



Short Minutes Transcript: Surcharge Purchaser Duty

Lawcover has seen a spike in claims against solicitors acting for purchasers who were foreign buyers and settled without paying the foreign purchaser surcharge duty. These claims usually involved the solicitor failing to provide advice in relation to the applicability of purchaser surcharge duty and Revenue NSW has later required payment, together with interest and penalties.

A buyer will generally be considered a foreign person unless:

- The buyer is an Australian citizen; or
- Has lived in Australia for more than 200 days in the 12 months before the purchase date, and is either:
 - a New Zealand citizen, who holds a subclass 444 visa; or
 - a permanent resident of Australia.

As well as paying Surcharge Purchaser Duty, foreign persons who own residential land must also pay Surcharge Land Tax.

Claims involving inadequate advice on Surcharge Purchaser Duty can be quite costly as the duty is, at present, 8% of the purchase price.

When advising buyers, solicitors should:

- Never assume that permanent residency is sufficient to avoid the purchaser surcharge duty.
- Don't overlook the requirement to live in Australia for more than 200 days in the previous 12 months for non-citizens.
- Be aware that there are different tests for "foreign" residents and persons under the State and Federal tax regimes, and it is not always obvious that a client is a "foreign" person. Clarify whether these provisions will apply to your clients before providing advice.
- Consider recommending that your clients obtain specialist tax advice in appropriate cases.
- Keep up to date with any changes and remain familiar with the definition of foreign persons to whom surcharge duty applies.
- Document all of your advice and instructions by file note, email or letter at the time or shortly after.

Incorporating these practical steps into everyday legal practice can help minimise risk and protect your clients and your legal practice when dealing with these types of transactions.

I'm Renee Stevens

[Revenue NSW - Foreign buyers and land owners definition](#)