



Surcharge Purchaser Duty

Help with managing risk

In recent years, Lawcover has seen a significant increase in claims against solicitors who have failed to identify when surcharge purchaser duty is payable.

The rules around surcharge purchaser duty are complex and solicitors need to be aware of the circumstances where it may be payable and how to properly advise their clients.

What is the Surcharge Purchaser Duty?

Surcharge Purchaser Duty applies to acquisitions of NSW residential-related property by purchasers deemed to be foreign persons.

When does it apply?

Key indicators that surcharge purchaser duty may apply where the property is residential-related, as defined in section 104K of the *Duties Act 1997*, are:

- ▼ Any purchaser is not an Australian citizen
- ▼ Any purchaser is a company, trust or partnership where the ultimate owners include persons who are not Australian citizens.

If these key indicators are present, further questions will need to be asked to determine whether surcharge purchaser duty actually applies, for example:

- ▼ In the case of permanent residents and New Zealand citizens holding a visa Subclass 444, have they spent at least 200 days in Australia during the 12-month period prior to the date of exchange of contracts?
- ▼ In the case of companies or unit trusts, what percentage of that entity is ultimately held by a foreign person, foreign corporation or foreign government?



- ▼ In the case of discretionary trusts, are foreign persons irrevocably excluded as potential beneficiaries?

Solicitors should keep copies of documentary evidence to support advice that Purchaser Surcharge Duty is, or isn't, payable.

Help and guidance

A number of useful resources for solicitors have been developed by Revenue NSW and are accessible via their [Professional Resource Centre](#) including:

- ▼ [Surcharge Purchaser Duty Guide](#) – a comprehensive resource which can be viewed on the Revenue NSW website and is available as a PDF download. The guide includes a number of useful tools such as a Surcharge Duty calculator, and a Duties Document Matrix which provides a comprehensive list of transactions where a surcharge liability may be due e.g., under [Chapter 2A of the Duties Act 1997](#).
- ▼ [Surcharge Purchaser Duty videos](#) – a series of short videos that provide a general overview to assist with determining Surcharge Purchaser Duty liability.

To remain up to date with any changes or new resources, solicitors can also [subscribe](#) to receive alerts and updates from Revenue NSW relating to their area of interest.

Potential liabilities arising in the application of surcharge purchaser duty can lead to disgruntled clients holding their solicitor responsible if errors are made. It is important to understand, and apply, Surcharge Purchaser Duty correctly. By utilising the resources available to them, solicitors can be confident that the right steps are being taken from the start to ensure accuracy.

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