

# Q&S CONVEYANCING UPDATE

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## BUYER HIT WITH SUBSTANTIAL PAYMENT TO OSR WHEN FORCED TO SELL WITHOUT OCCUPYING HOME WHERE CONCESSION CLAIMED

We were recently asked about the consequences of a buyer (who claimed a home concession on transfer duty) selling his property without first occupying it as his home.

The *Duties Act 2000* states that a person is eligible for a home concession if they buy a home and:

- Move in and live in the home as their principal place of residence within 1 year of the date of settlement; and
- Do not sell, transfer or lease all or part of the home to another person(s) before moving in or within 1 year of the date they move in (i.e. they must live in it for at least 1 year).

The buyer in question had purchased the property in April this year for \$300,000 and paid \$3,000 in transfer duty. He intended to do some renovation work, then move in and sell his existing home.

After listing his existing home and trying to sell it for several months he was unable to get a buyer. His new property was more readily saleable.

Accordingly he was left with little choice but to list for sale the newly purchased and renovated property as he could not afford to keep both properties. He will have to sell the first home on which he receives a realistic offer to purchase.

If the newly purchased property is sold before occupying it for 1 year then the our client will become ineligible for the home concession.

Buyers must within 28 days of becoming ineligible for the home concession notify the Office of State Revenue (OSR) by completing a Form D2.4 and providing the original stamped Contract or Transfer document.

For the buyer in question, transfer duty is reassessed by the OSR and further duty will be imposed as if the concession had never applied. This means that the buyer may have to pay a further \$5,925 in transfer duty plus unpaid tax interest if the newly purchased property sells first.

Buyers who claim a home concession should be certain that they can comply with the requirements or face substantial repayments and in some circumstances penalties. OSR have an active compliance program and may audit claims.

### **Richie Muir, Solicitor** **Quinn & Scattini Lawyers**

This update is for your information and interest only. It is not intended to be comprehensive, and it **does not constitute and must not be relied on as legal advice**. You must seek specific advice tailored to your circumstances.

*In addition to Residential and Commercial Conveyancing Services, our team of experienced lawyers practice in Business Law, Commercial Litigation, Property Law, Wills & Estates, Criminal Law and Family Law.*

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