

Quick cautionary tales for a better practice

Episode 71

Surcharge traps and discretionary trusts

Surcharge Purchaser Duty and Surcharge Land Tax continue to present a host of issues for solicitors advising on property transactions. Lawcover continues to receive claims where advice about liability for Surcharge Purchaser Duty and Surcharge Land Tax has been missing, incorrect or provided too late for the client to minimise their exposure. Purchases by trustees of discretionary trusts need particular advice because of the unusual rules governing whether the trust will be treated as a foreign person.

When advising trustees of discretionary trusts who are purchasing or holding residential land, solicitors should:

- Check the trust deed and any amending deed to see whether foreign beneficiaries are irrevocably excluded;
- If foreign beneficiaries are not irrevocably excluded:
 - advise in relation to liability for Surcharge Purchaser Duty and Surcharge Land Tax; and
 - seek instructions to amend the deed to irrevocably exclude foreign beneficiaries, preferably before any residential land is acquired.
- Confirm your instructions and advice in writing.

Refer to the Revenue NSW resources to check whether a client may or may not be liable for Surcharge Purchaser Duty and/or Surcharge Land Tax.

Remember, it only takes one potential beneficiary of a discretionary trust to make the trustee a foreign person.

I'm Glenda Carry

Foreign surcharges and discretionary trusts | Revenue NSW