

Publication Date: 20 December 2023
YSP Podcast Transcript: 391. Access for AFSS sign-off, damaged blinds and...a strata wedding!

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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. Hi, Reena!

Reena Van Aalst: Hi Amanda, how are you?

Amanda Farmer: I am great. This episode is going out to everybody and what I think is probably the last week of the business year. Christmas is just around the corner. You're shutting up shop soon, Reena.

Reena Van Aalst: Yes, we are actually on the 21st of December. So we're actually looking forward to that. I think everyone's had a really very tough year this year, I think in terms of workload and things happening and strata a lot of changes. So yes, it's a welcome event coming up for all of us, I think, having time off.

Amanda Farmer: You close for a couple of weeks?

Reena Van Aalst: Yes, two and a half weeks, which is great. But we wish we could actually close, like lawyers do for 3 or 4, but unfortunately, I would hate to think what we'd come back to if that was the case.

Amanda Farmer: Yes, I'm sure your inboxes are overflowing and it's a little bit scary when you open them up there in 2024. Well, I hope you do have a rest and a well-deserved break as many of our strata manager listeners will be doing as well. We're going to wrap up the year sharing our wins and our challenges. Hit me with your challenge for this week, Reena.

Reena Van Aalst: So this challenge for this week, Amanda is one that I actually haven't had before. So even though I've been doing this job for 23 years now, I think there's always something new that happens that you've never really come across.

And we had the building in the city, obviously, you know, doing the annual fire inspections and every year they've been passed, even though they haven't had access to into every unit. And as we know now, that the fire regulations have made the people that actually do the testing now, far more accountable in terms of what they submit and what they state they've done.

And so this year we had the same we had an event where one of the owners would not allow access because he's got OCD and he won't allow anyone into his apartment. So we're quite concerned, we let the insurer know, put the insurer on notice, and they said, "Well, just keep us up to date as to what happens with the City of Sydney Council when you go to submit the AFSS."

And as I had probably assumed, the council said, well, no, this is not an acceptable AFSS, even though every other measure has been ticked off and has been certified, there's one apartment you haven't accessed, and therefore we need that to be done. And the building manager said, "Well, I'm sorry, but they won't let us in."

And the answer to that, well, that's your problem, basically. You've got powers under the Act to get access. So if you have to do that, you have to use them. So we had to actually submit a state of PIN to avoid a penalty being issued by council on the basis of this reason.

Amanda Farmer: So that's a state of PIN, penalty infringement notice, I'm guessing?

Reena Van Aalst: Yes. And not all councils enforce this aspect of it. Some councils will say, oh, well, that's fine. Just let us know when it's done and we'll give you another month to get it done. But City of Sydney is a very strict council in that respect, and I can understand why, having a lot of high rise buildings and the recent fire that was in Surrey Hills, I think has really added an extra

YSP Podcast Transcript: 391. Access for AFSS sign-off, damaged blinds and...a strata wedding!

element of compliance that perhaps where there may have been some, you know, leeway given to buildings, certain reasons that sort of now really stopped, they're quite strict.

So under Section 123, access for fires, safety inspections, we obviously wrote to the owner and said, "we have a legal right to enforce this and to come in and do the inspection." He said, "No, I'm sorry, I've never let anybody into my apartment all these years. Why do I have to let them come in now?" And again, this is something we've talked about Amanda, where in the past people haven't done certain things, whether it's a managing agent, allowing contracts to be signed insurance or requiring licenses now the same thing. I mean, why do I have to let them in? I've never let them in before.

So eventually we had a compromise where we had to put like plastic on the floor. And I think he took a photo. He said he's going to take a photo of the spring club, but the guy said no, I've actually got to see it. So I think what happened was I think the guy had to dress up in some sort of like COVID type wear and then walk in.

Amanda Farmer: Right.

Reena Van Aalst: B.it of a palaver I had to say but eventually we got there but the problem I think that would have happened had he not agreed all those conditions is that we would have had to probably go to NCAT. And as you know that's very timely takes a lot of time sorry not time it's very time-consuming and not quick so it was a good outcome but I'm not sure how long council would have waited if with those proceedings had started

Amanda Farmer: You've mentioned the Reena, Section 123 in our Strata Schemes Management Act, which is titled access for fire safety inspections. I've never actually had a close look at that particular section. There's a few sections in that area of the Act about access and I'll go back to a couple of them. But this one in particular does say that it is a defense to a prosecution for an offense under this section consisting of a failure to ensure that access is provided to a lot in a strata scheme. If the owners corporation establishes that the owner or occupier of the lot refused to allow the access or could not be contacted by the owners corporation.

So the section actually goes to the owners corporation providing access to the building including access to lots in order for an authorised person to carry out an inspection under the Environmental Planning and Assessment Act.

I think that section may apply if the council, for example, was forcing some kind of inspection on the owners corporation in relation to fire safety. And the owners corporation couldn't facilitate access to lots because a lot owner would not provide access. And I've just read out there that exemption there from penalty if you can prove that a lot owner wouldn't provide access. Otherwise the section that requires lot owners to provide access for a number of different purposes including where an owners corporation needs to carry out work to the common property to investigate whether work needs to be carried out to the common property to do work that it is otherwise legally required to do.

And that's where the fire safety inspection is relevant, that section is Section 122, the power of an owner's corporation to enter property in order to carry out work. And indeed, as you've said there, Reena, if a lot owner doesn't provide access and you've informed them of your legal right as an owners corporation to get that access, you do then need to go to the Tribunal and seek an order. And that order is sought under Section 124. And I would imagine if you had to do that in this situation, then that order would have been made.

Reena Van Aalst: I'm not sure how I mean I've never had to do one of these before Amanda, or I'm not sure how long it takes to get these things. Obviously I didn't see that there'd be a list of cases and I don't know how quickly these types of do you have it you know if they would expedite such an application.

Amanda Farmer: Yes, it's a good question. It really depends on the position of the lot owner. And I have been involved both in cases where a lot owner has been facing such an application and upon receiving the notice from the Tribunal saying, "You've got to go to a directions hearing, you've got to explain why you're not providing access," then yes, access is provided. But I've also been

YSP Podcast Transcript: 391. Access for AFSS sign-off, damaged blinds and...a strata wedding!

in cases where they have been drawn out. Thinking in particular of a building that you were managing, Reena where I was involved years ago. You may not remember.

And we ended up in the Tribunal for quite some time. There was, there were windows that needed to be replaced. The owner didn't actually agree with the scope of work or the windows that were going in and on that basis refused to provide the owner corporation's contractors with access to install those windows. And the new windows actually sat outside the building for months and months, slowly deteriorating.

Reena Van Aalst: Yes, I remember that. Yes, yes, that's right. They were deteriorating. Yes. So I think, yes, and that's the thing that I think is concerning because council's attitude was, well, you know, you've got enforcement powers. And even though that section says that it's a defense, but I think it depends on the consequences, what could happen.

And I think now council is becoming, I think, less patient with those types of things. And also, there's an insurance implication for us as well. We had to put the insurer on notice. There's one apartment that didn't allow... And the problem is that it's been happening for so many years that the owner hasn't given access and it's never been raised. It's never been submitted in any of the AFSS that this apartment had not been inspected. And it's been happening for a long time apparently.

Amanda Farmer: So understandably, there's some frustration there.

Reena Van Aalst: Yes.

Amanda Farmer: But good result in the end and interesting that council is well aware of an owners corporations' right to seek an order from the Tribunal and was also pointing you in that direction. Everybody becoming a little bit more educated about the operation of our strata law.

Reena Van Aalst: Yes.

Amanda Farmer: My challenge for this week comes from our member forum. An owner inside our forum recently posted about a set of blinds that were installed at their lot. I believe it was adjacent to a courtyard. The owners corporation's contractors needed to come in and do some work on that courtyard relating to waterproofing.

And in the course of that work, the blinds were removed and they were actually thrown out. Contractor disposed of those blinds, they weren't brand new. I don't know if they were damaged during the course of the work quite possibly.

And this owner has posted in our forum this question, what is the owners corporation's obligation, if any, to replace these blinds that its contractor has removed without notice to me, without getting my consent, and they've been removed during the course of work being done on the common property.

Now, my answer to this and it wasn't the question itself so much that was challenging, but the result that's come out of it. My answer to this was the owners corporation does have a duty where it has damaged your lot property in the course of accessing your lot to carry out work on the common property.

The owners corporation does have a duty to, the owners corporation is liable for any damage to your lot property or to the contents in the lot that may arise out of the carrying out of that work. And again, we've already mentioned Section 122 today, Reena, but that is indeed the same section where that obligation is enshrined. I relayed that answer fairly promptly to the member in our forum and later heard back that the member had put that position to the strata manager had quoted Section 122, subsection 6 it is there in Section 122 and still the strata manager was relaying, I imagine the committee's instructions that no, they wouldn't deal with these blinds. They wouldn't compensate the owner for having to replace the blinds. I suggested as a next step that the owner go and get a quote to replace the blinds. It's probably inexpensive and put that quote to the owners corporation and see if they wouldn't pay that money by way of compensation, by way of meeting that loss.

YSP Podcast Transcript: 391. Access for AFSS sign-off, damaged blinds and...a strata wedding!

And once again, owner's corporation said, no, not going to do it. And I've said to this owner, what's your appetite? What's your appetite for going to the Tribunal and seeking an order? And the owner said, "Look, you know, it's a few hundred bucks, I'm not going to do it. But how frustrating is this that the law is black and white." And just because a committee digs their heels in who knows what they are or aren't being advised by their strata manager. I don't know, but committee just digs their heels in and says, "No, Sue us."

Reena Van Aalst: Yes. the issue with there is also is that the contractor to damage the blinds and the owners corporation can go to the contractor and say, "You know, you've damaged the blinds. Here's a quote, we're going to take that off your bill because you know, you cause the damage."

And bottom larger, I think if it's a small amount of money, usually the contractor will accept it, probably at it at the end somewhere else. But, yes, but normally those sorts of minor things, I think to me, it's not really worth arguing about such a small amount of money in relative terms.

Amanda Farmer: Well, exactly. And it sounds like this owners corporation has taken that view that the lot owner might decide this is not worth arguing about and walk away, which is indeed what it looks like that owner is going to do.

But great point for as long as the contractor is still there and still doing work and that contract's not completed, there's a good opportunity there for the owners corporation to get the contractor to solve that problem. So nobody feels like they're out of pocket. But once that contractor has gone, that opportunity may be lost.

Reena Van Aalst: Yes, exactly.

Amanda Farmer: It's something that John Minns, our Strata and Property Services Commissioner raised in our chat just a few weeks ago in saying that there are some parties where there are some parties in our dispute resolution system that do manipulate the system. And I asked him to go a little deeper on that and said, "You know, John, are you talking about owners corporations who know how hard it is and expensive and time consuming it is for lot owners to bring claims in the Tribunal. And essentially they sit back, wait for the minority to make that claim if they're ever going to make it, and then ultimately comply, meet their legal obligation once the owner has gone to that time, trouble and expense.

And that's not right. That's not how it should be. John agreed with me in having that conversation. If you haven't had a listen to that one, head back to Episode number 388 to catch that chat but yes, interesting that even our Strata and Property Services Commissioner is recognising that failure in the system.

Reena Van Aalst: Yes. I think its inherent now in some buildings were there is that mentality of just spending minimum amount of money, Amanda. And people putting their own personal sort of, mindset somehow they would perhaps they were in their own home.

And they can't extrapolate that when they become strata where their duties are not just to themselves but to all the owners. And I think that's sort of becoming a far more prevalent thing that I'm seeing now where as cost arising, buildings are ageing you know, 2 buildings I just had meetings in, you know, the lifts have to be replaced. They are talking about 250,000 to 300,000 not having enough money in the capital funds because they actually did the work. They would actually pretty much wipe it all out and not having any money to do anything else.

So, again these are years and years of not following capital fund forecast, not looking at rising costs, not putting away 5% increase every year in the capital fund. So the time does come and you have actually do the work the money's there. That's something inherent from sort of neglect. Sort of a decade I mean for some buildings some neglect really.

Well, hopefully we can wrap up a busy, burdensome year, Reena with some good news stories. Have you got a win to share with me this week?

YSP Podcast Transcript: 391. Access for AFSS sign-off, damaged blinds and...a strata wedding!

Reena Van Aalst: Yes, Amanda. Women in Strata had their annual Christmas party a few weeks, about a month ago, and it was well attended by many men actually. I think people do find it very unusual that men do come to Women in Strata events because we have always welcomed the contribution of men that help women. And many of the men actually were saying that they were highly surprised the welcome that they received at Women in Strata events because I think sometimes there's been that it's only for women and men aren't really encouraged to come, which is the opposite.

So it was a great evening, it was great food, we had the Ivy Pen House and we got to catch up with lots of people perhaps that we don't normally see and I met some new people as well. So yes, I just wanted to sort of share that with all our listeners and for those managers that perhaps haven't come to our events before. It's a really good way to meet your peers and share stories and have a nice time.

Amanda Farmer: Yes, Reena and I both sit on the steering committee of Women in Strata and I too enjoyed that event last month that it was great to see you, Reena in person. I see you a lot through the camera here but we don't often see each other in person.

So that's always nice. And yes, a good mix of people, strata managers, those who support strata managers with their services and that venue was awesome. I hadn't been to the Ivy Penthouse before and I posted a video or two on our social media. It's also on the Your Strata Property Facebook page. And I had a lot of people reach out to me and say, "Oh, Amanda, that was a fancy event there at Ivy Penthouse. Tell me more, tell me more." So big thanks to our sponsors who make sure that we're able to host such glamorous special events, welcoming around about a hundred people we had there at that event, looking forward to more next year for Women in Australia.

Reena Van Aalst: Definitely.

Amanda Farmer: Thank you for that nice reminder of good times, Reena. I too can wrap up with a special strata experience, let's say. Some of you may have seen this on our Instagram page a little while ago. I think it was on Facebook as well. I posted a short video of something rather unique, a little bit romantic happening in the common garden in my strata building. I was, I think I was in town for the Women in Strata event actually.

And it was a Saturday afternoon. I remember I had just done my online pilates, which is what I do when I travel in my living area. And I got a cup of tea and I stepped out onto the balcony and I could hear talking and laughing. And I'm a few levels up from the ground in that building. And I looked over the balcony and I saw rows of chairs set up in our back common garden and then I saw, what do you call the thing, the archway under which people get married? There's a special name for it.

Reena Van Aalst: Yes, but yes. No, no, I don't know what it is. Sorry, Amanda.

Amanda Farmer: Someone's going to tell me. I saw that set up and I, well, what I immediately thought was wow, somebody's getting married and then I thought, hang on, I'm on the committee. I knew about this. We did, I'm on the committee, I knew about this. Tenants in our building had some months, I think it was before reached out to the committee and said, look, we want to host a special event. I don't think at that time we were told it was a wedding. I had in my mind that it was an engagement party, but we want to host a special event. Is it okay if we use the back garden? What's the procedure for booking that? Blah, blah, blah.

Obviously want to make sure that we're not going to be disturbed or infringing on anybody else. So that was all signed off by the committee, but unless I missed a memo, I didn't realise it was going to be a wedding. So it was a lovely surprise to look over the balcony and say, wow, that is someone's about to get married. And I was then in a position because I've got sort of an L-shaped balcony where I could look over and see the bride arriving into our car park, walking down the path and then ultimately saying I do on our strata common property. Have you ever heard of that before, Reena Van Aalst?

Reena Van Aalst: Wow, that's never, I've never had a wedding on common property. No, that's another first for this episode as well, Amanda. That's lovely.

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Amanda Farmer: Yes, look, I think at a time when I suppose, you know, cost of living is up young, you're right. That's okay. You're reminded. At a time when cost of living is increasing, young people are focused on spending their money on other things, which I completely support. Having an intimate, easy, cost-effective, let's say, wedding is a great idea.

And obviously these tenants, I think they've been building for a couple of years now, decided that was a beautiful spot, which indeed it is very green, very quiet. I think you can even hear the birds singing in the video that I've posted. I'll pop a link to that under this episode as well. Really nice setting where you could fit a small group of people to see a lovely, memorable event.

Reena Van Aalst: Oh, it's lovely, man. That's really nice. It's nice to see that people actually, you know, use the common areas for many, many purposes. But usually you don't hear about the bad things that people do on common property. You don't hear about such events where people actually get married. So that's really nice.

And maybe this has sparked some ideas for others. We've got some beautiful properties in Sydney. Strata properties that have space, that have gardens, whether tenants or resident-owners or investor-owners wanting to use that space for an event.

Amanda Farmer: Someone had posted under the video, Amanda, I hope the party doesn't continue into the evening and keep everybody awake. No, it didn't at all. The reception was held somewhere else. It wasn't late night partying. But yes, but great idea for today's modern couples.

Reena Van Aalst: Yes, well, breakfast point Amanda for those that know that site has a country club and they have many weddings there but that's all geared for that. I mean, you know, they have the whole reception there and everything. So yes.

Amanda Farmer: Yes. Excellent. Well, lovely to finish up the year with you, Rena Van Aalst. Our podcast will be having a little break for a couple of weeks over our Christmas and New Year period, but I will be back with the first episode of 2020, 2025. I've been talking so much about 2024. I'm already in 2025. Yeah. I'll be back with the first episode of 2024 in a couple of weeks time.

And as always, I think pretty much since the podcast started, I commence the year with the top five episodes of the past year. So my team will be digging into those download stats and kicking off the year with the top five. So then anyone who might be new to the podcast or you think you might've missed some important episodes that, yes, important episodes, you can have a listen to that first episode of the year and make sure that you've caught those top five or head back and have another listen.

Happy festive season, Reena Van Aalst!

Reena Van Aalst: You too, Amanda, enjoy the break.

Amanda Farmer: I sure will. I'll see you next year.

Reena Van Aalst: See you then, bye.

Amanda Farmer: Bye.

Outro: Thank you for listening to Your Strata Property. The podcast which consistently delivers to property owners reliable and accurate information about their strata property. You can access all the information below this episode by the show notes at yourstrataproperty.com.au.