



## Short Minutes Episode 64 - Transcript

### Beware the bridging visa

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Although surcharge purchaser duty (SPD) has been around since 2016 it continues to cause headaches for lawyers who fail to identify that a client purchasing residential property is a foreign person and will be liable for SPD. Recently, a number of claims have been made where the client in question was on a bridging visa pending determination of an application for a partner visa.

The facts in these claims are similar to those in the decision of *Van der Zanden v Chief Commissioner of State Revenue*. In that case, the husband was a citizen of the Netherlands and his wife was an Australian citizen. He had applied for a sub-class 820 partner visa and in the meantime was on a bridging visa. He and his wife purchased a home in Newcastle, and some time later the Chief Commissioner of State Revenue issued a notice of assessment requiring SPD to be paid on the husband's share.

The husband argued that he was 'ordinarily resident' in Australia at the relevant time as his bridging visa did not specify an end date and he satisfied the 200 day criteria. The Tribunal, however, agreed with the Chief Commissioner's view that although the bridging visa did not specify an end date it was subject to a limitation as to time, and the husband could not, therefore, meet the requirements of being ordinarily resident in Australia. SPD was payable.

When acting for purchasers of residential land in New South Wales:

- Always consider whether any purchaser may be liable for SPD.
- For any purchaser who is not an Australian citizen, make enquiries to check whether they meet the requirements of being ordinarily resident in Australia.
- Check the information, including the visa table, in the Purchaser/Transferee Declaration – Explanatory Notes and Supporting Evidence on the State Revenue website.
- Be aware that a person on a bridging visa will not be considered ordinarily resident and will be liable for SPD.

I'm Glenda Carry

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#### Additional Resources

[Van der Zanden v Chief Commissioner of State Revenue \[2022\] NSWCATAD 283](#)

<https://www.revenue.nsw.gov.au/help-centre/resources-library/forms/duty/oda076en.pdf>