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Intro: Welcome to Your Strata Property, the podcast for property owners looking for reliable, accurate, and bite-sized information from an experienced and authoritative source.

Amanda Farmer: Hello and welcome to the podcast this week. It is wonderful to be back here with you on the pod. I am your host, strata lawyer Amanda Farmer. This week I'm coming to you with some fun, fascinating, frightening, facts from the recent conference that I attended over in the United States. That's my alliteration for today. Do you like that?

A couple of weeks ago I was in San Antonio, Texas attending the 2025 law seminar of the Community Associations Institute. That's the CAI not to be confused with the CIA. That is the American equivalent of our SCA, Strata Community Association. In addition to hosting an annual conference for their managers, their property managers as they call them over there, they also have a separate conference for their lawyers.

The College of Community Association Lawyers, or CCAL, help to put this conference together each year. It's one that I've attended a few times now, first online in 2021, then I was lucky enough to attend in person in 2024 when the conference was in Vegas and then just recently in San Antonio, Texas. Pretty cool town. I recommend checking it out if you haven't been before.

I learned a lot. I learned about what it is that we do differently. What it is that is surprisingly, perhaps for some of us, the same. I'm going to start by introducing you to some different terminology. The word strata is certainly not used over in the United States. I did mention it to a few people and the response was mostly, "Oh, that's so cute! Strata, I get it." Layers, layers on layers.

It is a term that's used in Canada. Our friends in British Columbia use the term strata, but not in the United States. Americans use the term Homeowner Association or HOA. They also use the term condo condominium. Community Associations do exist over there and they do reference occasionally apartment buildings, depending on the state, the location. An apartment building, I've learned, is often the kind of building that is wholly owned by a single investor owner and then rented out.

Apartment buildings are places that are full of tenants, usually in the US. Different terminology for managers of course. No strata managers. Instead, our American friends are property managers, lawyers are attorneys, though often are referring to themselves as HOA lawyers. The Community Associations Institute I've already mentioned the CAI. Our equivalent is SCA here in Australia and CCAL, the College of Community Association Lawyers. We too have a college here. Much of it.

I can see quite clearly modelled on CCAL. Our college is the Australian College of Strata Lawyers ACSL or A-C-S-L. The way they do law over in the States in the Community Associations context is a little bit different. In some respects the law is not as codified as it is here. And by which I mean we here in Australia, in our states and territories have specialised legislation.

There is a Strata Schemes Management Act or a Body Corporate and Community Management Act, or a Strata Titles Act or a Unit Titles Act generally in each state and territory, not the case in the U.S. The rules that bind their communities often are drawn from the specific governing documents for the community which are drawn up when the community is created. They might have by-laws, they might have deeds, they may have restrictive covenants, but certainly less overarching or state-based legislation that is unique to community associations.

That's not to say that there isn't relevant legislation, lots of references to the Fair Housing Act and other laws aimed at preventing discrimination. There is, I think, a Uniform Condominium Act, though only half a dozen or so states have adopted that. One major piece of legislation that is impacting Homeowner Associations over in the US right now is the Corporate Transparency Act. And I mentioned this because it sounds a little similar to something that's happening, has been happening in New South Wales in recent years.

The Corporate Transparency Act over in the U.S. was created to help combat money laundering and terrorist finance across the country and to safeguard national security, and the national financial system. The Act came into effect in January 2024 and

businesses that meet certain criteria are expected to file under this Act a Beneficial Ownership Information report with the U.S. Department of Treasury's Financial Crimes Enforcement Network, also known as FinCEN.

That report, that BOI report, has to be filed by the 1st of January 2025. The ultimate goal is to prevent those who may have malicious intent from hiding or benefiting from the ownership of their U.S. entities where they are facilitating illegal operations. But the Act has thrown up some unique issues for homeowner associations and condo communities. Certain categories of business are exempt from filing these forms. But apparently, most HOA Communities, Homeowner Associations, are not covered by that exemption.

And many of them feel that this is a little unfair. It's a little unreasonable to be asking these communities to file these BOI Beneficial Ownership Information reports. They are not the types of businesses or companies or entities that the government is really targeting. They are a low-risk, very low risk for money laundering. Most of them are not-for-profit entities. And the representative body, the Community Association Institute, does agree with that and has been actively advocating, including participating in litigation for its community associations for them to be exempt from from the act and the reporting requirements.

Why do communities want to be exempt from these requirements? Well, we need to have a look at what is supposed to be included in this reporting. The following information is required to be submitted. The business name of the association, the legal name, birth date, home address and identifying number from a driver's licence, state ID or passport of the board members. Board members? In the U.S., our equivalent is committee members or council members.

That's some pretty personal information to be given to the federal government. Also the name, birth date, address, driver's licence details, and passport details of anyone who has substantial control over financial reporting for the association. It's a little bit unclear, the Americans say, whether a property manager or a management company would qualify as an individual with substantial control. Do they need to provide their personal details? And if there's a change at any time, there's a new board member, there's a new community manager, that filing does have to be amended within 30 days.

This is kind of starting to sound a little bit like the Strata Hub in New South Wales. And the mandatory annual reporting that our New South Wales buildings now have to do, providing personal details of committee members, emergency contacts, details of strata managers, all to be uploaded to the Strata Hub and be accessible, some of it publicly, some of it apparently accessible only by government and those they may choose.

Apparently, it's pretty simple to file these BOI reports under the Corporate Transparency Act, pretty much the same process we might use to file in New South Wales for the Strata Hub. It's all done online. Doesn't cost any money to file a report. But of course, just as we've been talking over here about the implications of this kind of mandatory reporting, the Americans have identified a few problems with this type of requirement for their communities.

Privacy concerns. Number one, and I got to tell you, the Americans are very, very concerned about privacy. From a cultural perspective, I think, certainly more so than we are here as Australians. There are additional costs for communities to do this work, for their manager to do the work. I was hearing about lawyers, attorneys who were doing this work for their clients, and increased difficulty in finding new board members, just as we do here with our committees.

Some communities really struggle to attract members to serve on the board. This new requirement, it is feared, is going to make it even harder to find volunteers. They're expected to submit detailed personal information to the government. And there are also consequences for failing to do that on time. There are penalties and fines. Failing to submit a BOI report to FinCEN on time could cause an association to face a penalty of \$500 a day.

Criminal penalties also apply up to \$10,000 and jail time in some situations. So there's a lot of pushback on this legislation so far as it impacts community associations in the U.S. There has been a range of court cases testing the limits of the legislation, working out whether or not community associations are exempt or should be. At the time that I was over attending the conference, the legal position was that communities do need to be filing these reports.

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But there are a few cases around the country in different jurisdictions yet to be determined or under appeal. So it's possible that that could change. My online reading tells me that in reality, it could take months, even years, before the federal court system over there makes any final decision about the Corporate Transparency Act. Its constitutionality has been challenged and certainly, the Community Associations Institute is fighting hard on behalf of its members and those who they serve to solve this perceived problem.

So I didn't want to go on without mentioning the Corporate Transparency Act. It's such a hot topic over there. And as I'll say a few times in today's episode, I do find it interesting where we identify these similarities. Even though we're so far away and culturally perhaps quite different, when it comes to our communities, our homeowner associations, we are all going through similar things. Let's turn to the numbers.

The Community Associations Institute has almost 50,000 members. By comparison, SCA reports that it has just over 3,300 in Australia. So CAI is a considerable beast. And that becomes clear the minute you walk into any one of these massive conferences held at stunning convention centres around the U.S. The Lawyers Association, that's the College of Community Association Lawyers that sits within the CAI. They have 177 fellows of the College.

By comparison, our Australian College of Strata Lawyers, we've got about 30 fellows drawn from across the country. And this law seminar that I attended had over 750 attendees. That is huge conference by Australian standards. Our ACSL Lawyers Conference is being held in Brisbane next month and we might have around 80 people attending, so a little smaller than that 750. What I noticed was there were lots of property managers attending this conference, so 750 in attendance.

We've only got 177 CCAL fellows lawyers who are Fellows of the College. So that's a lot of people there who are not community associations or HOA lawyers. Many of them were property managers. And I had a chat to a few of them. They let me know that they come to the Lawyers Conference, even though they do have a managers conference later in the year. They come to the Lawyers Conference each year because they think the quality of the education is better.

There's more in-depth discussion on issues that are of interest to them. There are less sponsors floating around trying to get their business they call sponsors or suppliers what we might call suppliers in America, they call them vendors, less of those around at the Lawyers conference. That's certainly the case at our Lawyers' conference as well. And these managers were looking for education that better matched where they were at, better matched their skills, their expertise and their growing need for a practical understanding of the law.

A couple of my favourite sessions over the few days that I was there were the Case Law updates, a couple of hours where CCAL fellows took us through the top community association cases from right across the country over the past 12 months. I'm going to share a few of those with you today, but that's an excellent way to see how these real-life challenges, conflicts, and conundrums are being dealt with and resolved by the courts over there.

And as you'll often hear me say, learning from our cases is a really great way to learn, often a fast track way to learn both for lawyers and for managers and for owners. Speaking of the benefit that managers do get from attending these lawyers' conferences, it's not too late to register to attend our Australian College of Strata Lawyers Conference. We'll be in Brisbane in the first week of March 2025.

That's Wednesday the 5th to Friday the 7th of March. If you want to head up to Brisbane and say hello, spend a little time with me and my colleagues in person, hearing from some of the best in the business drawn from right across the country. Check out the registration link and the link to the conference programme that I've got for you in the show notes for this episode.

You can also head over to acsl.net.au the homepage of the College's website. Scroll to the bottom and you'll see a link there to the conference and the conference programme. I'd love to see you there. I've mentioned those case law updates and how much I enjoyed them at the U.S. Conference. A few cases that I made a special note of to come and share with you. Cases that reminded me that we're all going through the same thing.

A case from Florida about the failure to produce records in response to an inspection request. Don't we talk about that a lot here on the podcast? This case went to court. The trial court said, "Well, the association didn't produce everything that's right, but it's okay they substantially complied with the owner's request for records." The appeal court said, "No, substantial compliance is not enough. The association didn't produce everything that was asked of it. It was a legitimate request. The association failed to comply with the mandatory statutory requirement there in Florida, there is no flexibility."

We have similar cases here. I've talked about them on the podcast. Our legislation is strict when it comes to the types of records owners corporations here need to be keeping. The process for permitting inspections of those records upon receipt of a proper request. All records under the custody or in the control of an owners corporation here in New South Wales need to be produced for inspection.

There's not a lot of excuses that can be given if you don't want to produce. Privacy is not a valid excuse. Privacy Act does not apply where there is another piece of legislation that compels compliance, compels someone to produce records. That's certainly the case in the strata context. There is legislation that compels production of personal information, sometimes sensitive information, and the Privacy Act is not going to step in and allow you to get around that legal obligation.

Sounds like it's similar in Florida. Returning to a couple of months ago, Christmas time. In our last Friday live session on Facebook for the year, I talked about Christmas decorations and asked you which buildings have them? Do you allow them? Do you prevent them? Do you have problems with them? Christmas lights, Christmas trees. Well, in Idaho, Mr. Morris and his wife hosted a public Christmas programme. It was called in the court decision every year that involved a huge Christmas display with lights, parties, and livestock. Yes, I said livestock. Animals.

The Homeowner Association started to enforce its restrictions on nuisances, including excessive lights and livestock. The Morris ignored those warnings. Ultimately, Mr. Morris filed a lawsuit claiming that the association was violating his religious belief in Christmas. On appeal, the court found that there was evidence that the association had interfered with the Morris' enjoyment of their home and engaged in religious discrimination. Relevant to the court's consideration was a letter from the association that mentioned concerns about non-Christian residents being offended by the display.

And this suggested that the opposition to the Christmas programme may have been motivated by the owner's religious expression. That case has, I believe, been sent back to trial before a jury. Yes, jury trials in homeowner association cases in the U.S. That one's been sent back to be considered again and I believe it is still playing out this year. Speaking of livestock, and the keeping of pets, how about emotional assistance animals?

Anyone who's travelled in the US would have noticed. If you've travelled on planes, you're in airports, you're in shopping centres, a lot more cute doggies running around. Emotional assistance animals or support animals. This case out of Utah, where owners wanted to keep eight chickens as emotional assistance animals for their daughter. After giving it about two months of consideration, the association approved two chickens only, not eight. That resulted in a lawsuit, the owners alleging constructive denial of reasonable accommodation.

Now, I just want to pause there and explain this term "reasonable accommodation" comes up a lot in the HOA context in the US. This comes from the Fair Housing Act, which makes it unlawful to refuse to make reasonable accommodations to rules, policies, practices or services when such accommodations may be necessary to give people with disabilities an equal opportunity to use and enjoy a dwelling or public or common use areas.

So these owners said, "We need a reasonable accommodation. We know the rule is no more than two pets, which was the case in that community. But we need a reasonable accommodation here because these eight chickens are emotional assistance animals for our daughter who suffers from a disability." In court, the question was whether a failure to engage in communications about the request for two months was constructive denial of reasonable accommodation.

The court ultimately found that there was no unwarranted delay in the decision making and the association did engage in an

interactive process which was its obligation. Further, the owners never suffered any harm because all the while they were keeping their eight chickens without any penalty. While the approval was being sorted out, there was no constructive or actual denial of their request. So very interesting to see how other pieces of legislation come into play here in these association disputes in the U.S.

We don't see much of that here in Australia, though I have to say, these Human Rights Commission complaints, anti-discrimination complaints. I've seen a few more of them in recent years. Another chicken case, this one out of North Carolina. An owner purchased a home on a 17-acre lot on the Oak Grove farm. This gives you a little insight into the scale of some of these properties. Some of these communities in the US they bought their 17 acre lot and subsequently built a chicken coop and bought some hens.

Ultimately, they ended up with 60 chickens on their property. Now, that was despite a ban on poultry in the association's rules. The homeowner argued that the chickens were household pets. They're not poultry, they're pets. The issue at trial came to be how the owner interacted with the chickens. This owner spent up to two hours with her chickens each day, bathed them, blow-dried them in the house, took care of their medical needs. That was her evidence anyway.

She knew every chicken by name and it would come when called. None of the eggs were ever sold. After some of the chickens were removed, the owner drove over an hour each way, once or twice a week, to visit the chickens. Now, the association didn't dispute how the owner treated or cared for the chickens. They really didn't respond to that evidence. Rather, they simply said, "That chickens are poultry and they are incapable of being household pets and this restriction on poultry is absolute."

Well, the court didn't like that. Appellate court found that there was sufficient evidence demonstrating that the chickens were household pets. There was no violation of the association's covenants judgement in favour of the owner and her 60 chickens. Not sure how disruptive 60 chickens really would be on a 17-acre lot.

Smoking and smoke drift just as much of a problem overseas as it is here. Same issue, same way to tackle it. Is it a breach of the by-laws? Is it a nuisance? But in the US there is an added complication. The use of medical marijuana is authorised in 48 states and Washington D.C. it is only prohibited in Idaho and Nebraska. So property managers are having to deal with residents who are attempting to avoid prosecution for nuisance smoking by saying that this is a medical issue, that they have a prescription, that they have been directed to smoke this substance even though it's causing a nuisance to others. That's an angle on this issue that at least I haven't yet encountered here in Australia. But I do wonder if it might be on the horizon.

Speaking of the unique concerns of US property managers, this question was raised during one of the Q and A panels. What should a property manager do if they are presented with an ICE warrant? Let me explain that one. We're hearing that Immigrations and Customs Enforcement, that's ICE is conducting sweeps in accordance with President Trump's crackdown on unauthorised immigrants.

And reporting indicates that raids are increasingly being carried out in apartment buildings. This means that some owners, employees in those communities, property managers, the Community Associations Institute, are trying to work out what their legal obligations are and how they might handle these emotionally and politically charged interactions. The question may ultimately come down to whether there is a warrant for the production of records, of contact details, and whether that warrant is civil or criminal.

Apparently, with a civil warrant, ICE agents cannot enter private property without permission. But if there is a criminal warrant because an individual's been arrested for another crime, for example, then they must be allowed entry onto the property. Isn't it fascinating how these decisions, made at those high levels, federal government level, filter down to affect the day-to-day lives of our managers and those working in and living in our community associations?

Another statement my ears pricked up to. In Arizona, there is a statutory right to record meetings. That means it's in the legislation. Doing a bit more digging. I understand that the Arizona law says that, "People who are attending a meeting may audiotape or videotape those portions of the meeting that are open, whether they are board meetings or meetings of the members. And the

board of directors is not allowed to require any advance notice of that taping. They may adopt reasonable rules around the taping, but they can't stop those who are attending from recording unless the board itself records the meeting and makes the unedited recording available to members on request without restrictions on its use. And it can be used as evidence in any dispute resolution process."

That one seemed to surprise even the Americans who heard about it. I don't think that is all that common over there, but the recording of meetings is definitely a question that we've struggled with here. Can we record without consent? If we do record without consent, what can we do with that recording? I'm not sure that we've contemplated that somebody, one of our states or territories, might want to enshrine this right to record in their legislation, but that's certainly what's happened over in Arizona.

And finally, I want to leave you with what I thought was a brilliant idea shared by communications expert Susan Bittersmith, who is a person who's brought in to large communities. She's hired by these communities, sometimes hired by management companies, to help get projects across the line, to lobby local councils or government to get things done or approved or stopped in a community.

She had a lot of great tips about communicating with the media, crisis management and dealing with emotional people with vested interests, as we all do have when we're talking about our homes. This great idea that Susan suggested was that instead of hosting a town hall-style meeting, why not host an open house?

Let me explain the difference between those two concepts. Town hall meetings. This is something that some of you may have heard me recommend. You might have a town hall meeting when you've got a big project planned for a community, whether it's a compulsory remedial works project or it's an improvement or an upgrade. Multimillion-dollar projects. Maybe we're changing the facade of the building, we're changing the colour, or maybe there's even some significant litigation on the horizon.

We're thinking about suing the developer or we're in the middle of those proceedings and we want to make sure all owners understand what those are about, why the legal fees are so high, and why it's so important that we identify all of the different defects around the property. Instead of having a formal general meeting or even a committee meeting, you might want to have a town hall meeting where you invite everybody to attend of an evening. Usually, you want this to be in person. You don't have all the formal rules around agendas and motions, but it's an opportunity to hear from the relevant people who are involved in the project, hear from the experts, perhaps have a look at some slides, have a look at some plans, some colour schemes, and ask questions, Hear the questions of your neighbours, hear the answers that are being given and in that open, flexible environment, feel like you're receiving the right information and you too are being heard.

And Susan explained how sometimes with these town hall meetings, just the way that physically they're set up, they might be in a big room, all the lawyers and the managers and the experts might be sitting up the front at a table or on a stage, speaking through microphones. Owners may feel intimidated to ask questions, or it might be that they feel perfectly empowered to ask questions, and those who are sitting at the front get pummeled by questions, perhaps some of them unfair or uninformed.

The meeting drags on and blood pressures rise. People get hungry, they want their questions to be answered, they want to get home to dinner, and it doesn't quite work out the way that you might have intended. Compare that to an open house. An open house might be conducted on a Saturday or Sunday afternoon, could be on the property, an area that is set up with a few different stations where residents and owners can walk around and have a chat to the people they want to have a chat to to find out more about the project.

There's a table where the lawyers are sitting, there's a table where the engineers are, there's a table where the strata manager is. And you can pop by and privately, one-on-one, ask that person questions, questions that you might think are silly, that you don't want anyone else to hear, questions that are unique to you or your lot, and have a real human conversation with that particular expert about exactly what it is that's concerning you.

And get the answers to your questions in your own time in a way that feels really comfortable, very friendly, and the whole vibe of

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the open house is relaxed and welcoming and simply the way that those stations, those tables or chairs or the room is set out takes away that us and them mentality or feel. And I think it would be a great way to be having what can be these hard conversations, delivering some hard messages, some complex messages in a way that's going to be much better received and leave everybody feeling a bit more comfortable, a bit more heard, a bit more informed at the end of the day, I imagine takes a bit of setting up, probably involves setting aside a little bit more time, but I can see the potential of that open house style.

I wanted to make sure I gave that one to you. I thought it was a brilliant idea, hadn't heard it before. If anybody has done that kind of information session in an open house way, please do reach out, and let me know how it went. If this is something that's happening here in Australia, I'd love to hear about it. Those are my fun, fascinating, frightening facts from the United States of America 2025 Law Seminar of the Community Associations Institute.

Thank you to my College of Community Association friends and colleagues who I've met and hung out with a few times over there. Now some of you may be tuning in. Special hello to you and thank you to the Australian College of Strata Lawyers that makes that commitment to send a representative of the College over to the U.S. Conference so that we can come back and share so that we can build those valuable relationships.

Let me know what you've liked. Let me know what surprised you. Post a comment under this episode over on the website. Let me know what you might be taking back to your communities to implement. Thanks for the opportunity to share. That's it from me today. I look forward to catching up with you next time. Bye for now.

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