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YSP Podcast Transcript: 434. What about the dodgy building managers?

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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, Reena.

Reena Van Aalst: Hi, Amanda, how are you?

Amanda Farmer: I am great. We are almost at the end of the year, about to shut up shop, like a lot of strata professionals. When do you guys finish up?

Reena Van Aalst: Friday the 20th of December we finish. So, yes, Looking forward to the break. Amanda, we've been really, really busy and we just can't wait.

Amanda Farmer: You taking two weeks off, three weeks off.

Reena Van Aalst: Two and a half. We always do two and a half. So we come back on the Wednesday 8th January, which sort of like minimises the impact of coming back sort of halfway through the week.

Amanda Farmer: Yes, nice one. It's probably never enough, but I know you've said previously that it's better not to take too long sometimes and come back to the avalanche of emails and problems when you're a strata manager and all the fun stuff that happens over Christmas break in your building.

Reena Van Aalst: Yes, unfortunately, I think people don't realise that sometimes we are entitled to have a break and they might just ring up and say, but how come, how come you're not open? It's like, well, you know, on our email footers we've told people that we're going to be closed. We'll also do a blast at the end of the year as well. So, yes, hopefully people should be aware that everyone is entitled to a break at the end of the year. And we hope to have one and enjoy it as well.

Amanda Farmer: Yes, I hope you do too. We officially close for three weeks from the 19th will be our last day and taking that three weeks of downtime is something that we have always done and found very rejuvenating. And that is not to say that there aren't a few little things that crop up in between and certain clients who have a direct line to me, there always seems to be something sometimes that's the benefit of heading overseas during this time. I have to say, being in a different time zone, which I have done a few times over Christmas, it's a good way to get a break.

Reena Van Aalst: Yes, exactly, Amanda. Yeah, I think sometimes you do have to get out of the country to actually get a proper break.

Amanda Farmer: So this is officially our last podcast episode for 2024. Another big year. We will be back with an episode in the first week of week of the 6th of Jan, but otherwise a couple of weeks off and great to be able to share this last episode of the year with you, Reena. Our wins and our challenges as we like to do. What's been challenging you this week?

Reena Van Aalst: Yes, well, I think recently in the media we've all been aware of the fact that strata managing agents have sort of been the focus and the target of a lot of negative publicity. And some of it has been warranted and some of it probably hasn't been in terms of some clients of different schemes, perhaps casting a spell over every managing agent. And starting to question practises that perhaps they think is widespread. And I think that from what we've understood, it's not.

But today I'd like to probably focus on building managers. I think that not all buildings have building managers. We know that it's usually mid to large schemes that have building managers mid-sized to large schemes. Also building managers, even if schemes

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that are perhaps even smaller, may have a part-time building manager for 4 hours or so, which is usually the minimum per week, perhaps to meet. Contractors get quotes because Strata committee members are volunteers and many people work and obviously have commitments. So sometimes people expect owners or committee members in buildings to actually be the liaison between contractors, et cetera, when really when people are working, they shouldn't have to.

And secondly, when you think about it, those people are actually subsidising the rest of the owners in that building because they're giving up their personal time to do that work. But what we've been finding with a lot of our building managers recently, I suppose I've found this over a number of years now, I shouldn't say recently, but what I'm finding is that there's no training for building managers. I mean, I have many great building managers that I've worked with for many, many years and are fantastic and basically, do you know what they're engaged to do.

But I must say, recently, I would say in the last two to three years, I've really come across many building managers that there's been a big churn in buildings. So building manager starts, doesn't know what they're doing, the community's not happy, we want someone else. Someone else comes, no handover between the two managers, information gets lost.

And I mean for one particular building where there's a BMC involved. So there's about probably three strata plans and say three stratum lots. In that particular BMC we're talking about, the residential plans are over 100 lots. We're talking about a contract worth \$300,000. And on the face of it, that doesn't seem like a lot of money because you look at there's three plans, et cetera. But then when you look at the fact that every time a new building manager starts, I've got to give them the strata plan, it's not saved anywhere. It actually does become quite tiring and minutes aren't actioned. We're getting verbal approvals of quotes instead of work orders issued. We actually have people where we found out where there's full time building manager in one building doing work for another building.

Amanda Farmer: So full time in two different places?

Reena Van Aalst: Well, they're actually full time in that particular building and they're sitting in that office but with the software that they have, like Building Link or MyBoss, what happens is that. And that happens even for us, like we're given access to all the buildings where the building uses my boss, I can log in and have a look at every building so that the same happens to a building manager. They can log in and look at every other building they have so they're actually doing work for other buildings in other in that building's time.

And the other thing also is a lot of building managers don't understand the by-laws. So when there's an application they don't understand what information is required, they don't understand the fact that the licences have to be in the same name and entities as a quote and insurances. So there's a lot of back and forth.

And unfortunately, what happens in those cases, Amanda, is that the port owner making the application becomes, you know, because I've got to go back and say, no, where's this, where's that? They haven't provided this, you haven't provided that. Also, for managers where there's a BMC, the manager has to understand what is a shared facility. So a lot of the time we get the invoice and we think, hang on, that doesn't look right because that's the garage door. The garage door is a shared facility. It's been built to the strata plan. Send it back, get it re invoiced. Not understanding that quotes over 5,000 need a contract, even a simple Fair Trading contract. Not understanding that waterproofing requires a specific licence.

And the worst thing about it all is the whole thing of kickbacks. Now I know people don't like to talk about this, but there's a lot of kickbacks in the building management industry. And one of my building managers was telling me about two years ago, I've known this building manager for many, many years and he mentioned to me that a few years ago he was, the building wasn't happy with the standard of cleaning in this particular building. So he met with him and said to him, unfortunately, the strata committee, unhappy with the service, they're giving you so many warnings and unfortunately now, you know, we're giving you a month's notice.

So he asked him if he could take him out for lunch, which he did, you know, like a goodbye thing. He'd been there for a number of years. Obviously, this particular cleaner, you have a box of chocolates wrapped in cellophane. Anyway, he thanked him for the

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chocolates, went home and then gave it to his kids to open to eat. And there was \$10,000 cash in the box of chocolates. Now, this manager trusts me enough to tell me this because I've known him, as I said, for many, many years.

And some of my building managers, when there's been a change in the companies, have told me that, you know, a lot of the contractors down there had offered kickbacks, et cetera. So I just wanted to bring this to the forefront, I think not to disparage building managers generally, but I have also a particular manager that's doing 4 sites for me and she told me she does seven buildings altogether and there's no way you can do 7 buildings when only my four buildings take up 45 hours a week.

Now people will say, "Oh, you know, we have back office people doing work and etc." Which is okay. I don't doubt that for a moment that there are people in the back office doing, you know, perhaps could be issuing work orders, they could be approving invoices, doing all the admin tasks that, you know, normally you wouldn't expect a building manager paid at a certain hourly rate to be doing. But I don't believe with all of that that perhaps especially in the more part-time arrangements where if you're supposed to do 4 hours a week, well, no one ever asks a building manager for a timesheet. No one ever says, can you account for every single thing you've done in this time that we're paying you for?

Now, I'm not saying that people should be doing that, but unfortunately for strata managers, that seems to be the case where people want to know every single thing we're doing in addition to what we're charging? And that's fine. I have no problem with that at all. People should be accountable for what they're charging. However, there seems to be a different approach when people look at building managers and don't sit in the same light.

And most of the time, and they're actually paying like a full time building manager will be between 130 to 180,000 per annum. We're talking 130 to 180 for a large scheme. Right. So we're not talking about small dollars in here yet. I think sometimes the value for building managers is great when they're very good. They save money for the building, they know what they're doing. They obviously make the strata manager's job easier because they, they deal with all the aspects of application. So by the time that we get them, it's already been vetted and correct.

The other thing that building managers don't do is don't provide the quotes that they're getting. So again, before the meeting we have to issue an agenda. We don't have the quotes, we don't have their reports. Their reports are usually just a dump of what's in the software, which is just like cases. So I know I've gone on about this today and I've taken up a lot of time.

Amanda Farmer: Point being received.

Reena Van Aalst: Yes. But I just. I just wanted to sort of make a point about the fact that there's another important service provider for strata schemes that I think needs more regulation. Like strata, managing agents are regulated.

Amanda Farmer: Well, Reena, you've touched on a point that has been made some years ago now, if I think about the 2021 discussion paper, that has led to a couple of rounds now of reform in New South Wales; legislative reform. Precisely. This issue was raised. For a long time, owners have been complaining about conflicts, kickbacks, poor behaviour on the part of strata managers. But the role of building managers has largely flown under the radar.

And the poor practises of some building managers has flown under the radar. Some of the recommendations that came out of that discussion paper have been implemented in the last couple of rounds of reform, including disclosure obligations that are now on strata managers, also being on building managers where they're receiving commissions, where they're receiving payments, where they are connected to third party service providers. Building managers as well as strata managers will need to be disclosing that those are laws that commence in February 2025.

And also interestingly, the draft bill that is currently before New South Wales Parliament inserts a new obligation for building managers to act in the best interests of the owners corporation. Quite a broad obligation, perhaps you could arguably say they've always had that obligation. It's now going to be when this legislation is made enshrined in our Act.

But there was a whole raft of other recommendations in that 2021 discussion paper that have not been implemented, including

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placing a limit on a building manager's contract. So in New South Wales, building managers can have up to 10 year contracts. There has been a recommendation that that be aligned with strata management contracts at 3 years. That's not yet appeared in any draft legislation.

So I simply say that by way of acknowledging you're not alone in raising these concerns, I think they have been recognised by others as well. But I agree with you that more needs to be done. And while we are shining a light on professionals or those who strive to be professionals in this space, the role and practises of building managers should be investigated.

Reena Van Aalst: Yes, I think Amanda, the issue is now that the government is encouraging, you know, more medium density housing, larger schemes going to be constructed in terms of number of lots. So I think there'll be more building managers required in the future and that's why I think it will require more regulation. If you think about the amount of money buildings are spending on building managers, I mean one particular building we have, there's been about, I think 6 managers in about nine months.

Now sometimes buildings are difficult in terms of the lot owners and their expectations. Also an issue in terms of how people treat a building manager. But I still think that the same would apply to a strata manager, I think. Because a strata manager is required for every single strata scheme apart from those that are self managed, people can see more about what a strata manager does and doesn't do yet. Because not every building has to have a building manager. That's why I think that they've come up come sort of than have been on the radar.

But I think in terms of future proofing of management and professional management of buildings, I think building managers, as you said that there is a start now in this current reforms to give those obligations fiduciary obligations that apply to strata managing agents. But I think also that the contract limits also need to be looked at as well because I don't think anyone would have a 10 year contract for anything. I mean I know they're allowed to but most companies now don't put forward 10 year contracts. But I think the act needs to also reflect community expectations.

Amanda Farmer: Yes, it's interesting that you say that because that's been the pushback from whoever it is that's representing building manager. I don't even know who that is in this space saying that building management is different to strata management. We invest time, resources, including human resources when we get a building management contract, as you say, Reena these building managers are paid, by the sounds of it, far more than you may be paying your strata manager.

It's often the case that one person is devoted to servicing one building. So the excuse, if you like, for why we don't want to limit the contract terms is that there's no incentive there for us to invest in that site if we know we could possibly be out within 3 years. We want a much longer contract. But you're saying to me, "You don't usually see, at least not these days, those long term contracts." Is a three year contract common on the ground?

Reena Van Aalst: Yes, three is what I'm seeing a lot. And a lot of people now are doing like three years with like a one year, no penalty exit. Because the problem is that people say mill managers are investing a lot of money in people, but they're not investing any more money than anyone else would invest in a staff member. If you think about it, what are their operating costs? Normally they sit in an office supplied by the building. The software is paid for by the building.

So apart from training that person, which a strata manager has to be trained, every person doing a job has to be trained and invested in. So I don't really understand the fact that the same could apply to any business. We think, well, why would I do a contract for less than so many years if I don't have longevity? The contract's with the entity, it's not with the person. And no entity can control the longevity of a person's tenure at a building. I mean, you might interview a building manager, we just had one now where we had interviewed the company and the committee wanted to interview the individual, which is of course it's always down to the person that is going to be dealing with the owners and residents. That person started, they did great interview, they engaged them. That person, he wasn't there for like two months, three months, and then, oh, he decided to leave and move to another state.

Now, so the whole thing was predicated on this particular person who then left within three months. So now they've got somebody else which again, you know, like hand over this, that new person, start again, committee, time investment, our time investment. Yes. So I think building management companies are using that argument in terms of investment. Like actually they have the least

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capital investment. I mean even the building, building provides the computers, even if they don't have a computer. So.

Amanda Farmer: Yes, fair point. Good to hear that perspective and as always, happy to hear the other side here. Happy to hear from building managers who are tuning in and have a different point of view and want to let us know where you're coming from, please do reach out to us. Happy to hear your views.

Now it's interesting, Reena, that you've raised this topic of building managers and their responsibilities as a challenge today because in explaining to us, what building managers mostly are not doing. I think it was your list there. You've mentioned that there's no legal requirement necessarily for them to keep certain records or to record their tasks that they're carrying out on behalf of an owners corporation.

The challenge that I planned to bring to the table this week is very related to that because there's been a bit of discussion in our online membership community and also through looking at this proposed new legislation in New South Wales, a discussion about Section 55 of the Strata Schemes Management Act.

Now this is the little known, I've discovered little known section that requires a strata managing agent who exercises a function of the owners corporation to, immediately after exercising that function, make a record specifying the function and the manner in which it was exercised. That's what Section 55 says. It also goes on to say that the strata manager must then give a copy of that record for the previous 12 months to the owners corporation at least once each year.

Now I'm not sure if we've talked about on the podcast before. I've certainly had a bit of back and forth with it, about it with other managers, but what I've heard is some managers are completely unaware of this legal obligation, don't understand what it means, don't believe that they are complying with it, they're not recording the exercise of their function. They're certainly not giving a copy of that record to their clients for the preceding 12 months.

It's come up again recently because there's a proposed change to Section 55 with this latest round of reform and that changes that, yes, this record continues to be made record the exercise of a function of the owners corporation, but give that record to the owners corporation every 6 months rather than every 12 months.

And it's kind of bizarre to go and read the discussion paper and the recommendation on which apparently these amendments are based. Because what the recommendation and the discussion is around, you know, we want to know what a strata manager is doing, we want to know what important decisions they are making. Material decisions was the word used in the discussion paper and in the recommendations. We don't want to be overloaded with information, but we kind of want to know what's the big ticket stuff that a strata manager is doing for us.

And we don't necessarily want to have to go searching for that information. We want it to be given to us. The response to that recommendation was simply to amend Section 55 or propose the amendment of Section 55 to double the obligation of a strata manager to deliver this record of the exercise of the owners corporations functions. Deliver this record every 6 months instead of every 12 months. I don't see how that change meets the need that has been expressed in the discussion paper, but I thought I'd bring it here to the podcast because I'm getting questions. Amanda what does Section 55 even mean? How do we comply with it? And is anybody really doing this? What do you think, Reena Van Aalst?

Reena Van Aalst: I'm just going to try and really not say what I'm thinking.

Amanda Farmer: Go for it. Why hold back? This is a safe space.

Reena Van Aalst: I remember when I was in my previous job the software would spit out something like we paid this many invoices, we did this, we did that. Et cetera, et cetera. I mean end of the day, like that information is already available to owners corporations, usually via portals. You can see what bills have been paid. It depends. I think if the agent has full delegation or partial delegation.

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So I think for full delegation that's a whole different ball game. I'm not really sure if this particular section of the act really refers to managers that are acting with full authority or not. I don't think that's really clear. But if you have partial delegation and that you don't do anything without being instructed, you don't even pay an invoice unless it's approved by the treasurer and the building manager on a portal or approved before it.

So I don't really understand why people need to know what a manager's doing when they're actually telling them what to do and they can see evidence of its performance. So I've always been baffled by this section. I've never had anyone ever ask me about this section. I know some people have spoken about it and some software can spit out like if you issued 20 work orders, it knows what you know and it'll 20 work orders were done, 15,000 invoices were paid. You know, so many quote, requests were obtained. Like, I mean I just think to myself, well, that information is already available anyway. I think a manager doing their job properly doesn't really need to account and has partial delegation where the committee gives instructions on how agent is to perform. You know, I mean that's again more costly. So people want to pay more money and they want a line by line, you know, export of every day, what I did and who I spoke to them and what I said.

And I know I'm exaggerating here, but I just think that end of the day, like, I don't really know any other profession that needs to account for every single thing that they have done in every 6 months. Like you tell. I mean, I'm just trying to understand why I started managing agents again under a higher level of requirement than any other professional that is servicing owners corporations or the public in general.

Amanda Farmer: Yes, yes, I think you've hit the nail on the head there, referring to the extent of your delegation, because that is exactly the area of the act where this section appears. Section 55 follows those sections about what functions an owners corporation may delegate to a strata manager. The section about an owners corporation can delegate some but not others. It doesn't mean the owners corporation or the committee members can't exercise those functions themselves. So I think you've got a good point there from an interpretation perspective, that Section 55 may go only to where a strata managing agent has full delegated authority and is not otherwise receiving instructions to do something. If you're receiving instructions to do something, arguably you're carrying out an instruction, you're not necessarily exercising a function.

Reena Van Aalst: Yes.

Amanda Farmer: The confusing thing I think about Section 55 is that it requires you to make a record specifying the function and the manner in which it was exercised. So I agree with you that the books and records of the owners corporation, full stop, will contain the record of you exercising the function. The work order itself shows the manner in which it was exercised, the email that you send, the record you make of the telephone call, all of the things that you rely on as your records to be able to bill a client, to be able to substantiate the work that you're doing. All of that are those Section 55 records.

But query whether 55 requires something more, which is the record itself has to specify the function that you're carrying out. That's the bit that I think some conscientious data managers going, "Oh, well, yeah, sure, everything's in writing. But I'm not actually. There's not a little notation at the end of my email saying, this is me as the strata manager exercising my function of undertaking the financial management of the funds and books of account," which is one of the functions that's listed in the agency agreement.

Reena Van Aalst: Yes, when I pay an invoice, or when I. Or when we prepare financial accounts, or when we send accounts for Audit, we're exercising function ABC or 1, 2, 3.

Amanda Farmer: Yes, yes. And I can see how that task, without software, that's doing it for you. And I can't see how the software can be looking over your shoulder all the time. It can't do everything. Email is an exercise of dysfunction. That's right. I like the information there, that there are some software programmes that can spit things out, like this many work orders and, you know, this many whatever.

And I'd encourage managers to chat to your providers about that ability. But I also agree with you that a manager that is transparent with their clients gives them every opportunity to access their records, whether that's through a portal or whether that's by easy facilitation of a lot owner's access to books and records. They're not going to encounter a problem with this because

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owners are only pointing out, "Hey, Section 55, when they're left in the dark."

And something that I suggested on a webinar that I ran earlier this year, my Trust From Transparency Webinar, was that I recommend all strata managers look into open access filing systems, which is, at the click of a button, securely. A lot owner who is entitled to access books and records can access those records exactly as the strata manager sees them. There's no need to jump through any other hoops. There's no need for there to be separate files set up just for that lot owner's inspection purposes.

I think if you've got that open access system that owners can get into their own records at any time, then that's another example of how you would be complying with Section 55. And you don't necessarily need to worry about these timeframes of 6 months, 12 months, owners have access at any time.

And I think you've got a good argument there that by giving them a link to that file, giving them instructions on how they access, you are giving them that access per your requirements under Section 55.

Reena Van Aalst: Yes. And like you said, Amanda's security. Because the problem is that, yeah, like, we're now moving to a more secure environment in terms of, like, when we share a document now, the person's email has to be put in, not just a link that everyone can open. Because what my IT consultant said to me, he said to me, once someone gets into your system, then you don't know who else has got into their system that can then get into.

Amanda Farmer: With the same link. Yes.

Reena Van Aalst: Or let's say someone's computer's been hacked and they don't even know an Amanda. So this is a thing. I mean, this is another topic that we can talk about another time. But the whole thing about security, personal information, privacy, you know, also not. Not many people see privilege information. I mean, if you're giving someone access to Linked, that what we can see, they can see and someone hasn't turned off that part of it and something that's privileged has been accidentally shown to everybody. This is a thing. This is why when we do our searches, we upload certain things because we want to make sure that there's no accidental divulging of information that shouldn't be seen.

The other thing also I think people don't understand is that telephone numbers aren't required under the Act. If you look at what Section 22 requires, it doesn't require telephone. We obviously collect that information in order for us to do our job, in order for us to communicate and the information is given to us on the premise that only we have access to it. It's not given on the premise that someone's neighbour can find out someone else's telephone number.

And again, when you're giving access to people on a platform, these types of things have to be thought about because on the face of it, oh yes, you give people access to all information that you have, but some information that you have is not required under the act and therefore you know someone else having it. It could be a problem that you've allowed because you've actually given access to something that perhaps they did not realise was given to you and then used inadvertently by someone else for other reasons apart from just for lot owner or owner corporation purposes.

Amanda Farmer: I hear you that there are legitimate, genuine, understandable concerns about privacy and access to personal information in strata. The bottom line, from my perspective as a lawyer and on a plain reading of the legislation, is that our strata legislation just does not protect owners from that does not protect their personal or sensitive information.

If certain information is given on a Section 22 notice, a strata interest notice, including a phone number, then you're obliged to, under Section 176, put that information on the strata roll. There have been calls for the act to be amended to allow strata managers, secretaries to redact certain personal information. Again, that's one of the recommendations. Proposed changes that has not yet come through in the draft legislation and I had cause to go back and have a close look at that because there was an earlier draught of the bill that's currently before parliament that was circulated to a number of stakeholders. I think you're included in that did include an amendment about redacting owner's information that hasn't come through in the bill that's currently before Parliament.

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Not to say that it won't come in the future, but you can see how there's a real cautious approach to this, recognising the rights of owners to have access to their records and also their right to privacy, which, as I've said a few times now, that right just doesn't exist when it comes to your strata records. And I have, when I'm teaching on this topic of privacy, teaching CPD sessions to strata managers, I emerging them to make that clear to owners, put it in your own privacy policy that's on your website.

I agree with you, Reena, there's a real misunderstanding there from lot owners that their information is private. I think it's incumbent on strata managers to tell them it ain't. If you're going to send me that information in an email, if you're going to send me your phone number, your email address, your life history, that is a record of the owners corporation. It's not my record. It's not your record. You are talking to a body corporate, you're not talking to an individual.

Reena Van Aalst: But I think, Amanda, the problem is that owners assume that. I've also had people now, unfortunately, they've had to change their email addresses, not use their personal and create new ones because of information and bombardment they've had from certain owners when they've done a strata search.

So when you think about it, people think, well, hang on, I'm a committee member, I'm a volunteer. Why do I need to put up with people emailing me directly when I've told you we have a strata managing agent? Don't email me. As I've had to write to a number of owners that are written directly to the committee and I've said, "Please don't write to the committee. The committee have asked that you don't do this. Write to me, I will forward it to the committee as I have always done." So I think there's got to be another really look at you, look at Optus, look at all these different companies that have had their data breached. I mean, can you imagine someone doing a search their computer's hacked into, someone's got all someone else's personal information. When we even have bank details, when someone wants a reimbursement, we have someone's bank details on our file. So what that person's bank details are going to be shared? If someone does a strata search and. Or someone's getting to. Well, I mean, this is what people don't understand.

Like, again, they don't realise that then when they're giving me a bank detail for reimbursement, that's on the record, you know, that's in our software, that's on our system. So, yes, I think people just think now with this whole thing of with cyber attacks and all that sort of thing, I think people have to. People are much more wary now, but I think in strata, people are not aware of their personal information being stored.

Amanda Farmer: I think the short answer to. Does a committee member have to put up with emails from harassing and threatening, annoying emails, abusive emails from somebody else? The short answer is no, of course you don't. And what you do is you block that person. I'm regularly giving that advice. I've done it myself. I have to say, both in my professional inbox and in my personal inbox to simply say, any emails from this person goes to spam and I tell that person that that is what I have done. I will no longer see your email, so send me whatever you like but I ain't going to be reading it. I think going and changing your email address or setting up a new account because you don't want to receive emails from a particular person is not a necessary solution.

Reena Van Aalst: Oh, no, it's more. If people are doing searches and then they're using those emails, then email them directly. It could be about. Isn't that to be threatening or menacing? But people say we have a managing agent. We don't want to deal with lot owners directly. That's why we're paying a managing agent to communicate on behalf of the committee. We don't want these people who've done a search to bypass that delegated authority that we have to keep the records to correspond, then going directly and asking the community directly for things that they should be asking me do I mean, like through or our company throughout. As an agent, you know, you're a volunteer, you're not paid to respond to people. Whether it's harassment or it's just normal questions. You know, we have a managing agent, that's what we pay someone to do. Can you please respect our not our private. They don't use the word privacy, just respect the fact that it's like a board of directors and shareholders. I mean, you know, I can't email the board member directly. If you're a shareholder, you have to go through the company secretary, that there are lines of communication which are established for that reason. So, yes.

Amanda Farmer: And I would like to think if that's explained, then in that kind of circumstance, there wouldn't be continuing barrage of correspondence. If that line is drawn. So all of this is a roundabout way of addressing this Section 55 obligation and where you do open up this access in order to meet your Section 55 obligation, what some of the consequences might be interesting to hear from your perspective, Reena. I know that your position, your experience as a strata manager is very well

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respected here by our listeners and they're always interested to know how you do things. So to hear you say, after many years of experience, "Look, I've never had a Section 55 problem." I think that's a comfort. I don't know where this legislation comes from or who comes up with these ideas, but it's a really weird section.

Reena Van Aalst: It's been around for a long time and, I mean, I remember it like even when I was at Dynamic in my early days, but I think it might stem from the fact that managing agents had full delegation and they were just doing the usual. Like back in the day, you just issued work orders, you paid the invoices, you didn't one AGM a year and. Yes, so maybe I think it might stem from that historical approach where managers didn't really have a huge sort of role in managing schemes as they do now. As legislation has changed, as complexity has changed, that's my only sort of reasoning as to why that section's in there. But, I mean, obviously, looking at it again, I don't know.

Amanda Farmer: Yes. And worth noting, if you don't comply, there's no consequence express in the legislation. I'm regularly asked that by owners and by managers. So if this doesn't happen, what's the consequence? It's not a penalty provision. To be clear, there's nothing express about how you might seek orders to enforce that section. I'm sure we'd be able to find a way. But, yes, thanks for loving. Perhaps another toothless provision of our New South Wales legislation. All right. Do you have a win for me this week, Reena?

Reena Van Aalst: Yes. So since we've been talking about record keeping, et cetera, I know you've been. You've recently done your webinar in relation to transparency and record keeping. So we actually had a case in one of our schemes where someone wanted to obtain some information, but we didn't have all the information, as some of the records were kept at the building by the building manager. So, again, as I referred to my earlier piece on building managers not providing us for documents, you know, we can't obviously ask what we don't know is happening or what.

And the half the time, can we have the quote? Can we have the quote? You know, again, more time wasted and effort put in. So we gave the person all the documents I required, I give them a link, then they said, "Oh, they want every single email." And it's like, at the time, this was like a year ago, there was 22,000 emails. And yes, so obviously you can imagine trying to sort and go through and see what's privileged or et cetera, et cetera.

And we also had a case in this particular building where there was domestic violence and someone had written to us saying, "Please make sure that my information is not on the file, because I'm scared that if my husband knows anyone that does a search," I mean, you know, because anyone can do a search if authorised by a lot owner, that's one thing, actually a matter that I think we haven't spoken about. Not just lot owner can do a search, anyone authorised by loan, it can do a search. So even if you're not selling, I can. I mean, I had someone, one of my friends asked me to do a search a few weeks ago on a building that she lives in. So anyway, and so I said, yes, definitely. But I mean, you know, we obviously didn't got to make sure that that email is filed, but it's, you know, to go through every single email and make sure that emails that shouldn't, you know, that are privileged, that are of that nature aren't in there. So anyway, eventually the, you know, went to NCAT, et cetera, you know, some. There was a mediation that had to happen beforehand and basically what the members, they try and get you to actually come to some resolution.

And what the NCAT member said, she said specifically, you're not entitled to see every email. That's what she said. Right. She said that you're using a sledgehammer to hit a nail. What is it exactly that you're after? Because anyone with any sense of understanding human nature can see that really the reason that was purported was that work had been done of a significant amount of money that had not had proper approvals and it had been improved retrospectively.

And I had advised the committee that that should have been put on the agenda then, you know. But during the time the work was done, there was issues that were happening, kept on escalating the amount of money and it sort of not got out of control. But it, as with waterproofing, you do something, you find something else is wrong, you're paying people by the day. You've got hoarding, you know, you kind of say, stop. Can we have a general meeting to approve the next tranche of money?

So the member said, if these are your concerns about these issues, then we can narrow it down to those things. And she said, "I'm not going to give you an order where you can see everything because you're not entitled to see everything."

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Amanda Farmer: Interesting.

Reena Van Aalst: The thing is that people are entitled to information. But what she was trying to say, even though someone doesn't have to give you the reason that they're looking for it, if you're going to ncat, then in order for a member to make an order, then I think you do have to tell them what you're looking for. So there was another set of documents that they wanted to see. These were related to some threats that were made against me and others and the police was involved.

And again, I had my home address on there. And the member said, "Well, why do you need to see that email when it contains her personal address?" And she said, "You don't need to see that." So what we agreed for that investigation that occurred, that that person would come into our office, we would redact all personal information out of the emails, anything, and they would. They'd pay for another hours worth of searching. I sat there, I went through, everything was redacted that we were told that we agreed that should be redacted and that was done.

So I think when it comes to NCAT, I don't think people, in terms of, you know, if you're going to go that far to see records, I think people have to understand that of course owners are entitled to see things and understand and make sure that things are being done correctly and transparently, but there is a limit to what people will be allowed to see. I think your push comes to shove. So that's my win. Yes. Consent orders made, Amanda. So, because we agreed together that I would give this person ABC, and obviously that person got advice and they must have agreed and so that the information they really were after was provided and then. Yes, so. So that's one to sort of bring that up.

Amanda Farmer: Great to have that insight into how an application like that may play out in practise before the Tribunal. And that's certainly been my experience as well, where you have some members who are a little interventionists than others and prefer to see these kinds of applications resolved. They may be making comments like that to encourage a resolution.

As a lawyer, of course, I am always thinking, I wonder how that would go if the applicant said, no, I am entitled to see everything and I'm going to push this on to a hearing. And the member then had to look carefully at the law and make a final and binding determination on whether or not this person does need to explain the purpose for their inspection. Because that's certainly not a requirement that's in the legislation.

But of course, wherever these cases can be resolved without further time, cost trauma to those who are involved, that's always a good result. And I would encourage anyone who's going before the tribunal, regardless the application, to be conscious of the benefits of making time to discuss those kinds of compromise solutions.

Reena Van Aalst: But see, Amanda, the other thing also is, and something that's probably not being taken into consideration is the cost of compiling all these records for a search. So I know they're increasing the search fee...

Amanda Farmer: I think only for authorised persons, not for owners. I call that the lawyer tax.

Reena Van Aalst: Yes, exactly. Thinking about you, but. But when you think about it, for us to compile, let's say the order was to give the 22,000 emails. So first of all, you have to get usually an IT person, because you can't get someone going into your Outlook, because Outlook contains every. We have a building A file for every single building folder, so they can't come into your system.

Then the person, oh, you know, this person's been, oh, well, you can just do a word search, you know, and as we know with word searches, it may say one thing in the subject, but you don't know inside the email what there could be. Which means the mandate to sit there going through all the emails to make sure nothing that shouldn't be there is, is there.

So the cost would be humongous. And it'll be all billable to the owners corporation because it can't be billed to the owner. There's a statutory fee if you want the managing agent to prepare all this information and get all the emails and in a form that has been checked, etc, there's another cost, I think people that they're not aware of, which again, and that's why is what you've said, "Tell us what it is you want so we can get those emails for you." We can, you know, ask for emails. And I think the committee emails also

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came up.

And obviously when we have no compulsion or ability to make community members provide, if they email each other, which happens a lot, we know that community members email each other all the time, they don't include us, partly because people think, oh, we're going to charge for every time a week, which we Don't. But some people want to do. And sometimes they may want to just, you know, like we said, people please, we give you say a quote or a request. Can you guys. The members will talk with each other and then we get one person to then come back and tell us what the final answer is. Because sometimes we get 20 emails back and forth and you're trying to work out what you have to do. So those 20 emails, we don't have those. So we're not under any obligation to say, can you give us all those emails?

Amanda Farmer: Well the strata manager doesn't have them but from my point of view they are emails that are in the custody and under the control of the owners corporation because the committee members are representatives of the owners corporation. So and from that perspective they should be produced. I completely agree that you don't know that if they exist or not as the strata manager, you've never seen them.

It's a mess and it's a huge obligation for strata managers. And I don't think, not even just don't think you don't have the help and the guidance that you need to be able to comply and to assist your buildings to comply. The fact that you and I are talking about this and not coming up with any hard and fast determinations here is a symptom of that. It's tough. It's a really tough one.

Reena Van Aalst: And the cost of manager, also the cost of storing, if you think about it like when I remember first started in Strata like each manager would get their little. I remember it was a pink folder with their mail. So the mail would come in and get stamped and this one of the junior staff would go around to each manager and put the mail in their tray and you'd go through it and you'd know this is days before scanning even.

And then you'd get back to someone. Whereas now the amount of emails, I mean sometimes I might get 20 emails just from one committee in one day and I'm just trying to work out what do I have to do. And all the storage capacity that we have to pay for now to store all these emails in terms of, you know, terabytes of data. I mean that's again a cost that owners corporations will have to understand that they have to pay for. Like it's not, you know, that's it.

Amanda Farmer: Yes, yes. So that is a whole separate conversation about what strata managers are charging and that is why Strata management costs do need to increase. Yeah. All the reasons why our strata managers now are looking forward to a break. The end of. I was going to say another full on year and this has been a particularly tough year.

Reena Van Aalst: Yes.

Amanda Farmer: For our strata managers. Yes, we're going to have to wrap up there. I would usually share a win after your win, Reena, but I'm going to carry that one over to 2025 and simply say that getting through 2024 has been a win in my book and watching my friends and colleagues and great professionals in this space doing incredibly important work get through 2024 has been a win. And I look forward to sharing another year with you, Reena and all of our listeners in 2025.

Reena Van Aalst: Merry Christmas everybody. Have a good new year.

Amanda Farmer: Merry Christmas. Have a great holiday. Bye for now.

Reena Van Aalst: Bye.

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