

## Ask Amanda Now: 9 February 2024

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Hello and welcome to Ask Amanda. Now, I am your host strata lawyer, Amanda Farmer. I'm coming to you live straight from Los Angeles in the United States of America. That is where I am right now. It is a little later on Thursday night where I am. I know it is Friday afternoon where most of you are on the east coast of Australia. But I've gone back in time,

traveled here from Sydney on Thursday morning and landed here on Thursday morning and have spent the day recovering, trying not to sleep, trying to get on us time, wandering around some of these fascinating streets and getting to know LA a little bit. It's my first time here and I am here in transit off towards Las Vegas, heading there on Monday to get ready for the annual conference of the College of Community Association Lawyers.

Now they are the equivalent of we Aussie Strata lawyers in the us They call themselves community association lawyers. And I'm heading over to their annual conference in Las Vegas as a representative of the Australian College of Strata Lawyers. I'm a council member on the Australian College and they're sending me over to check it out, see what our US counterparts are up to, what they have to share,

what their challenges are, what their experiences are, experiences are, and to bring back to Oz all the news. And this is where it starts here with you today saying hello from Ia. Great to see you for our Ask Amanda now session. If this is your first ask Amanda now session, this is the time, 10 minutes, 15 minutes, depending on how long I'm talking,

how excited I am, how tired I am to answer one strata question chosen from a bunch of questions that you have posted here on the page you have sent to my inbox and the team has collated for me. And then we pick out that one question that we think will be most helpful to most people. So we tend not to pick the nitty gritty,

the questions with lots of detail, the questions that are very specific to their own situations. We try to pick out those questions that are short and sharp, that really grapple with or ask me to grapple with an issue that I think is probably impacting many of you, whether you are strata managers, whether you are owners, whether you're committee members, wherever you are.

And those are the types of questions and answers that we bring to ask Amanda now. So that's what today's all about. I apologize if I'm a little bit weary. I've probably had a total of About two or three hours sleep in the last 36 odd hours. You know when you get so tired you actually start to feel a little bit, a little bit queasy.

We're getting to that stage when we finish up here. I'll ask Amanda in our session here tonight, I'm going to be moving a few paces over that way, which is where there's a lovely comfy bed for me to relax into and be up and rearing to go tomorrow, which will be my Friday. So looking forward to that rest. Thank you though for joining me here,

coming on in live. I can see Shana. Hey Shana. Margaret is here saying, happy travels. Thank you very much, Margaret. If you are here live and you wanna say hello here in the comments, you are more than welcome. If you come back around catching the replay, feel free to give me a hello. Yes, we have chosen one question for you today from the many that were sent through to us.

And before I announce what the question is, I wanna point out that all except one question that was sent to us from those of you who would like your question answered on this session. All except one question related to strata managers and strata management, and Amanda, my strata manager is, or my strata manager isn't doing this. Are they allowed to? Should they be?

This happened at a meeting, this happened with a contract. I was quite blown away this week in particular, seeing that almost all of those questions were about strata managers. Interesting, interesting. And I know on Facebook here on the page, and I've been posting a fair bit of resources and welcoming lots of new people into our world. You might have seen a few different promos that are out there at the moment.

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So look, we can't solve it. We can't make it better unless we call it out, unless we start talking about it and start unpacking why is this happening and how can we do better for everyone in this space? How can we help our strata managers to do better, to be providing better service for you as owners? So always happy to bring those questions and those answers to you here.

Richard's here saying hi, keep enjoying. Thank you very much, Richard. Hey Jan. Hey Gail, lovely to see you. So the one question that I have chosen today absolutely does have to do with strata managers, strata management. Today's question, and we're going to bring it up here on the screen for you, comes from Wendy and Wendy says this,

what data can we reasonably expect to be transferred by our old strata manager to our new strata manager? We received 1000 JPEG files, all unlabeled and unintelligible. So what Wendy's talking about there is that her building finished up the contract with their former strata manager. Maybe that manager had the building for a year, maybe that manager had the building for 25 years.

I'm not sure, but there would've been a lot of records there held by that strata manager. And then Wendy's building has engaged a new managing agent, new strata manager, and the files have to get transferred from the old manager to the new manager. And when this has happened, new manager has opened up the files, or maybe Wendy's committee has had the opportunity to go on and have a look at the files and realized what a state they are in that they're unintelligible,

that they're unlabeled, that there's no discernible filing system, and when files are not properly named, it's impossible for them to be filed correctly. What can a building like Wendy's, a committee, an owner, even a strata manager who is taking on records from a previous manager, what can they reasonably expect? Is the standard too high if you're expecting that everything should be neatly filed and named and labeled in an electronic file?

Should you just take what you can get? Is it okay for managers who are handing over files for managers who are the custodians of those records? Is it okay for them to be keeping records in this fashion? Now this question caught my eye among the many other questions about strata management practices that I received today because I totally get it, Wendy, this is not the first time I have heard this frustration.

I myself have experienced this frustration when I have been engaged by owners to carry out searches of books and records when I've logged into an A portal and looked at electronic files. As recently as last week, I was doing that for an owner and it was unusually a very full file. There were lots of things that had been filed there by the strata manager over the last few years, but a lot of it, a lot of the documents weren't named in gobbledygook. It was just letters and numbers. There were oftentimes not even a date. I didn't know if I clicked on that document, was I going to open an invoice? Was I going to open an email? What was gonna be there, what date it was, whether it was relevant to what my client had instructed me to look for and to download copies of.

So really, really frustrating. Rena has raised this before. Rena Van sst, strata manager, who often joins me on the podcast, she's raised this before, when she gets file transfers for buildings that her company has just taken on from another manager having to spend her and her team having to spend hours going through files, opening up PDFs, JPEGs as you say,

Wendy, TIFF files that have just been scanned in with no fault whatsoever to naming those files so that anyone who comes afterwards can work out what they are. Lots of time being spent on that exercise, trying to put a file together and therefore lots of money, whether it's money for that building who's just engaged a new manager to care for their files, or it's an owner who's engaged,

somebody like me to go through the books and records and provide them with advice where there is time spent, there is money that is being spent. So why do we have this problem? And is there some kind of standard that is out there that should be met and that is being missed by our strata managers in keeping files in this slipshod way? Well,

here is my answer and it's not a very satisfactory one as far as I'm aware. And those of you who are I know well across the Strata law who tune in here, strata managers perhaps experienced strata managers who thought about this problem and have thought about the standards on them. When it comes to record keeping, if you have a different view, let me know.

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But as far as I'm aware, there are no express legal requirements in our strata legislation or even I went over and had a look at the Property and Stock Agents Act and regulations, which govern our strata management, strata managers, licensed strata managers. There's nothing expressed in there that requires strata managers to keep an owners corporation's books and records in any particular way.

And that goes the same for secretaries of owners corporations. So those who are self-managed who don't have a strata manager, they're doing all this themselves. There's no requirement in our strata legislation for these records to be properly filed, identifiable, labeled, categorized in any way. It's just not there. Where there is a fair bit of detail about how you should be keeping records is when it comes to accounting records and trust account,

how you run a trust account, how you account for money and record the money that goes in, the money that goes out. There's quite a lot of detailed requirements around that in the strata legislation and also in the property and stock agents legislation. But there seems to be this complete overlooking of the fact that strata managers do a heck of a lot more than property managers then real estate agents,

when it comes to keeping maintaining files, correspondence, they're dealing with emails, they're dealing with repair and maintenance requests, they're dealing with invoices not just from trades, but from lawyers and from accountants and from engineers. They're dealing with many, many different types of correspondence. And there is, as far as I'm aware, no regulation, no legislation, no strict legal requirements about how those records should be kept.

The only requirement that perhaps has some relevance here, but it's very broad, is the requirement in section 176 of the Strata Schemes Management Act, which is a new one that has just come in as of December last year in New South Wales, the new requirement that records be kept electronically. So we now have that requirement, but this was a missed opportunity I think.

Yes, we have new reg new legislation that says Strata manager must keep records electronically. We could have slotted in there how those electronic records are to be kept, what kind of filing system should be used, the fact that files, so you're saying something as simple that files should be properly labeled and named so that their content is reasonably discernible. There was an opportunity there,

I think for this to be made so much easier for our owners and for new strata managers who are taking on old files, not an opportunity that's lost forever. Hopefully we are continuing, at least in New South Wales to look at our strata legislation and point out identify room for improvement. I think this is a really big one. When I, I dug a little closer into the legislation.

I looked at the function in thinking about this answer to Wendy's question, looked at the functions of a secretary. Does the secretary have a function of keeping records in a particular way? Interestingly, no. The strata legislation doesn't even tell us that it is the secretary's function to keep the records in any particular way. The secretary has to enable inspection of records.

So you would think that in having to enable inspection, then records should be kept in a form that is able to be reasonably inspected, let's say. But there isn't even a requirement there for the secretary to keep records in any kind of a format, in any kind of a reasonably accessible format. So that's another section in our legislation where they could quite simply be put a clearer obligation on our secretaries to be keeping records in a way that they are reasonably identifiable and accessible.

Jan is here saying OMGI have had a terrible time trying to get records. My first search brought up a very interesting email, took a photo of the relevant bit, then went back to get the entire email and it had been removed. Yeah, so not being able to get access to records at all, Jen is a problem in itself, but then getting access to a mountain of material,

which has definitely been my experience before, that cannot be identified without opening up each and every file. I don't think that's right. I think that there should be a clearer, let's say if heavier and I, I know it is hard. We all live in that electronic age where yeah, you scan things and then you've gotta rename them and then you have to file them and put them somewhere.

You have to have a system in place. It may be burdensome, but if we don't have express rules around that and that's not happening as a matter of course in our professional strata management offices, then perhaps we do need a rule around that.

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Perhaps we do need some stricter requirements, definitely some guidance for our strata managers. If there's anybody who is a manager who is perhaps a member of SCA Strata Community Association,

definitely a manager who is a licensee in charge and is responsible for managing the supervision guidelines, new South Wales Fair Trading, calls 'em the supervision guidelines if, have you got anything in your supervision guidelines or is there any guidance out there from SCA or REI, the Real Estate Institute about your file management and about your file management systems and the hygiene of your files?

I meant to go over and have a look and see if there was anything in the solicitor's rules about this because we keep very tight, very easily categorized, easily accessed, easily understood files. And my, the way I was trained is that that is what we are required to do as lawyers, as professionals. We need to make sure that if we are handing over a file to a new lawyer that our client has engaged,

then that file is able to be properly accessed, properly read efficiently by that new person. I'm not sure if there's a rule around that or it's just the way that lawyers conduct themselves. Most lawyers hopefully, but strata managers really need to be, should be at that same standard. There was a post on LinkedIn, a coup just a couple of weeks ago.

I think a lot of discussion, as I said when we had our chat last week, a lot of discussion in the media about strata at the moment, and someone had posted on LinkedIn a response addressing this exact issue even though that wasn't the the issue that was raised on LinkedIn. But the response was, I think from a professional strata searcher who said the way in which he sees strata managers keeping records is negligent,

that that's been his experience, the state of records that he's been inspecting and how hard it is to work out what the heck is going on when you open up an electronic file. This person who was a professional strata searcher believes that is negligent. So big call, but here it is again, Wendy raising that question here today. Bill and Ben are saying we had something like that with a change and the old agent just dropped off four boxes of records with no reference to what any of it was.

They were not happy we had sacked them. Yeah, is it a bit of a tantrum thing? Is it a bit of a bit of a spit? The dummy, you are not gonna renew my contract. This is how your new manager's gonna get their records. That's a bit sad, especially when we're all our strata managers are all moving towards professionalism.

That's the name and the aim of the game at the moment. And I would hate to think that that's what's going on. Shauna's saying great question from Wendy. Yep. I think so too. Mina, if you wanna bring that one back up on the screen because there's a few new eyes coming on in who may not be aware, aware of what the question was today,

bill and Ben says, got a strata roll today with phone numbers on it. Sometimes you get a mess and sometimes you get too much. Yeah, well, our phone numbers too much. Bill and Ben, if we're thinking about what the legislation requires, a phone number has a place on a strata role. An owner has a right to access a strata role,

then you're getting what legally the manager or the secretary is required to produce Richard Ache. If I haven't said hello to you yet, hello there, Richard. Saying the detail may not be in the act, but I feel reasonably confident that an obligation to keep records must include an obligation to maintain the records in a manner that makes them reasonably accessible, leaving aside,

making them accessible to owners or searches. They must be in a form which is accessible for use in the management of the scheme, which is the principle obligation of a managing agent. Yeah, I like that, Richard. And that's sort of threw my jet lag. That's sort of what I was trying to find in the act earlier this evening when I was having a look at,

okay, we, we have detailed quite prescriptive rules about accounting records, about every registers, about financial reporting, about financial statements. There's quite a lot of detail there on how we keep records when it comes to accounting. But there isn't even a general requirement about keeping records, about maintaining records aside from records are kept for seven years, records must be kept electronically.

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I like those words reasonably accessible, an obligation to maintain the records in a manner that makes them reasonably accessible. Something like that in our legislation would be great. So thank you for your thoughts there, Richard. And I think, yeah, if we were, if we were getting very legalistic about this, I'm sure we could find some common law principles,

some principles of professional management, file management that we could dig up to say, of course, these 1000 jpeg files should not be unlabeled, unintelligible. The fact that you are as a strata manager, the custodian of the records. And I suppose when we look at the agency agreement and the function of the manager in the agency agreement is to be the custodial of the records to manage the owners corporations,

books and records. That's where we might see that function, those words managing the records. Then we can read into that, as you say, Richard, an obligation to do that properly, to do that professionally and in a way that they are can be understood and are reasonably accessible. Okay, so that's 20 minutes of our 10 minute ask Amanda now session.

Thank you very much, Wendy, for asking that question. As I said, lots of questions this week about strata managers, about contracts, about responding to emails, about this question of records. Many of you have lots of questions about your strata managers. Some of you who have posted questions on the page or in my inbox, you are members of the Your Strata Property online membership community.

And generally my team swings back around and reminds you that if your question didn't get answered today, then please go ahead and post your question in our member forum. You'll get your questions answered there much more quickly than I have time to do on a fortnightly ask Amanda. Now, I'm in the forum every day. I was in there this morning trying to keep awake when I got off that plane,

waiting to check into the hotel, answering questions for our members. So if you're a member and you've got a question, whether it's about your Strata manager, whatever it is, about your strata experience, post that into our member forum and I will be there to answer it in detail for you. If you're not yet a member, now's the time to come on in and join us.

You didn't get your question answered today. You can pop it in the forum tomorrow and you'll have my answer there for you. Find out more about membership, join us over [@stratamembership.com](mailto:@stratamembership.com). I'm going to rest my weary head. I'm going to be exploring more of LA over the next couple of days before I then move off to Las Vegas and enjoy the College of Community Association Lawyers Conference.

Yeah, I'm gonna bring you some highlights. Yeah, I'm gonna show you some photos, maybe some videos that we'll be taking. Let you in on all the juicy stuff, so do hang around. I will be on the page next week. Have a lovely restful weekend and I'll look forward to chatting Strata with you all again soon. Bye for now.