

Publication Date: 13 July 2023
YSP Podcast Transcript: 370. Affordability, availability and competition in strata insurance - with John Trowbridge

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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 to this week's podcast episode. I'm your host, Strata lawyer, Amanda Farmer. And my guest this week is John Trowbridge.

I last spoke to John in episodes 349 and 350, a two-part episode. At that time, John had just completed phase two of his three-phase review of strata insurance practices.

John is back on the show now because the third and final phase of his review is complete. John speaks about the affordability and availability of strata insurance, including the factors that he believes are impacting those two issues. We talk about whether the recommendations made in his earlier reports have been or will be adopted by the strata industry, and if not, why not?

John also shares what he recommends owners do to ensure greater transparency when it comes to their strata insurance, especially when it comes to the remuneration arrangements between a strata manager and a broker.

Now if you haven't yet listened to episodes 349 or 350, I do recommend you go back and have a listen to those or give yourself a refresh before diving into this one. Your access to complete copies of each of John's reports are over on his website johntrawbridge.com.au There is a link for you over in the show notes under this episode. I'll take you right over now to my chat with John Trowbridge.

Amanda Farmer: John Trowbridge, welcome to the show.

John Trowbridge: Thanks very much, Amanda. Nice to talk to you.

Amanda Farmer: Welcome back, I should say, you were my guest previously in [episode 349](#) and [episode 350](#). We had so much to talk about. We produced that one as a two-part episode. At that stage, you were talking about phase one and phase two, I think, of your review of strata insurance practices. You have now published phase three. Tell us about that. What was phase three all about?

John Trowbridge: Well, phase three was intended to deal with affordability and availability of strata insurance, whereas the previous two phases were about intermediaries, what brokers and strata managers do and how they're remunerated and a few other things.

So phase three on affordability and availability is more about what the underwriting agencies and the insurers are doing and how they are operating, but in order to give the complete picture, I included in the Phase 3 report the summary of Phases 1 and 2. And that's important because Phase 1 in particular, which is about transparent disclosure, is the key to everything basically, and that actually got quite a bit of airplay in the forum that I held on the 30th of March, which was the prelude to completing the Phase 3 report.

Phase one is about disclosure. What we know is that at the present time, hardly any brokers or strata managers give their owners corporations a fully transparent disclosure of the transactions that go on in the process of buying insurance.

And what's become evident in the last year over which I've been doing this work is that most owners and their strata committees don't really understand what's going on financially. A lot of things are not disclosed, in some cases they're not disclosed, and in some of the cases when they are disclosed, they're disclosed in a way which is not transparent because it's not in the one place where owners can understand and put it all together and make some kind of evaluation themselves of what services they're getting and what they're paying for.

Publication Date: 13 July 2023

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Until we've got into that position until we're in that position of everybody knowing and seeing what's going on, it's very, very hard to build a constructive dialogue, especially when you recognise that most owners and their strata committees are not people who are familiar with this business, so, it's really important to help them and to give them a means of communicating effectively, asking the right questions and understanding the answers from strata managers and brokers. And it was recognised in this forum on the 30th of March that this is the key. Until that's understood, talking about conflicts of interest for example or fairness of remuneration, appropriateness of remuneration, and all that's quite difficult for people to deal with.

Amanda Farmer: Until they really understand what's going on and who's getting paid, what and why.

John Trowbridge: That's right, that's right. Now there's no intention in all of this by the way to force remuneration down. It's about understanding it and knowing what you're paying for and what you're receiving and being able to have a, if you like, a discussion on more equal terms with your broker and strata manager than is normally the case today.

Amanda Farmer: So if we've recognised that disclosure is important, that there is a potential for conflict of interest on the part of strata managers who are receiving commissions and paying broker fees, what do we do about that?

John Trowbridge: Well, that's where phase two comes in, actually. Phase one is about making it all visible so that people can take their own position on it and decide whether they're getting good value or not and whether they're happy with what they're paying for and what they're receiving. The conflicts of interest ought to be visible once you've got proper disclosure. And once you have conflicts of interest, and once they're recognised, then at least people can deal with them.

My contention is, which is in phase two, is that there is actually three conflicts of interest, if you like. One is the existence of commissions themselves, which apply right across the general insurance industry. And arguably they're a manageable conflict. They've been around for 100 years or more. People pretty much understand what they're for and if they want to they can find out exactly what commission's been paid and they can negotiate it if they choose to with their broker. But in the case of strata insurance, you've got the second intermediary, you've got the strata manager in addition to the broker sitting in between the insurer and the client which is the owners corporation.

And what happens in most cases is that the strata manager seeks a significant portion of the broker's commission and the broker says, "Okay, I'm happy to give you that, but in return, you have to give me a broker fee".

Both of those are conflicts of interest. They're discussions which occur between the broker and the strata manager, and ultimately they may or may not be fully disclosed to the owners, but it's a conflict of interest because it's all about what you're prepared to pay me for the service I'm offering and it's outside of the domain of the, in most cases, of the owners.

So those two conflicts I believe should be phased out. I haven't advocated that they be ripped out right away because I think until we get disclosure properly done, it wouldn't really work very well anyway.

Amanda Farmer: So we have your recognized need for disclosure. We have your identification of these conflicts of interest.

What is your phase three report then? Tell us, John.

John Trowbridge: What it does is talk about the levels of premiums and the underwriting. What's the process at the insurer's end?

I just talk about underwriters because this area does confuse some owners, but an underwriting agency acts as the insurer. So if you're working with somebody like CHU or SCI or SUU, and there are a couple of others, there are some others, they are agents of the insurer that sits behind it. The insurer is responsible for the claims, but the underwriting agency handles the underwriting, that is making decisions about prices and terms and conditions for individual bodies corporates.

And of course premiums have been rising, rising a lot. In fact this year I think they're up more than 20% in most cases.

Publication Date: 13 July 2023

YSP Podcast Transcript: 370. Affordability, availability and competition in strata insurance - with John Trowbridge

And the excesses have also risen in many cases from \$1,000 to \$2,000 and in some cases \$5,000 or more. There's been a lot of concern about all of this. So the question is why are prices rising and are they being handled fairly? And what can Bodies Corporate do about it and the strata managers and brokers if those prices seem to be excessive?

So one of the issues is where exactly are the problems. In order to try and deal with that, I split the market into four main components. I talk about low-risk areas, and regions, which is most of Australia and most parts of most of Australia. And I talk about in those low-risk areas, I'll come to the high-risk ones in a minute, the lower-risk areas you have what I call standard risks and substandard risks. So the standard risks get priced in a kind of a standard way or market competitive way, but there are substandard risks being risks where there are. For example, defects that haven't been remediated, there are maintenance and repairs that have not been followed through and done properly and the underwriters often take an adverse view of that and will seek a higher premium because of it.

So you've got, in most locations, you've got standard and substandard risks, and then we've got high-risk locations which are essentially northern Australia and some other areas flood-prone, for example around Lismore and various parts of Queensland, Victoria, South Australia, New South Wales, Tasmania, just about every state's got flood-prone areas. And you can also have an adverse location where there's a strata building that's very close to some other buildings and access in the event of claims or indeed repairs might be difficult and so they can also cause problems.

Now there's a second dimension to this. What I've just referred to there is the characteristics of the property. There's also an important consideration which is the functionality or the effectiveness of the strata committee.

There are many strata committees and owners corporations, which are quite difficult for insurers, underwriters, and brokers to deal with. And that is because they don't remediate when they say they will, they don't do proper maintenance or they don't have a very well-functioning committee. You can get all sorts of difficulties there and you're probably more aware of those than I am, Amanda. But there are a lot of situations where the strata committee or the owners corporation does not function easily. For example, you know the sinking fund might not be properly funded.

There can be a whole range of things. The reason I raise this is that when people find prices too high or they're having trouble getting their cover, they tend to think that there's something unfair going on at the underwriters' end. And that can be the case.

But it's also often the case that the body corporate itself is not functioning in a way that is giving good risk management to the property and that's as difficult as property characteristics themselves. So Phase 3 was aimed at understanding all of those and looking at the things that might be done to alleviate or ameliorate the things that are causing difficulty.

Amanda Farmer: And if I can just talk about the forum that you held on the 30th of March, I understand John, you had a number of owners in attendance, industry representation, and that was a place in which these issues were discussed. Can you share with us any particular insights? I know there are some mentioned in your report that came from that forum, even directly from owners.

John Trowbridge: Yes, that was a terrific forum actually. There were about 40-odd people present and another 20 I think online. It was a restricted invitation list, and I don't think we've ever seen before where we had insurer reps, underwriting agency representatives, we had brokers, strata managers and we had owners. We also had regulators, you know, APRA, ASIC, ACCC, Treasury, New South Wales State Property Commissioner, they're all represented there, so they all had a chance to have a say.

I think the owners who spoke were primarily concerned about the remuneration of brokers and strata managers and the lack of understanding of that. There are also a lot of concerns about the high prices. And so we had, for example, one of the insurers spoke about excesses and how they can be used to reduce premiums to some extent.

Amanda Farmer: In terms of your point about the need for owners corporations, strata committees, to properly, more properly manage risk and attend to repair and maintenance and the - I suppose my question is, did you see that there was a recognition among owners that, that is indeed a piece of the puzzle or part of the problem that we are not recognising our own responsibility to

Publication Date: 13 July 2023
YSP Podcast Transcript: 370. Affordability, availability and competition in strata insurance - with John Trowbridge

keep our buildings in a fit state to ensure our insurance premiums don't go through the roof? Or was that something you had some pushback about from owners when it was put?

John Trowbridge: Well, the owners, because it was a restricted invitation list and it was people who are active in the field, the owner representatives in the audience were familiar with these problems, and they acknowledged them. And in fact, what they've been doing over the years, and you're one of them, are trying to help people to understand better these issues. And I know that they go beyond risk management, but they also do include risk management. So now there was no pushback on that, but I think the effort was being made to make it clearer, if you like, to those representatives of consumer groups that this is something that needs attention. And the only thing you can really do is look at educational things. So you're, the work you do and some other people, as you know, in the field who are doing similar things. That's really what we're talking about here.

So, if you like, in the end, there are three things to look at. One is how the brokers and strata managers operate. One is what the owners are doing to minimise or manage the risks in their properties. And the third one is what are the insurers doing.

Now, the insurers have two kinds of problems in the insurer area. One is in large properties, there are now a growing number of quite large ones. If the value is over \$100 million and there are more and more of these, then it's not uncommon that one insurer won't accept the whole risk and it gets shared on what insurers refer to as a co-insurance basis. So you might have a \$200 million property where the leading underwriter, the underwriter will accept 100 million and say "I can't take any more".

The broker then goes and talks to the other underwriters in the market and says "Well are you prepared to take the other 100 million?"

And that happens, and that happens increasingly because of the development of the industry. The other one is the substandard risks so-called which can be because it's a substandard location such as Northern Australia or just as we were talking then about the management of the property and the body corporate. And I think there's a lot of dissatisfaction around amongst on the consumer side, which includes the brokers and the strata managers, that sometimes they think, they feel that the underwriters are not being as constructive and as thoughtful as they might be in order to help the owners to get a better outcome.

And this then brings on to other questions like transactional efficiency, because when you think about it we've only got five or six major underwriters. There are approaching 400,000 strata properties in Australia and they all want quotes and the brokers want, they try to get three quotes every time. This becomes a big administrative burden on the underwriters, so they say, "Well, look, these ones are too hard to deal with, we'll just decline the risk because we've got too many other things to do."

So you've got a different kind of, you've got an administrative capacity problem as well as an insurance capacity problem. So these things all have been exposed, if you like, to some extent, and hopefully what we get out of this is a greater understanding on both sides, both that is the insurer side or underwriting side and amongst the buyers and the owners as to just what they're dealing.

Amanda Farmer: There were a few things that you recommended should happen quickly. I think John, in your report, priorities for 2023, that's this year, and we're already over halfway through it. What were those top priorities for you this year?

John Trowbridge: Well, there were two. The first one was what I began with here today, which is the transparent disclosure. Now, the Strata Community Association is active on that. There's a widespread agreement by the way that we should have transparent disclosure. This isn't disputed, but getting it to happen really takes a whole lot of extra things to go on. So the Strata Community Association is preparing a practice standard for strata managers who are members of the SCA across the country. I'm not sure when that will be released, and I haven't seen any drafts, but they tell me that it's going to be very similar to or close to the templates that I've recommended and the other processes that go with using the templates.

Amanda Farmer: And these are templates for when quotes come in for insurance premiums. Is that right? Can you just explain a little bit about what's in this template?

Publication Date: 13 July 2023
YSP Podcast Transcript: 370. Affordability, availability and competition in strata insurance - with John Trowbridge

John Trowbridge: Ah, okay, well the template, it shows the premium, any commissions, any broker fees, puts that all out in a short table and then having identified when it comes to remuneration, firstly you can see the premium itself before and after commission and then you can see the total of commission and broker fees and then you can see the allocation of those total intermediary charges between the strata manager and the broker given that the strata manager receives in most cases quite a bit of the commission and the broker receives whatever's left of the commission plus the broker fee, and that's what the template is for.

And it's got definitions as well because we see quite often strata managers giving their owners something that's called the premium, which is not the premium, it's the premium plus the fees for example.

Amanda Farmer: Now, John, shortly after you released your phase three report, you also released a [disclosure handbook](#) and you have a series of templates in there. I understand that that's publicly available. Is it helpful if we link to that handbook for anyone who's wanting to have a look at your recommended format for these documents?

John Trowbridge: Sure

Amanda Farmer: We'll pop a link to that into the show notes for this episode.

John Trowbridge: Yes, it is, if you like, a consolidation of the disclosure recommendations made in the Phase 1 report with a few refinements, it's on my website as well, so there are four things now. There's a Phase 1 report, paper of Phase 2, a Phase 3 paper, and then there's this disclosure handbook. But yes, by all means, that's part of the educational process because what I tell people when I seem to get quite a few calls now from owners and others, and I always say make sure you look at those disclosures and don't hesitate to ask your strata manager or your broker to give you the information that's nominated in the disclosure.

Amanda Farmer: So even if your invoice for your premium is not set out in that way, what your templates do is draw owners attention to the components of the charge that ultimately they're having to pay so that you can ask these educated questions about how it's made up.

John Trowbridge: That's correct, that's correct, yes. And there's more than that too. There's a set of procedures because firstly, there's the quoting process which should start some couple of months before renewal. And there are questions that have to be answered by the strata manager on behalf of the owners to help the broker to go to the insurers. And historically, brokers don't know what information the owners see. Now, this set of procedures I've got advocates a way of ensuring that the owners and the brokers and the strata managers all see the same material.

Amanda Farmer: Makes sense.

John Trowbridge: At the moment, a lot of it's just not visible.

Amanda Farmer: So hopefully we will see SCA come out with their practice standard soon, which may look similar to your templates. What else is on the priority list for this year?

John Trowbridge: Well, the other one is around these questions of underwriting substandard risks and large risks. What's needed there is more dialogue between the underwriters and the insurers on the one side and all the owner representatives on the other, with the owner representatives being the owners themselves plus the strata managers and the brokers. Because remember that the brokers and the strata managers are agents of the owners, they're not agents of the insurer. And so their job is to assist the owners.

So what we really need is more dialogue to try and standardise if we can and get more uniformity across the underwriting industry of what is a substandard risk and what isn't and what should be done if it's substandard. How do we handle defects? How do we

Publication Date: 13 July 2023
YSP Podcast Transcript: 370. Affordability, availability and competition in strata insurance - with John Trowbridge

handle repairs and maintenance and other things?

What happens is that basically the underwriters and their insurers are not really that close to what owners' needs are. Brokers and strata managers are often struggling with getting the things that they want to get from the underwriters.

So what I'm advocating is there'll be some coming together of those two groups. Now I've advocated a way of doing that. It's a work in progress at the moment to see if we can pull something together to try and create the type of dialogue that could assist everybody on both sides to have a more effective and more efficient industry.

Amanda Farmer: What about the conflict of interest point? John, does disclosure cure that? Does it solve that problem? If we have proper disclosure and owners are able to see who's getting what and how much, does that mean that conflict disappears or do you have separate recommendations for dealing with that?

John Trowbridge: It certainly doesn't disappear. The question is whether it can be managed. Now many strata managers will tell you it can be managed. I don't believe that. I don't believe it is managed. It needs to be phased out in my view because, to me, it's pretty obvious. And if you talk to a lawyer or talk to anybody at PWC for example at the moment, they sure know what conflicts of interest are. But there seem to be many people in the strata industry and some in the broking industry who don't really think it's a conflict or those who do see it as a conflict think that it's readily managed.

Disclosure will help, because disclosure will make it clear to the owners what's going on and the owners, if they're interested in the topic, they will identify the conflict themselves and say, hey, hang on a minute, is this the right way of doing it? But since it's not regulated, all I can say is I think that the owners need to satisfy themselves about the type of remuneration and the quantum of it. There are alternatives to this commission rebate system and they're covered in my phase two report.

Amanda Farmer: You said that John you think it should be phased out, I think were your words, when dealing with this conflict. Do you mean phase out commissions and broker fees for strata managers? Is that what you're suggesting?

John Trowbridge: Yes, yes.

Amanda Farmer: Look I agree with you and to hear you say owners with the disclosure regime should better be able to assess whether or not there's a conflict and make a decision. For a lawyer to hear that is just a bizarre situation, because as lawyers, we are having to deal with conflicts regularly and it is our duty as a professional, legal duty, ethical duty, moral duty to identify that conflict and not to put ourselves in that position of conflict and to ensure that our clients don't suffer from our being in a conflicted position. That is our duty, it is not our client's duty and I do not believe it is the owner's duty to have to recognise and deal with these conflicts.

John Trowbridge: Yes, I agree fully with what you have just said. I'm an actuary by profession and I've got the same obligations, perhaps not as stringent as yours in the legal profession, but it's really the same to deal with conflicts of interest and either to avoid them altogether or where they exist to ensure that they are managed suitably.

In the case of strata managers, I mean, there's a fiduciary duty, isn't there, to the owners. And you're quite right. The owners shouldn't have to be the ones that call it out. But why I talk about phasing it out is that unless a government intervenes and says you can't do it, then strata managers are going to do it until their own association, professional association, or the brokers, force them out of it.

Amanda Farmer: And I think what I'm hearing is there's no appetite for that right now.

John Trowbridge: I don't think there is. If you look at Commonwealth Legislation, the Corporations Act, we've got the Quality of Advice Review, as you know, still not finalised. But the government has just recently said that commissions of themselves are okay

Publication Date: 13 July 2023
YSP Podcast Transcript: 370. Affordability, availability and competition in strata insurance - with John Trowbridge

in insurance, but that doesn't mean that commissions going through to strata managers are okay. That doesn't mean that commissions and broker fees together are okay either.

Amanda Farmer: And I know that was the basis for your engagement. I mean, you are in your report very open about the fact that you've been engaged by Steadfast Group. And the basis for that engagement, as I understand from our earlier conversation, was that Steadfast is saying, "Let's not wait until we are forced by legislation to stop this practice. Let's have a look at calling out what the practice is, if there are problems with it, what are those problems and how do we solve them?"

And I have to say it's disappointing that you have gone to the trouble of preparing this report at the cost of Steadfast, you come up with these recommendations and there is no appetite for part of those recommendations to be implemented or to recognize the value in those.

John Trowbridge: Well it is disappointing but I've tried to be realistic about it in this way, that the practice has arisen from the history when there were no brokers involved and that strata managers did warrant some kind of remuneration from underwriters and they received it. I think initially it was 5% or 10% and over time it grew to 20% which is what happens when you have the intermediary being the source of sales if you like for the underwriter. This is a long-term problem in life and general insurance that the customer of the insurer in effect becomes the intermediary, not the ultimate client. That's how the conflict arises in the first place. But if you say, well, arguably, historically it was quite okay. Once brokers entered the fray, then strata managers said, "Well, look, yeas, you can help me, but I want my commission." You know, that's how the broker fee thing came about.

So it was unhealthy away from the start, but it's so built into the system that to change it requires firstly a serious recognition on behalf of the industry associations which are NEBA for the brokers and the SCA, along with consciousness by people like yourself and myself and a whole lot of others who have a professional background which says you can't have conflicts of interest or if you have you better be very clear about it, about whether they're okay or not.

Instead, you've got here a whole generation of young and not-so-young strata managers and brokers who've just grown up with the system. When they take on their job, they inherit what's there, they don't question it, they just do it the way it was done.

And with the Strata Manager Commissions, it's quite hard. One of the strata managers rang me the other day and said, look, I'm having real trouble with this. We'd like to change and go to just fees only instead of fees plus commissions. But our competitors are taking our business when we try and do it or else the customers just don't want to listen because they've been talking to a competitor. So you end up in a commercial sense, you end up with a first move of disadvantage. If you want to change your business model in a way that causes your customers to go somewhere else because of the effect of the strength of the sales pitch, if you like, of the competitors, then you're in a cleft stick.

Amanda Farmer: Yes, well, I think you've now hit the nail on the head though, John, identifying it's the sales pitch of the competitors. Surely your pitch with your new business model, which is no fees, no commissions has to be better than your competitors explaining that if there are no fees, no commissions, then your insurance premium is going to be lower. So there's no downside at the end of the day.

John Trowbridge: The insurance premium isn't necessarily lower, by the way. I've tried in my phase two report to explain what I think are fair market prices, competitive market prices and some actual prices. So it's not necessarily about bringing down the costs, but it's about having the costs or the charges made by the strata managers and the brokers commensurate with the value of the services offered, and this is one reason why I haven't advocated caps anywhere is that some brokers do a massive service and some do very little. Same with strata managers, some do a wonderful job and they go beyond what a lot of others do but then there are others who do virtually nothing for their money as well, so you've got to somehow deal with all of that.

I just gave you the example of the strata manager who finds it difficult to change, I've had owners on the phone, some of whom are quite familiar with insurance and they're fuming about this and they've changed brokers or strata managers or both because they aren't happy with what they're finding.

Publication Date: 13 July 2023
YSP Podcast Transcript: 370. Affordability, availability and competition in strata insurance - with John Trowbridge

I think there's a little bit of, I won't call it tumult occurring at this stage, but this movement is occurring, Amanda, and I think the services you provide, my reports and the services that others are dealing with together with growing recognition of conflicts of interest and I think the PWC situation is, everybody's now aware of that one, so I don't have any trouble commenting or making a reference to it.

Awareness of conflicts of interest and what they can lead to has got to be growing in the community. At the same time, there are brokers and strata managers who want to work on a fee-only basis. And there's more of that now, there's more every year of that.

Amanda Farmer: Yes.

John Trowbridge: So the commissions go, the fees are split somehow between the broker and the strata manager, and that's a healthier environment. But it's not the full distance, the full distance is where there are two separate fees.

One that the broker charges for his or her services and another one that the strata manager charges separately. But I'm saying in this sort of evolution, we're seeing that at least let's get to fees first.

Amanda Farmer: One step at a time. What is next for you in this space, John, if anything, or have you finished up phase three and you're moving on to something that is as far away from strata as you can possibly get?

John Trowbridge: Well, I can't move away from strata. People like you are making sure of that.

Amanda Farmer: I keep dragging you back in.

John Trowbridge: But I want to see this coming together, dialogue between the owner's side, strata managers, brokers and owners on the one hand, and underwriters and insurers on the other hand, trying to come together. So I'm not sure if we can pull together any mechanism for getting that to happen, but that's what I'd quite like to be involved in. And I've been talking to some people about what we might be able to do there. Outside of that, I think it's open to other people. The SCA is an issue is really important and NEBA is keen as well. It's a bit harder for NEBA because they've got thousands of members, only a small percentage of whom do strata insurance.

Amanda Farmer: That's the Brokers Association, NEBA.

John Trowbridge: Yes, yes. Nevertheless, Phil Kueh and the CEO, he's very keen to avoid conflicts and to assist in this area. So, NEBA has been standing alongside the SCA. But SCA, it's an interesting situation. The SCA has to really put out the standards, but then it's the brokers who have to do most of the implementation. So, we await to see how that happens as well.

Amanda Farmer: Well, I certainly think we are far further along in this conversation than we were this time last year before your Phase One report had been published. And I know I first got my hands on it just before Christmas last year and was talking about it with our community and we've continued that conversation. So thank you very much for your good work and for continuing to stick with us as we work our way out of this historical position.

I do acknowledge that too, it's a big shift it's a big cultural shift a big mindset shift for many people working in strata and that will take time. I will make sure that there is a link in our show notes below this episode to your website, John, where our listeners can go and access all of your reports and your disclosure handbook and make sure that they're on the front foot when they are looking at documents their strata manager is issuing when it comes to insurance premiums and the costs of insurance.

And thank you once again. Look forward to chatting with you again sometime soon.

John Trowbridge: Well, my pleasure, Amanda. Yes, thank you and good luck with all of that. Thank you.

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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 yourstrataproperty.com.au.