

Document Class:	EXEMPTIONS
Document Name:	Family Law agreement
Document Description:	Pursuant to 71CA
Document Code:	EX

Introduction

This Document Guide Note applies to a Family Law agreement. Section 71CA of the *Stamp Duties Act 1923* (the “SD Act”) provides an exemption from stamp duty to a Family Law agreement, which is defined in that section as follows:

Family Law agreement means:

- (a) a maintenance agreement; or
- (b) a financial agreement;
- (c) a splitting agreement.

Each of these three types of agreements is then individually defined as follows:

maintenance agreement means:

- (a) a maintenance agreement approved by a court by order under Section 87 of the *Family Law Act 1975* (Cwlth) (the “FL Act”); or
- (b) a maintenance agreement registered in a court under Section 86 of the FL Act or under regulations made pursuant to Section 89 of that Act.

financial agreement means a financial agreement made under Part VIIIA or VIIIAB of the FL Act (or taken to have been made under Part VIIIAB of that Act) that, under that Act, is binding on the parties to the agreement.

splitting agreement means:

- (a) a flag lifting agreement; or
- (b) a superannuation agreement, that has effect under Part VIIIB of FL Act.

These types of splitting agreements are then defined as follows:

flag lifting agreement has the same meaning as in Part VIIIB of the FL Act.

superannuation agreement has the same meaning as in Part VIIIB of the FL Act.

Exemption

A Family Law agreement (as defined) is exempt from stamp duty and must be stamped under the document heading:

- [Exemptions – Family Law agreement – Pursuant to 71CA \(EX\)](#).

The exemption does not apply to the Family Law agreement (as defined) if the Family Law agreement (as defined) conveys property.

The following similar transactions cannot be stamped under this document heading:

If a document conveys land to give effect to, or consequential on, a Family Law agreement (or a Family Law order), you will need to refer to the document heading:

- [Exemptions – Conveyance of Land – Pursuant to 71CA \(EX\)](#)

If a document conveys property other than land to give effect to, or consequential on, a Family Law agreement (or a Family Law order), you will need to refer to the document heading:

- [Exemptions – Conveyance of Property Other Than Land – Pursuant to 71CA \(EX\)](#)

Note: with effect from 1 July 2010, South Australian legislative power in relation to the making of laws concerning the division of property of *de facto* partners upon their separation was referred to the Commonwealth.

This Document Guide Note only refers to a Family Law agreement between the parties to a marriage (or former marriage) or former *de facto* relationship.

A certified domestic partnership agreement or a deed or other instrument (including an application to transfer registration of a motor vehicle) to give effect to, or consequential on, a certified domestic partnership agreement or a property adjustment order between former domestic partners (as those persons are defined in the *Domestic Partners Property Act 1996*), may be exempt under Section 71CBA of the SD Act. Three Document Guide Notes are available on the RevenueSA website page in relation to Section 71CBA of the SD Act.

What types of *transactions* can I stamp under this document heading?

The Family Law agreement can be drawn as an agreement or a deed and includes a:

- maintenance agreement (as described above);
- financial agreement (as described above);
- flag lifting agreement (as described above); or
- superannuation agreement (as described above).

The exemption does not apply to the Family Law agreement (as defined) if the Family Law agreement (as defined) conveys property.

What stamp duty is payable on this document?

The Family Law agreement document is 'Exempt' from stamp duty and can be self-determined via RevNet.

What evidence do I need to retain for audit purposes?

For audit purposes, you will need to retain the following documentation:

- a copy of the stamped document; and

- brief details of any conveying document(s) related to the Family Law agreement that you may have also stamped.

What section of the SD Act applies?

Section 71CA (which from 1 July 2010 also applies to *de facto* persons, due to the *Statutes Amendment (De Facto Relationships) Act 2011*, which was assented to on 21 July 2011).