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YSP Podcast Transcript: Episode 357. Electronic signatures on proxy forms?

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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'm doing great. We are recording this just ahead of the Easter long weekend. So, it's crazy as it always is before a few days off. No doubt the same for you.

Reena Van Aalst: Yes, actually I've been away up the coast at a meeting that I had for an AGM that, sorry, I manage a resort. So, the actual AGM was in the resort, which is always nice to have a different type of meeting where you're not in your normal familiar surroundings.

Amanda Farmer: Nice. A little bit of work, a little bit of holiday maybe.

Reena Van Aalst: Exactly.

Amanda Farmer: Good job. Well, ready to dive into our wins and our challenges for this week. Hit me with your challenge, Reena.

Reena Van Aalst: Amanda, I have an owner that's been emailing me constantly because this particular owners corporation wants to minimize their costs in terms of photocopying and postage, and they had a motion passed on their agenda quite a number of years ago before we took over. And they also have a by-law to the same effect where anyone that's given their email address is deemed to have given consent to receive all their agendas and minutes electronically. Now, I said to them, I don't believe that's actually binding. My understanding from the strata roll is that an owner can give an address to that, they want their communications to be sent to, agendas and minutes and levies, et cetera. And if an email address is the only thing that's been given, then that can be deemed to be an address for service. However, I don't believe a by-law or a resolution at a general meeting can override that.

Amanda Farmer: Interesting, Reena. I believe I'm with you. There is a regime in our legislation where a new owner is to notify their owners corporation of their address for service. That regime is set out in section 22 of our Strata Schemes Management Act in New South Wales. A new owner needs to provide what's called a strata interest notice. And section 22 tells us what should be in a strata interest notice. It must, and that's a must, specify an address for service of notices. So, it is generally the job of the lawyer or the conveyancer who is acting for an owner on the purchase of their shiny new apartment. They make a point of filling out this strata interest notice and sending it to the strata manager to make sure the strata roll can be updated. Sometimes that doesn't happen, and that's why strata managers end up with incorrect details on a strata roll because a section 22 strata interest notice hasn't been provided. You've mentioned there, Reena, the strata roll, section 178 tells us what information must be recorded on the strata roll. The strata roll must include that address for service of notices, and that's the address that was notified by the section 22 strata interest notice. It also says that an email address must be included on the strata roll if the owner has one and if that email address has not otherwise been provided as the address for service. So, I'm with you. I think that a by-law that essentially attempts to get around this regime in our legislation is quite possibly not a valid by-law. And as convenient as it may be, I think owners are still entitled to nominate something other than an email address as their address for service of notices.

Reena Van Aalst: Yes, that's my understanding as well, Amanda. And I think even for many people, including myself, when I sometimes receive an agenda, I like to have it on paper so I can write notes on it. And I know many owners that I have who are very tech savvy still like to have a paper copy sent to them because they don't want to spend their own time and money printing it up themselves sometimes. So yes, that's what I try to tell that person. And I think that from what you're saying, you're confirming what I think is the case.

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Amanda Farmer: I appreciate it's frustrating for some communities where most people have an email address as their address for service and others have a postal address because that means that it does take a lot longer to convene a general meeting because we must have seven days notice of a general meeting. If you're going to be posting out agendas, you've got to add another seven days, usually a little bit more because we're dealing with weekends and we can't count those in our calculation of postage periods. Strata managers mailing out general meeting agendas are often having to send them out three weeks before the meeting. I think that's kind of the rule of thumb now, isn't it, Reena?

Reena Van Aalst: Yes, that's pretty much the standard. Yes, I mean, because you can't include the day you issue the agenda, you can't include the day of the meeting. And now that under that Interpretations Act, it says that its postage is now seven days deemed to be served, not four like it used to be because now it's basically 17 days. And I think you're right, three weeks is a good term to use as a point of reference to make sure that the agenda is compliant. And you may have, like now we've got public holidays coming into the mix. So that adds to the notice period time as well.

Amanda Farmer: Yes, because the postage period is seven working days. So we can't count weekends, we can't count public holidays. So yes, it is timely that we're talking about this now. Whereas if you were serving by email, then it is deemed served after you send it, after you hit send on that email, as long as it doesn't bounce back to you, then it's been served and you can start counting your seven days. So you can be convening your general meetings much more efficiently if everyone is being served by email. So, I know a lot of buildings scramble to get those email addresses as addresses for service. But at the moment, it is certainly not mandatory, not the law that everyone must have an email address for what I hope are obvious reasons.

Reena Van Aalst: Thank you, Amanda.

Amanda Farmer: My challenge for this week has come up in our members Q&A forum just a couple of weeks ago. There was an interesting discussion going on about electronic signatures. And I'm wondering if you might have come across this, Reena. I've been asked by a member in our forum, what happens if somebody sends in a proxy form, which must be signed, our legislation says proxy forms must be signed by the owner of the lot. And it looks like the form has been signed by the owner, simply typing their name into the form. It's not a signature that looks like it's been done by hand. Someone's just typed their name into the form. This person whom I imagine is a strata manager has said, I've rejected this form and I've asked for original signatures. I've been told that it has been signed electronically because this person didn't have access to a printer and that I should accept it. Amanda, do I need to accept it? I have a view on this, which I've shared with that member. Have you come across this, Reena, the electronic signing of proxy forms?

Reena Van Aalst: Yes, it's funny. I just had one of these recently and it's the first time I've ever had one where they've just typed up their name. Obviously, electronic signatures are fine in terms of people using electronic means to sign with it. Even DocuSign has a thing where you can either adopt a signature or you can use your own one that you've...

Amanda Farmer: So, you're talking about a scanned-in signature that looks like someone's done by hand?

Reena Van Aalst: Yes. Or sometimes like with DocuSign, even if you haven't got one to upload, you can actually just adopt one that they give you. But when it came to someone just typing it up, I said that we couldn't accept that. I didn't think that it was correct because to me, I mean, anyone can do that. I can do that. So at least with an adopted one, I mean, someone's gone to some effort. I mean, I suppose there is no logic there. I don't know, but that's what... We only had it once and we said... And plus, it was a new owner, so I didn't know the owner at all was a new owner. So, I thought, is this legit? Because I haven't had a problem with proxies previously with someone forged someone's signature. So that's why I'm a bit... I'm sort of a bit scared. Yes.

Amanda Farmer: Well, this is such a great conversation to be having because everything that you've just said comes into this and needs to be considered. So, when I was discussing and debating this in the forum, the DocuSign platform certainly came up as, I think I might've asked the question, was it DocuSigned? And if so, that is a piece of software that issues a certificate after you've signed it. And that certificate gets emailed usually to both parties if you're signing a contract, but certainly, the person who signed

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will have in their inbox a certificate verifying that it's been signed through DocuSign and you have that layer of proof if you like and security. And I suggested to this member, if it's been DocuSigned, then request the certificate. The member has come back to me and said, Amanda, it hasn't been DocuSigned. I've just been told that it's just been typed in. They didn't have access to a printer. That then sent me off to actually do some real lawyering and to look up the Electronic Transactions Act. And this is legislation that we have across the country. I'm looking at the New South Wales version. The Electronic Transactions Act does deal with electronic signatures and section nine is the relevant section dealing with signatures. And it does say that if a document needs to be signed then it is legally signed electronically if there is a method used to identify the person and to indicate their intention to sign a document. So, I read that as well the person has written their name somewhere on the document and that method has to be reliable in light of all the circumstances and the person who requires the signature, so in this example, it would be the owner's corporation, is required to consent to receive the signature in that form. So, this is where your comments there Reena about your experience in the past where this was a new owner you didn't know them this wasn't something that you'd previously agreed to this wasn't the practice of that owners corporation and on that basis, you decided that you as the agent of the owner's corporation wouldn't consent to receive the communication that way. Might have been different if there was a DocuSign and there was a certificate that was given that you could rely on.

Reena Van Aalst: Well but also too Amanda, in this case, there were only two owners and only one had put their name on it so.

Amanda Farmer: Ah there you go well that wasn't properly signed anyway.

Reena Van Aalst: Yes so I was wondering like so one person's typing it up it's two owners I'm thinking well you know is it's a new owner I don't know anything about these people you know you don't know what the intentions are sometimes and then I think that under the eighth the chairperson is the person who decides whether they accept the proxy or not.

Amanda Farmer: Yes true good point yes good point. So, look at my reading of this and I've only had a quick look at it for the purpose of providing some guidance in the member forum I think it is legally valid and acceptable that you could sign a document this way but the bottom line seems to be that both parties need to consent to receiving the document that way, and the circumstances need to be taken into account. So, I've said to this member do you know the owner have you had a phone call with them have they confirmed that it was them who typed the name in or are these just emails going back and forth make sure that you're very aware of what's actually happening in reality if your chair is going to accept this proxy as being valid.

Reena Van Aalst: Yes I mean it does make sense what you're saying Amanda because an electronic signature is just a made-up thing anyway and when you think about it, like in terms of someone not DocuSign but sometimes people use you know if they adopt their own signature it's something that they've actually made up themselves I mean it's not really it's an image file and sometimes people use you know if you look at the word you can do like your name in running writing and things like that sometimes people use those tools to sign off and that's because it's running writing people think oh that's more like a signature but what you're saying I think makes perfect sense like if you know the person and you both agree that Yes I know who you are I can't get to

Amanda Farmer: you intended to sign it under the act it's all about intention and you intended to use this method.

Reena Van Aalst: Yes, yes

Amanda Farmer: So, I think we're going to see more of that it won't be the first time that this has come up that's for sure and proxy forms are often controversial.

Reena Van Aalst: Exactly well I mean as we know these things obviously can affect outcomes so sometimes you know every proxy may have a purpose beyond its original intention of just giving someone a right of their vote to be exercised at a meeting.

Amanda Farmer: Yes, every proxy counts. Over to your win for this week Reena

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Reena Van Aalst: Yes so we've been managing a scheme compulsorily since last year and it's taken quite some time for us to finally get the scope of works that the engineer had completed a draft was completed last year in November and then it was finalized in February and I went through the whole report I did a very in-depth report letter just to note key sections of the tender works so that owners could actually like rather than you know like on this page it refers to this so that everyone had the key areas identified and we decided that we would hold a meeting with all the owners and have the engineer come so the owners could decide even about the scope of works that need to be completed. Part of the reason also was to discuss funding options that we're going to need in the future once the tender is actually issued to builders the other thing also was there some optional works that were included where whereby by having the builder there at the same time doing a number of other remedial works, it would actually be probably expedient and cost-effective to undertake some other work such as the entranceway, it's really unsightly it's dangerous it really needs to be repaired and even though this is not part of the work so that was ordered by the tribunal, it's probably good for the owners to consider whether or not it would be a good idea while you have the builder there and cost would be much less than having a little come at us to do that particular piece of work in the future. And so, it was really you know owners could ask questions of the builder they asked him whether it was required it was actually quite a really productive meeting, and it was agreed by everybody at the meeting that they would like to proceed with the optional works and get a separate costing to see how much it would cost and depending on that. I was going to then put that to um the owners even though we're the ones that had the voting rights at the time when we're putting forward the pricing and the funding. The other thing also that people liked about the meeting was that I asked them what they thought and whether or not I would force a loan upon them, and I said no what I would be doing is putting it forward to all owners and in a sense treating them like an owners corporation because if the majority of people don't want a loan well then I think that's probably the way to go. And I had an email come I think a few days later saying thank you like you know even though you didn't have to include us in the discussion and seek our opinion you know you actually did that and also about the funding because many owners that do have the funds don't want to spend the money on paying interest and you know this work is going to be more than I'd say two million dollars, so talking about it's going to be good fun. So even though even if the majority of the amount is raised by a special levy and then the balance could be funded through a loan, at least then you know people haven't had the ability to vote even though they don't really get a vote as such but to have their voices heard about how they would like to proceed. What I note is that you know if people are given the option to exercise their opinions and to be heard, I think it helps with managing the scheme in the sense I'm only the custodian of the owners corporation for a very short limited time you know either one year or two years depending on the term of the appointment, but I think Amanda, it's important that even if you do have the power you should exercise it cautiously and fairly and at least people know then at the end of the day everyone did get a say to the extent that it is sort of democratically able to be under a compulsorily managed scheme, but I was actually surprised that everyone's saying Yes we want this work done it's been long overdue I think some of the people that were the recalcitrant people that had not really wanted the work to be done seemed to I mean they didn't say much but they're pretty much I think outvoted in terms of people saying this has been going on too long and it should be done as quickly as possible

Amanda Farmer: Yes, some really key points there even though you are the compulsory manager and you have all the power there is a time and a place to exercise that power. There may be some decisions like when you first come in the first few months you've got to get that money in the bank you've got to raise those levies you've got to pay an insurance premium whatever it is that's urgent you're dealing with that very quickly and then after settling in, getting to know the owners then getting to know you there are opportunities for you to canvas opinions and take those into account for all the reasons you've just said Reena, to part ways down the track if you do end up parting ways or perhaps they end up engaging you as a long-term voluntary manager. But for the owners to feel that they have had some control of their fate, so I think that's quite a skilful way to manage. And when we hear about bad experiences with compulsory management which I do hear a lot of in my circles, it is often because there wasn't any flexibility any consideration given to these opportunities to operate as a quasi-democracy let's say that.

Reena Van Aalst: that's a good term, Amanda, actually Yes and I think I'm not sure why people really don't do that because I know people think oh it's more time-consuming but the issue is it's in the day it's not our building, and therefore the building does belong to the owners and I think in our role obviously we're appointed by the tribunal because there is dysfunction but as part of trying to deal with the dysfunction if you try and do the best for the majority of people then I think most people will see that effort and try and be more helpful and responsive in terms of anything else that comes up that people are more amenable to hearing about it and being able to say yes we're happy to do more. And I was surprised that people wanted to do more than just they were

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happy to do more things to improve their building, and other things that had come up were obviously five things that we've already been addressing, one of the recommendations was to get a lift audit done we've got that done now we're going to start you know because the lift is like over 40 years old but had been upgraded like 20 years old but obviously now most people know that lifts don't have a lifespan more than 20 years on average. So we're doing all those things concurrently, so it's going to be a lot of money being spent but I was really happy to hear that people were wanting their building to be improved that was really heartening for me as a manager because most people don't want to spend any money and I understand that to some extent but when people say no this work needs to be done it's long overdue it does make it easier for us as managers to manage schemes like that.

Amanda Farmer: Nice one well it'll be good to see all of that rolling out thank you for sharing that win, Reena.

My win relates to a little strata scheme tiny scheme; two lots. I have been working with one of the owners in that two-lot scheme and I might have alluded to this particular dispute in a past episode. This is a scheme where one owner has 65 per cent of the total unit entitlement and the other owner has 35%, so reasonably unusual in two-lot schemes usually we like to see equal unit entitlement. So there is no one owner with complete control, but not so in this case and therefore my client was finding it very difficult impossible really to get repair and maintenance work done on the common property that was only affecting her lot so she had some water penetration. Quotes have come in at about a hundred thousand dollars to fix this problem. So her neighbour was not at all interested in approving that and we were in the middle of tribunal proceedings. Fast forward a little bit and the other lot owner listed her property for sale. And tribunal proceedings were paused while that was happening and the new owner came in, it wasn't clear to my client or myself how much that new owner was informed about the financial situation of the strata plan or the legal proceedings. And I remember saying to my client, fingers crossed here's hoping you've got a really nice really understanding law-abiding neighbour who is willing to consent to this work being done understands legal obligations and doesn't have to be dragged through tribunal proceedings. And lo and behold, that is exactly the owner who bought in and I received an email very recently saying Amanda no need for the tribunal proceedings. I have met my neighbour, and whilst my neighbour is a little traumatized, a little shocked and surprised about this, they understand their obligations as a strata owner they understand the strata law and work is commencing in two weeks' time.

Reena Van Aalst: Oh my god I can't believe it Amanda was this scheme managed by a strata manager or self-managed?

Amanda Farmer: No strata manager self-managed for many many years and the outgoing owner who's no longer the owner had been there for many many years and was running accounts and running meetings and essentially doing their best and not doing a terrible job, but when it came time to meet this big expense it was clear that just wasn't going to happen without a tribunal order.

Reena Van Aalst: Yes, the result I was going to ask you Amanda about that, was if they did a strata search, what records they would have seen in terms of this dispute?

Amanda Farmer: Oh Yes very little if any I think Yes. And I remember my client telling me that she would be at home, because she lived in the property she'd be at home and she would see people coming for the open inspections, and she would think oh I just really want to tell them what's going on I want to go and tap them on the shoulder which I suppose there was nothing stopping her doing that but that might have created a whole other can of worms. She didn't do that she left it to the outgoing owner the vendor to meet their disclosure obligations whatever they may be in the circumstances and as a matter of law, I think I can say they are not as extensive or as onerous as they should be in strata as for what our vendors need to disclose.

Reena Van Aalst: Yes I always get concerned about these two lot schemes Amanda without strata managers. They're more common than I think people would know because I think "Oh we can just manage it ourselves" and we can it's funny I've actually got someone that I know who's another in one of our buildings. His son lives in a two-lot scheme and he's actually asked me for your details that I've provided, knowing that you've done a lot of these types of things but I think that you know again oh we don't need a strata manager we can just you know hold out they don't have a proper AGM or anything and this is a problem I think that yes there's someone trying to search I think they'd be not knowing what they're getting into.

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Amanda Farmer: Yes well, this time last year I did some education for the Australian Institute of conveyancers, and I was engaged to do a CPD session. And I suggested the topic of small schemes two lot schemes and attempting to educate conveyancers who are the ones advising their purchases on contracts about precisely what these things are, how to identify them, what the relevant legislation is, and what to look out for and warn their clients about the number one thing being unequal unit entitlements where you've got two schemes and one person has the majority unit entitlement. Those ordinary resolutions are very hard to get past if you're wanting something done and you're not the majority holder, so to be warning incoming purchases about that the impact of that from a strata law perspective it's often not something conveyancers are armed with and it became a very engaged session for sure.

Reena Van Aalst: But even if the entitlements are equal, if one votes for, and one votes against, it's still lost.

Amanda Farmer: Oh, you're right.

Reena Van Aalst: So, I think I always walk past the duplex and I just think oh my god the only way I would ever own one is if I owned both lots and rent one out. I shouldn't say that on your podcast but anyway I probably ruined it for everyone that thinking of buying in a two-lot scheme.

Amanda Farmer: Oh no, they are tricky and it comes down when I have clients talking to me about difficulties in two lot schemes, developer clients who want to build these schemes and want to keep one. And I say to them they say "Oh Amanda how can I wrap it all up so that I'm protected?" There are a few things you can do in by-laws before the plan is registered for sure, but if you do have equal unit entitlement and I do recommend that because I think for a savvy purchaser, it's not a great marketing strategy if you're trying to sell next door with the lesser unit entitlement. But I say it depends who buys it and you don't have control over that, it depends who buys it and it depends who the tenant is if they are an investor and they're going to put a tenant in there often because that's what it comes down to. "do you get along with your neighbour at the end of the day?" and that matters more in the smaller buildings than it does in our larger multi-stories.

Reena Van Aalst: Oh much more. But I think also sometimes when people have different views on how to run a scheme, it's like a marriage in a way it's in a sense it's that sort of analogous, because you know one person may want their kid to go to a certain school, the other person may say no, public school is fine. And it comes down to that sort of philosophical differences and how people think about property, how people think about investment, you know. People worry more about it. When it's your own home you want it to be functional if it's an investment. Perhaps you're only worried about your returns on investment and nothing else so it becomes an ideological difference between owners in terms of how they deal with these types of issues.

Amanda Farmer: For sure. The other point that I wanted to make with this win is that sometimes a situation just seems impossible or incredibly difficult to resolve and you can't see the solution on the horizon. Sometimes that freezes people and it stops them from taking the first step or the next step or filing that mediation application, or commencing those tribunal proceedings. But this is a great example, and I see this often. I've got another one in my inbox actually that I'll have to add to the spreadsheet, where really difficult situations are resolved because somebody sells, or move out and they never would have done that if they weren't being called to account. If those proceedings were not on foot, if the pressure wasn't on, if they weren't having to pay lawyers' fees, if they didn't see the writing on the wall, if you never take that first step to exercise your legal rights, you may not have this kind of a win and it's absolutely a big win in this situation.

Reena Van Aalst: Oh I totally agree, Amanda. And I actually had a compulsory manager scheme that we were looking after where there were two owners, and one owner sold, the problematic owner sold, and then after that when our compulsory time was over, I mean she was quite savvy and she was really good, she was someone that had a legal background, and I said to her "I don't think you need a manager, I think you can just do this yourself and with the new owner" because I was so nice, she agreed and she had taken all the steps that you were saying. Even at the last minute the owner, after she sold, she had her truck and she blocked her garage so she couldn't get out of her garage for like you know two days. That was like her last bit of vengeance I think, but yes but I mean like you said if you and if she hadn't pushed and pushed like what you've said and taken those steps, and you know and

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sometimes that's what it takes to sometimes force a sale in such a way that people think "You know what, I don't need the hassle and you can actually do it sort of indirectly."

Amanda Farmer: That's right, and sometimes that's you can't see that on the horizon or you can't see what the solution is going to be or how it's going to pan out but you do know that there is a next step to take and that's the best thing you can do is just take the next step, and I'm often saying to my clients in difficult situations "what's the alternative?" "What will happen if you do nothing and if you stay in this leaking apartment?" or whatever the situation is if you've made the decision you don't want to sell then what other option do you have but to take this step and see how it turns out? And that's not a legal decision that's a personal decision to weigh up those things but I absolutely have seen some good outcomes in hard situations where the difficult owner or neighbour has moved on.

Amanda Farmer: The giggle, don't think so. Catch you next time. Bye!

Reena Van Aalst: Okay, 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?