourning the second meeting, when I said, "*What happens now? You're kind of in legal limbo with this meeting,*" she said, "*Well, the strata manager has said the motions will all be marked as not resolved, and the meeting concluded, and we will convene a brand new meeting from scratch.*"

Reena Van Aalst: Exactly. I think those owners are not turning up as a sign of trying to frustrate the whole process by probably not being seen to be voting against it, but not turning up. So, it's another way of achieving the same outcome but they don't realise that that would have been counterproductive if their strata manager had known what the Act said.

Amanda Farmer: Yes. Oh yes. She definitely missed the opportunity to put those motions through in the absence of anybody else being there at the adjourned meeting. But yes, good point. Perhaps there was some agenda there on the part of the other owners. Look, something that we may see as basic as strata managers, as strata lawyers, the quorum provision and the ability to adjourn, if you like, or push on if that's what you decide to do after 30 minutes, we think we know these things, but just be careful that you're applying them correctly, and you haven't missed a key point there. You cannot adjourn an adjourned meeting.

Reena Van Aalst: Yes, but even in the previous legislation, Amanda, you had to adjourn, whereas now you don't have to, but the second meeting, at the, adjourned meeting, you always had to proceed, and even if there's only one person, that was always going to be the quorum. That part hasn't changed. The first part is what the legislation sort of allowed to occur in a sense to ensure that, especially larger schemes where there's always been a difficulty perhaps in achieving a quorum, there's the time delays of 17 days notice period for another meeting, further delays in achieving outcomes, sometimes you could just be short of a quorum by very few votes. So sometimes, that wasn't that they only had one person. You just had a few people short of a quorum, but yes, it's

important to understand and know the legislation.

Amanda Farmer: Yes, absolutely. Do you have a win for me this week, Reena?

Reena Van Aalst: Yes, this is actually a very strange one. Again, this is another new experience for me, Amanda, where there was a by-law that was passed at a general meeting, and some of the owners were against the fact that this by-law in their view was invalidly adopted for reasons in terms of disclosure of the areas of common property that were being used, et cetera. The concerns perhaps weren't raised as well as they perhaps should have been at the meeting and weren't documented. So, it then went to the Tribunal, and NCAT actually dismissed the application to invalidate the by-law and ordered that the by-law be registered as per the meeting's outcome.

And so, we went to register the by-law following having the consolidation completed, the lawyer said to us, "Oh no, we need a certified copy of the NCAT orders." So, we had to go back to NCAT to get a certified copy. Have you heard of it a certified copy being required? What does that mean? A certified copy of the orders?

Amanda Farmer: So, Reena, let me just understand the history here. The by-law was put to a meeting. It's a renovation works by-law for an owner. The by-law was especially resolved at the meeting, and then certain owners felt that that was the wrong decision, and they applied to the tribunal for an order, essentially invalidating the resolution. So, if the resolution was invalidated, then the by-law couldn't be registered. And I think you've said the tribunal didn't accept that. The tribunal said, "*No, the by-law's fine. The resolution stands and the by-law has to be registered.*" And the tribunal then made an order. Is that the order?

Reena Van Aalst: Yes, that's correct. Yes. So, an order was made to register the by-law in the same terms that had been adopted at the meeting.

Amanda Farmer: Okay. Now, tell me this. How much time had passed since the meeting and then the order? Were you passed the 6-month period? Because in my mind, you don't need an order to register the by-law. All you needed was for the tribunal to dismiss the application to invalidate. You then go ahead and register the by-law.

Reena Van Aalst: Yes, that's correct. It would have been maybe not even a month after the minutes had been issued that the appeal had been lodged. So, it was in order to prevent the by-law being registered because I had gone ahead and got 3 proposals to do the consolidation, and before I went to do that, then the appeal was lodged. So, therefore we could not register, and we were told by the lawyers acting to defend the application that this appeal had been lodged and therefore don't register the by-law until NCAT makes a decision. But part of NCAT's ruling was that the by-law be registered

I've got the orders here. I'll read them out to you. So, it says, "Pursuant to Section 149 of the Strata Schemes Management Act to make common property rights by-law tabled by the lot number at the general meeting held on the first of the date, and pursuant to Section 246 of the Strata Schemes Management Act for the respondent to do all things necessary to register the by-law referred to in the order one above on the common property certificate of title."

Amanda Farmer: Okay. That's a bit clearer. So, it was a Section 149 application, that's an interesting section under which to make the application if the by-law had not actually been registered, but then indeed it does make sense that the registration then happened under Section 246, and indeed that section does say that the order has to be certified by the tribunal as a true copy and then lodged with the registrar general.

Reena Van Aalst: Yes, so that's what we had to do. So, that was probably the first time, Amanda, we would have to have actually undertaken to not just refer to an order, but get a certified copy of the order.

Amanda Farmer: Yes. So, when a by-law is being made pursuant to an order of the tribunal rather than because of a meeting special resolution, then yes, the Land Registry Services here in New South Wales does require a copy of the order, and Section 246 requires that copy to be certified. And was that any issue getting a certified copy from-

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Reena Van Aalst: No, no, no, but the issue, Amanda, was as you said that the meeting had already been resolved to pass the by-law so it wasn't as if the tribunal was actually making any changes or ordering. It was just that the fact that it wasn't that the by-law was put and then the owners disagreed and we were resolving to adopt that resolution and by-law, and therefore the owner had to go to the tribunal to force the owners corporation to then allow the by-law to be registered. In this case, it was just a common property rights by-law. It was just a managing renovation. The owners are in conflict in this particular strata scheme. There were allegations of perhaps the plans not reflecting the true centre of the works, and they went to the tribunal. And so, that's why I thought it was a bit unusual that it would have to be a certified copy when it wasn't sort of anything that was... The meeting had already passed it. It was just now saying, *"Go ahead and just do what would normally have happened had there not been an application to dismiss the resolution and by-law."*

Reena Van Aalst: So, yes, it's an interesting one, and yes, I'm glad you sort of mentioned that it's quite unusual for that section to be applied when the meeting had already passed the by-law.

Amanda Farmer: Yes. With my limited knowledge, I have to confess, of the fact scenario there, there may well be a reason why that approach was taken. But this is why I love strata. I love these brain benders. Thank you for sharing that one.

Quick win that I will share as we wrap up. I wanted to say thank you, Reena, because a couple of episodes ago, you were sharing with us, Reena, the important steps that need to be covered off when an owners corporation is affixing their seal to a development application. And you've said that it's very important, and you take this process, as a strata manager, that you have all of the documents given to you by the lot owner who wants the owners corporation to assign their development application. The owners corporation, and it's really the committee generally, in my experience, who's looking at these documents needs to make sure they understand the work that's being done, they've got all the plans, they have all of the reports, the statement of environmental effects that's going to be lodged with the development application. So, they know what they're sealing. They know what they are facilitating in allowing the development application to go through to the council.

Now, I had a very recent experience where I was given a development application form on behalf of an owners corporation client and told, *"We know the committee has no problem with this work. Please have them sign and seal the development application so that we can proceed to council."* And I had Reena Van Aalst's voice ringing in my ears saying, "Amanda, do you have everything? Check that you have everything." And of course, when I looked more closely at the documents, the application form was referencing all kinds of things that were going to be lodged with the form, plans and reports and specifications, and I had none of those things to be able to confidently advise my client that the application was fine to sign.

So, I went back to the lot owner's lawyer, it was, and said, "I'm not even going to send this onto my client until I have these additional documents because they cannot sign a form that doesn't have all of the information that they need to understand the development that is proposed." So, thank you. I have learned from that podcast episode, and it was a good shortcut and a happy client I had that I wasn't wasting their time sending them incomplete documentation.

Reena Van Aalst: That's great, Amanda. Yes, I'm glad that I was to help you in that small respect.

Amanda Farmer: And as we know, signing or sealing, I'm using the word seal because we do actually put a stamp on documents to execute them as an owners corporation, that process itself simply facilitates the lodgement of a development application. It doesn't in any way approve the work. That's for council to do and where common property is being affected, that is for the owners corporation in general meeting to do, to approve that work on whatever relevant terms there may be. But owners corporations are often pressured, strata managers are often pressured into putting seals and signatures on development applications. Lot owners are understandably in a hurry to get their work through council but don't be bullied. Don't be pressured. If you don't have everything that helps you to understand what the work is or you don't know exactly what's being submitted to council, ask for that information, and it is the responsibility of the lot owner or their representative to arm you with all of that information.

Reena Van Aalst: That's right, Amanda. And I think also what you'll find now with councils, I know that City of Sydney and also the Inner West Council, they now require copies of minutes whenever a DA is being lodged for common properties because they're aware now that people, even though they're told that they can submit the application but not do the work, many people have

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proceeded to do the work once they've received the DA approval, and then it's really hard to then try and undo work that's been done. You'd have to go to the tribunal. So now, which is great that the councils are now understanding that they need to have the approval from the owners corporation either by minutes or any other format in terms of knowing. And the City of Sydney even says if there's any common property changes if they need general meeting approval or committee meeting if there's a minor renovation, there's been a by-law that allows the committee to authorise minor renovations. So, yes, I think that's really a good move.

Amanda Farmer: There you go. Very important to know too for our lot owners who are wanting to push things along quickly. Let's not put the cart before the horse. Make sure you've got your owners corporation approvals before you lodge your DA.

Reena Van Aalst: Yes.

Amanda Farmer: Awesome. Lots covered in this episode, Reena. Thank you so much for sharing your expertise with us once again. I will send you out into your week in strata and look forward to catching up with you next time.

Reena Van Aalst: Thanks, Amanda. See you then. Bye.

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