



Quick cautionary tales for a better practice

Episode 75

From Exempt to Expensive

When property transfers go wrong, the fallout can be costly.

In *El Chami* and *Chief Commissioner of State Revenue* the solicitor was instructed by a married couple to transfer 50% of a property owned solely by the husband to his wife as joint tenants. The intended 50% transfer of the property satisfied the requirements for the exemption from duty but unfortunately, the transfer instrument prepared by the solicitor contained an error. It mistakenly transferred 100% of the property from the husband to the wife.

The mistake was discovered after the transfer had been registered. Thinking he needed to quickly correct the situation, rather than requesting that the Registrar General cancel the transfer, the solicitor effected a second transfer of a 50% interest in the property back to the husband. When Revenue NSW later investigated, although the second transfer correcting the mistake was exempt from duty, full ad valorem stamp duty, as well as penalties and interest were imposed on the initial transfer. The wife sought a review of this decision in NCAT and the Tribunal reduced the penalties and interest payable but confirmed that payment of the full ad valorem duty was required.

If the first transfer had been cancelled and deleted from the register before lodging a new transfer as originally intended, the duty could have been avoided.

There is a risk management tip here about checking dealings carefully before they are lodged for registration. Mistakes will be made from time to time, and the important message is to stop, think, and seek guidance about what to do next.

When a mistake happens, it can be worth your while to seek guidance from an experienced colleague, or Land Registry Services or Revenue NSW. You should also notify Lawcover at an early stage of circumstances which may give rise to a claim. Our claims solicitors are often able to assist with strategies to mitigate loss.

I'm Jen McMillan

El Chami v Chief Commissioner of State Revenue [2025] NSWCATAD 266