

Publication Date: 19 January 2022
YSP Podcast Transcript: Episode 296. Overwhelmed already? How to reset for a calmer 2022

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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 with me today, Reena Van Aalst, from Strata Central. Hi Reena.

Reena Van Aalst: Happy New Year, Amanda.

Amanda Farmer: Happy New Year. This is our first chat for 2022. Have you had a little bit of a break?

Reena Van Aalst: Yes, it's been good. We actually had nearly 3 weeks off, which is always quite nice to have it at this time of the year, even though one of our conversations we're going to talk about today, Amanda, is communications. Nevertheless, it's still actually good to have a formal break where people know that you are strictly not available.

Amanda Farmer:

Strictly not available, no excuses. I know at the end of last year, I was saying that I wasn't taking on any new work and certainly no new clients until February this year. And I have stuck to that, I think. No one's going to call me out on that. There's enough to wrap up at the end of a year, that's for sure, with promises that have already been made and work to be finished. But another big year ahead of us, full of wins and challenges, I'm sure. Do you have a challenge to share with me today, Reena?

Reena Van Aalst: Yes, I think Amanda, one of the challenges that our society is facing as well as strata managers and owners is the impact of COVID in buildings. And what we're finding now, even before we came back from leave, is that in some of our buildings where one building manager might have had COVID then the rest of the team had to then go into isolation. We've had contractors that have been unable to come on-site because again, they've been in isolation or they've actually had COVID. And the other thing that some of our buildings have had challenges with is mask-wearing in buildings. I think that a lot of my strata schemes are saying that they're finding it hard to enforce the mask-wearing in buildings, which I think wasn't really much the case when we had the previous Delta variant. But I think now because of this new way of thinking in a sense that we have to live with COVID, I think now we're finding it's harder to enforce rules and it's becoming much more of a challenge for our strata committees and building managers.

Amanda Farmer: And I think going through a couple of weeks here in New South Wales where masks were off and then having them go back on, I too have noticed that having them back on, particularly on the common property, which is indeed the law here in New South Wales, there hasn't been the take-up or the compliance that there was when that was the previous order. And I do see emails from building managers, buildings that I'm involved in. I get emails from building managers saying, "Just a reminder, everybody, mask-wearing on the common property." And yes, it must be very difficult, as it is for so many businesses at the moment, short-staffed because of staff in isolation or with COVID. I imagine strata management offices facing that as well, particularly large offices with many strata managers and assistants being down and out for the time being.

Reena Van Aalst: Yes. We had that happen before Christmas and then we had one of our team members had gone to a 21st birthday party. And even though she didn't get it, she was in close contact and then her mother and sister ended up getting it. So she had to be off and work from home. So yes, I think it has played havoc on strata businesses, large or small, I think because it depends on the teams that you're in and who does what and people being away or being unwell.

Amanda Farmer: So perhaps urging our listeners who may be committee members, owners, residents, to be a little sensitive to that and maybe their strata management offices are under considerable pressure at this point in time and being mindful that everybody is doing the best they can in a difficult situation.

Reena Van Aalst: Exactly Amanda.

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Amanda Farmer: Well, having come off the new year, Christmas holiday festive season, I wanted to talk today about the challenge of communication overwhelm. And it might seem like this is a period where people should be resting, on holidays, perhaps not on email or making reports about things that are happening in their building. But my experience, both as a strata lawyer and as a committee member and an apartment resident myself, is that this holiday period can often be the busiest time because people are at home, people are having parties at home. Especially now when travel is limited, there is alcohol involved in some people's celebrations, there is happiness and festivities. And as a committee member, I receive messages quite often about what might be going on in a couple of the buildings I'm involved in. I get messages by SMS, I get messages by WhatsApp, I get email messages.

And when I get to the second week or so of January, I recognise that I'm suffering from communication overwhelm. And I am sure that I'm not the only one who experiences this around this time of the year. And I wanted to workshop a little today about how I'm dealing with that. And maybe Reena, if you'd like to share, if you are experiencing any communication overwhelm, how you might be dealing with that. It is something that I have spoken about before in past episodes about communication protocols and even communication by-laws and how we might deal with difficult residents communicating in unacceptable ways. But today, I'm talking more about the level of communication we receive and the different methods by which we receive it.

Now, what I do tell my fellow committee members is that I prefer all communications to come via email and I like our strata manager to be copied into those email communications when of course the subject is about going on in the building. That helps with our record keeping and it makes sure that we can easily instruct the strata manager to send a letter or take some action or indeed put the issue on the agenda of our next committee meeting. I think WhatsApp groups in communities are great and it's something that I do support for issues that may be urgent, photos that perhaps been taken about things that are happening around the building and need to be dealt with quickly or even just a social support or a social group for communities, for people who may be isolating or not otherwise having contact with others, to feel connected or to ask for help if they need to. And SMS is a way that I often communicate with my clients in my legal practice. So I understand the benefits of that as well.

But I did find myself, last week, telling a resident in a building who was giving me regular updates via SMS, that I needed to apologise in advance that I was not going to be responsive on SMS or on WhatsApp. And if they did require a response, then please send me an email and I will always be responsive on email. And I said that was simply because I was overwhelmed with the level of communication. And I was glad that I raised that because the resident said to me, "Amanda, I don't expect you to respond to SMS. I'm just letting you know so that you are informed." And that took a weight off my shoulders to know that that resident didn't expect a response to every SMS or every WhatsApp message, but was just keeping me informed so that I knew what was going on in a building where I wasn't present. Reena, is communication overwhelming for you at this time of the year?

Reena Van Aalst: Yes, I think strata managers, I think we're in a different situation because I think people expect us, in a sense, to be available even during the break. And I had one particular message where someone sent me a text saying, "Happy New Year," and someone had attached a hose reel to the outside of their apartment. They're on the ground floor. And was I aware of this? Was there an application? And I hope that this hasn't intruded in your holiday. And I'm thinking, this is not urgent, as you could imagine. I also got an email about it. So I think sometimes people think, well, even though you are closed, they still think that they got the right to tell you things that aren't particularly urgent. And I think SMSs are a way where people do try to get your attention more quickly than perhaps with an email, because with emails, you don't get the sound, emails usually people respond, especially if it's a professional capacity, you're responding in a certain timeframe being business hours, usually.

Although for strata managers, business hours are much longer than most other professionals. But whereas with an SMS, because you get the noise notification, you tend to look at it. Sometimes people will know that you've opened it, because it'll say read on a message. And to refer back to your example, Amanda, that even though she said that she doesn't expect you to respond. But in a sense, it wasn't just saying for your information, because perhaps if you'd seen it written that way, you may not have felt that you had to respond in the way that you did. And I suppose in a sense, her behaviour had been called out where obviously it was becoming more than just the occasional text message.

I actually got a message over the break. I spoke to one of my committee members and he said to me that people want to tell him

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every 5 minutes who's doing what, and he doesn't really care. He doesn't care about that. But he's on the committee, as you said. And then people think that, as a committee member, you need to be told, whereas a strata manager, you need to be told. And there are certain things that you really can't deal with until you're back in the office anyway.

And I think because of the mediums that we have available, Amanda, and because of our phones being accessible at any time when we're at home or when we're travelling, people do feel that they can communicate with you by these mediums. And they do expect you to respond. Otherwise, they'd send you an email knowing that you're not available, and you'll see when you come back from leave. So yes, I think strata managers are finding now, even during this current break and the last break that we had with COVID that people aren't away and that there is a high level of expectation of being available and being involved even where things aren't necessarily that urgent. When we were on our break, someone rang before our office had opened and we opened on Wednesday rather than Monday and they were saying they're upset that we're still closed. That was a message.

Amanda Farmer: Exactly. And this is the thing. It's true that we can't control the way people contact us necessarily. I want to have my mobile number published. I want to be part of a building's WhatsApp group. I want to give my personal email address to my fellow committee members and my business email address to my clients. You really could block people or you could not give out your mobile number. Fair enough. But as you say, Reena, from time to time, that is the best way to contact in an urgent situation. And I think it's important that people have those means.

But what you can do, you can have some level of control. And this is what I hoped that I demonstrated the other day by telling the other person, in these circumstances, I will be responsive, in other circumstances, you're welcome to send me all the messages you like. But please don't feel ignored or upset if I don't respond. It is not because I don't want to respond or I don't care because I know I'm very concerned as a committee member, particularly if I'm not resident in the building. I'm very concerned to make sure other residents and committee members know that I do care, that I am interested, that I am invested in what's going on in the building.

But I cannot, when I'm receiving hundreds, on a working day, of messages per day from different means respond either at all or immediately. But definitely, the way I work is that email is primary. And if it is in my inbox, then it is on the list to be responded to and will always be responded to. So communicating that to your clients, to your colleagues, to your neighbours, to your fellow committee members, "This is the best way to contact me. Yes, I'll get those other messages, but please, if I don't respond, it is not because I'm ignoring you. It is just because I am overwhelmed." Then you may have that person come back and say, "It's okay. I get it. Not a problem." And immediately, you've got some relief there. But I think you need to have that conversation.

Reena Van Aalst: That's a great idea, Amanda. I think it's important that we all establish boundaries when it comes to that communication.

Amanda Farmer: So perhaps a 2022 New Year procedure or protocol for those out there who are struggling with communication overwhelm already, already in this year, putting in play those systems, those boundaries and communicating those to the people who need to know about them is a good idea. Have you already got a win for me this year, Reena?

Reena Van Aalst: Yes. This actually started last year, Amanda, I think that you are alluding to earlier, not taking on many new clients and trying to catch up with what you were doing in terms of your client workload and getting work done. And so what I decided to do last year was to resign from 3 buildings. It's quite a great feeling. I think a lot of people in strata don't like to resign from buildings because I know that, especially with a lot of managers, there's a lot of pressure to meet targets and manage a number of buildings and dollar values as part of any professional organisation. But I think sometimes when the relationship's not working or in a sense managing that strata scheme can actually endanger your company when you're being asked to do things that you know aren't correct and that eventually will cause an issue. There's no need. And it's just a great feeling, I think resigning. Just love it.

Amanda Farmer: I imagine this could well be a feeling on both sides. If the relationship is not working, then it's important that both

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parties move on. And I assume under your agency agreement Reena, as is the standard agency agreement issued by SCA and REI, there is a provision for mutual termination. So is that how it works with your clients where you say you resign, it's actually an agreement between the two of you?

Reena Van Aalst: I mean this particular building we resigned from, there was no conflict. End of the day, everything is going on fine, do this, do that. But then when they do this became an issue that I felt was not in the interest of our company, I just don't feel comfortable doing that, then yes, I just said, it's been a number of years now I've been your manager. It was harmonious. And so it's not always acrimonious. And also I don't leave my clients in the lurch. I give them time to find another manager and we keep working as if we're not leaving. Because end of the day, to me, how you are engaged and how you start off a relationship is as important as how you leave a relationship. And to me, when you resign, it's always best to do things, end on a good note. And so we give people time, like one particular, one night it was November and I said January. And they said, "Oh, can we do it at the end of March?" And I said, "Okay." Because of their AGMs. That's fine.

Amanda Farmer: Yes. Especially if you're otherwise looking at what may have been a 3 year up to a 3 year agreement, which are our maximum terms in New South Wales, a resignation that might be coming in the first year can be a surprise for an owners corporation and they need time to have a look at other options for partnerships they might want to make for the next 3 years. But definitely, if you have a client really may not matter what profession you're in, we certainly do this as lawyers, a client who does not follow your advice or who gives you an instruction to carry out an act which is illegal or which you cannot carry out under your powers, under your contract, your agency agreement or under the legislation, then it is very important to be telling that client that you cannot do that, you will not do that.

And if you continue to be instructed to act that way, then you have no choice but to resign. Indeed, I've been in that position before, as a lawyer where my advice hasn't been taken or I've been instructed to do something that I have just drawn a line and said, "I will not do that. I will not send that letter. I will not put my name on that piece of correspondence." And it is best, both for me and for the client, that they go and find another lawyer, another professional to represent them.

Reena Van Aalst: Yes. I think I've always had in the best manner, I think you leave both on a good note and then you give them time to find someone new and then. Yes, and it just to me works out well for both sides.

Amanda Farmer: Well, there you go. I hope you don't get inundated now Reena, with requests for fee proposals and that our listeners know that your books are a little clearer, the beginning of 2022. I know you've got a bit of a waitlist there anyway.

Reena Van Aalst: Yes. Definitely.

Amanda Farmer: The win that I am sharing this week is a new service. A new service not offered by me, offered by an organisation that I am part of and very proud to be part of, the Australian College of Strata Lawyers. Now many long time listeners would've heard me mention the college on a few occasions. I am a council member with the college and this is a membership organisation for lawyers across Australia and New Zealand with specialist expertise in strata and community titles law. And for some time now, we have been working on putting together a directory of our members with particular reference to their areas of expertise. So while all strata lawyers are expert in strata law, some of us have more experience in particular areas than others. Some of us work with developers and are focused on structuring and planning. Some of our Queensland members in particular are experienced with management rights and management rights agreements.

Some of us are very good at drafting by-laws contracts. A few of us focus on levy collection and debt recovery. There are some brave lawyers out there who act in building defects, litigation. Others that might specialise in the Tribunal and litigation. You can now find out through the Australian College of Strata Lawyers' website where every member's level of expertise lies by searching the new online directory. So if you're looking for a strata lawyer right across Australia and New Zealand, you can do so over at acsl.net.au. That is the homepage for the college. And you will see there a button to search the member directory by area of expertise.

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Reena Van Aalst: That's great, Amanda. I think that's probably going to be a good service for strata managers that perhaps don't know what lawyers do want. I think many strata managers do work with this sort of set of lawyers in terms of certain types of matters. But I think if you're wanting something outside of that, and you're not sure, you don't want to ask the lawyer themselves, "Do you know another lawyer that does this type of work?"

Amanda Farmer: Do you know what? You love, and it might seem strange that I would be spruiking a referral service for strata lawyers when I am a strata lawyer, but I refer people to other strata lawyers all the time. Granted, I am a solo practitioner, I'm a small firm. I can only take on so much. And I don't take on a lot as I was saying earlier. But I find it necessary regularly to refer owners, owners corporations, strata managers, to other lawyers either because I don't have the room in my schedule, that's usually the main reason, or I don't focus on that particular area. And building defects is a good example. In my case, I do not give advice in building defects matters or run building defects litigation. I do think that is a specialised area and a legal practice needs a team set up ready and able to do that in accordance with all of the very important timeframes.

So I refer buildings to other lawyers in respect to building defects and increasingly, we have conflicts of interest. It is surprising to me how few strata lawyers there still are right across the country. But if you are for example, a Sydney based strata lawyer, and there's a handful of us in Sydney doing this work, it is not uncommon that someone will come to me and say, "Amanda, I'm an owner in this building. Will you act for me in respect to this particular matter?" And I have to say, "No, I can't because I've acted for your building in the past and I hold information that places me in a position of conflict when it comes to acting for you. So I can't act for you, but please try the following 3, 4, 5 people who may not have a conflict." And definitely, I receive referrals from my colleagues as well on that basis.

So a great resource, if you haven't been able to be pointed to somebody else, you can go to that website and find another member of the Australian College of Strata Lawyers, knowing that they have been vetted by the college. We only accept experienced lawyers, particularly when we're talking about fellows of the college, knowing that the majority of their practice is in strata and community titles law is really important.

Reena Van Aalst: So when you say, Amanda, vetted, that's the criteria is that you just had to demonstrate that you actually practice in this area, but not your competence?

Amanda Farmer: Yes, that is definitely one of the criteria that the majority of your practice is in this particular area of the law, especially if you're applying to be a fellow. But definitely, you do have to demonstrate with the work that you've done, the cases that you've been involved in, the type of advice that you've been giving, what's your position in the firm. We have different levels of membership from an associate-level membership to, as I've said, a fellow of the college, which is the higher level of membership. And membership is by application to the council, and the council does turn prospective members down from time to time because they don't meet the requirements which are set out in our constitution. So quite an esteemed college, let's say.

Reena Van Aalst: That's good to know Amanda. Because I think I had this problem last year where one of the clients that we took over had a strata manager and there was a big problem with their accounting. Even though the accounts had been audited by a very prominent strata accounting firm, there were major issues. And we're talking about a BMC with an umbrella, so it's quite complex. It wasn't your run of the mill basic strata accounting. Anyway, and so the lawyer that was acting for the owners corporation was asked by the BMC members to act for them against this strata managing agent. And even though there was no legal conflict as such as what you are referring to, where you've acted before for one side and therefore you've got information that obviously would prejudice to your new client. In this case, the lawyer said that they couldn't act for the owners corporation against a strata managing agent.

And I believe the reason for that was because they actually get a lot of work from that agent and therefore they did not want to. And we actually were struggling to actually find lawyers in strata that would actually because they're quite a big firm and I think they probably get a lot of work from various managers in that company. So perhaps that might work for knowing that there's a database out there where... Because you don't want to go to a firm like a different type of firm where they have no connection with strata because perhaps they wouldn't understand.

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Amanda Farmer: This situation you've just mentioned there Reena, of lawyers saying that they have a conflict of interest because they will not act against a strata management company, there's a whole podcast episode on that one. That is definitely something that I have come across in our space. And it is something that concerns me greatly, especially when the conflict is not a legal conflict, but a commercial conflict. You've mentioned there that you think maybe this firm gets a lot of work referred to them by this particular strata management company. Yes, that does happen, that there are those referral sources. But that does not mean you have a conflict of interest in acting against that particular strata management company. You may have a conflict if you have represented that agency. That would be different where you've acted for them directly in some kind of a dispute and then to act for a building that was also involved in that dispute could present a conflict. But it would be a rare case indeed, where you had an actual conflict in acting against a strata management company.

But I too hear from buildings from owners who come to me looking for representation, who they have been turned down by other lawyers for that reason, seemingly for that reason. And I have to say that's one of the big benefits that I have experienced the last few years in that I don't get a lot of work directly from a particular strata management company or strata management companies. Most of my work comes directly from owners, from committee members who are finding me online or tuning into the podcast. And I just don't have the concern. And I don't even think it's a real concern, a legitimate concern, definitely not a legitimate concern, I don't think, that my pipeline of work will suddenly dry up if I happen to give advice or representation that is adverse to a particular strata management company's interests. I think that is very concerning that, that's happening in our space.

Reena Van Aalst: Yes. Well I think that having this referral service that you're talking about, Amanda, I think now is probably a very good tool for any potential clients of ours that do have issues with their previous managing agent. Or any client that comes to us for consulting work, we can always refer them to that list of people that could potentially act for them in the future if they have a problem where the owners corporation's lawyer or another lawyer won't act for them because of the fact that they have an issue, is a commercial conflict with them as opposed to a legal conflict.

Amanda Farmer: Yes. So the list is over at acsl.net.au. I will put that link in the show notes for this episode, number 296. Almost up to episode 300, Reena.

Reena Van Aalst: Exciting times ahead.

Amanda Farmer: Exactly. I will look forward to chatting to you again soon. Enjoy the rest of your weekend strata.

Reena Van Aalst: You too, Amanda. Happy New Year again.

Amanda Farmer: You too. Bye.

Reena Van Aalst: 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 via 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?