

El Chami v Chief Commissioner of State Revenue

Lessons for practitioners in the age of e-conveyancing

Risk management topics:

General Practice

Practice Management

Property and Lending



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Technology now plays a central role in NSW property transactions. Electronic Duties Return (EDR) and Property Exchange Australia (PEXA) allow property transfers and duty assessments to be completed digitally, replacing traditional manual, paper based processes. While these platforms offer efficiency and speed, they also depend heavily on the accurate entry of data. Mistakes that previously would have been caught through manual checks can now be lodged undetected, sometimes with significant financial and legal consequences.

The NCAT decision in *El Chami v Chief Commissioner of State Revenue* [2025] NSWCATAD 266 highlights the risks of errors in electronic property transfers and the critical need to correct or deregister an incorrect transfer before attempting to lodge a second, corrective transfer.

1

Background

The matter concerned the duty payable on a transfer of a residential property from Mr El Chami to his wife, and the imposition of penalty tax and interest.

2

Intended transaction

Mr and Mrs El Chami instructed their solicitor to prepare a transfer of a 50% interest in a property owned solely by Mr El Chami so that his wife could be registered as a 50% owner. A transfer of this kind ordinarily qualifies for the spousal exemption under section 104B of the Duties Act 1997 (NSW).

3

The error

The solicitor mistakenly prepared and lodged a transfer instrument (the first transfer) showing a 100% transfer of the property to Mrs El Chami. Despite the mistake, the EDR system accepted the lodgement and incorrectly issued a nil duty assessment.

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Section 104B does not exempt a complete (100%) transfer between spouses. The error only came to light after a routine title search showed that Mrs El Chami had been registered as the sole owner.

4 The “corrective” transfer

To rectify the mistake, the solicitor prepared a second transfer, transferring 50% of the property back to Mr El Chami. This second transfer properly qualified for the spousal exemption.

However, the solicitor did not seek deregistration or cancellation of the erroneous first transfer before lodging the second one.

5 Revenue NSW assessment

Following an investigation, Revenue NSW:

- assessed the first transfer as dutiable,
- issued a Notice of Assessment based initially on an estimated property value of \$1,960,000 (later reduced to \$1,075,000 following a valuation), and
- imposed penalty tax and interest.

Mrs El Chami lodged an administrative review application with NCAT.



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NCAT findings

Senior Member Sullivan held:

- The parties intended a 50% spousal transfer, but the solicitor's error resulted in the lodgement of a legally valid 100% transfer.
- There was no evidence the solicitor contacted Revenue NSW or NSW Land Registry Services to seek deregistration or cancellation of the first transfer.
- Lodging a second, correct transfer did not cure the defective first transfer.
- The first transfer was therefore subject to ad valorem duty, assessed on the revised valuation of \$1,075,000.

On penalties and interest:

- The Tribunal accepted that the error was genuine but not outside the control of the applicant or her solicitor.
- Penalty tax was reduced by 50% (from 25% to 12.5%).
- Interest was recalculated, with the premium component remitted by 50%.

Senior Member Sullivan emphasised that EDR is a self assessment system and that the inaccurate data entered by the solicitor was the direct cause of the issue.

Risk management tips:



- Check all data entered into EDR and PEXA carefully before submission.
- Identify the nature and cause of any transfer error immediately.
- Understand the scope of the spousal exemption—section 104B exempts only certain 50% transfers between spouses or de facto partners.
- If an incorrect transfer is lodged, contact Revenue NSW and NSW Land Registry immediately.
 - Do not lodge a second transfer until the first is deregistered or cancelled.
 - If the first transfer remains in place, ad valorem duty may be assessed.
- Consider statutory avenues for rectification, including:
 - section 32(6), Conveyancing Act 1919 (NSW) – rectification of the register,
 - section 65(14), Duties Act 1997 (NSW) relating to correction of errors in a registered transfer.

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Risk management tips:



- Notify NSW Land Registry Services promptly, seek guidance and follow the approved rectification or cancellation process.
- Engage with Revenue NSW early, provide a detailed written explanation of the error, evidence supporting the mistake, and the steps being taken to correct it.
- Obtain clear client instructions before undertaking any corrective action.
- Maintain a complete file record of all communications with the client, Land Registry Services, and Revenue NSW.
- Strengthen internal risk controls, such as:
 - training on common EDR/PEXA errors,
 - dual review procedures before lodging transactions,
 - keeping screenshots or printouts of EDR and registry inputs.