

<b>Document Class:</b>	<b>EXEMPTIONS</b>
<b>Document Name:</b>	<b>Conveyance of Land</b>
<b>Document Description:</b>	<b>Pursuant to 71CA</b>
<b>Document Code:</b>	<b>EX</b>

## Introduction

This Document Guide Note applies to a conveyance of land (including a leasehold interest) pursuant to Section 71CA of the *Stamp Duties Act 1923* (the “SD Act”) This section of the SD Act provides three exemptions from stamp duty, the second and third of which are:

Section 71CA(2)(b) - a deed or other document (including an application to transfer registration of a motor vehicle) to give effect to, or consequential on a Family Law agreement or a Family Law order, if:

- the agreement or order relates to:
  - a marriage that has been dissolved or annulled; or
  - a marriage or *de facto* relationship that the Commissioner is satisfied has broken down irretrievably;
- the document provides for the disposition of property between the parties to the marriage (or former marriage) or former *de facto* relationship and no other person, other than a trustee of a superannuation fund (if relevant), takes or is entitled to take an interest in property in pursuance of the document; and
- at the time of the execution of the document the parties were, or had been, married to, or in a *de facto* relationship with, each other.

Section 71CA(2)(c) - a deed or other document executed by a trustee of a superannuation fund to give effect to, or consequential on:

- a Family Law agreement;
- a Family Law order; or
- the provisions of any Act (including an Act or subordinate legislation of the Commonwealth) relating to the transfer or disposition of property or any entitlements on account of a Family Law agreement or Family Law order.

**Note:** until 30 June 2010, Section 71CA(2)(b) only applied to the parties to a marriage (or former marriage). With effect from 1 July 2010, this section also applies to *de facto* persons (as a result of the referral of South Australian legislative power in relation to the making of laws concerning the division of property of *de facto* partners upon their separation, to the Commonwealth from that date). Accordingly, *de facto* persons who do not come within the regime of the *Family Law Act 1975* (Cwlth) (the “FL Act”) with effect from 1 July 2010 may be entitled to an exemption from stamp duty under either Section 71CB or Section 71CBA of the SD Act. Relevant guide notes are available on the RevenueSA website page in relation to those exemptions.

**Note:** the third exemption in Section 71CA of the SD Act, for a Family Law agreement, is discussed in the Document Guide Note ‘Exemptions - Family Law agreement – Pursuant to 71CA – (EX)’ and is stamped under the document heading:

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

## Definitions

**de facto relationship** has the same meaning as in the FL Act.

**Family Law agreement** means:

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

**Family Law order** means an order of a court under Part VIII, VIIIA, VIIIAB or VIIIB of the FL Act.

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

**maintenance agreement** means:

- (a) a maintenance agreement approved by a court by order under Section 87 of 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.

**splitting agreement** means:

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

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

Definitions of 'marriage', 'superannuation fund' and 'trustee' (of a superannuation fund) are also in Section 71CA of the SD Act.

## Exemption

A conveying deed or other document that satisfies either Section 71CA(2)(b) or Section 71CA(2)(c) of the SD Act is exempt from stamp duty whether in agreement form or deed form and must be stamped under the document heading:

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

The exemption applies regardless of whether or not there is consideration passing.

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

If the property conveyed is **not land** - refer to the document heading:

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

For those persons not covered by the FL Act, they may be eligible for an exemption under Section 71CB or Section 71CBA of the SD Act. Please refer to the document headings:

- [Exemptions – Conveyance of Land – Pursuant to 71CB \(EX\)](#)
- [Exemptions – Conveyance of Land - Pursuant to 71CBA \(EX\)](#)
- [Exemptions – Transfer of Motor Vehicle – Pursuant to 71CB \(EX\)](#)
- [Exemptions – Conveyance of Property Other Than Land – Pursuant to 71CBA \(EX\)](#)
- [Exemptions – Certified Domestic Partnership agreement – Pursuant to 71CBA \(EX\)](#)

**What *documents* can I stamp under this document heading?**

The document can be in the form of:

- a LTO Form T1 - Memorandum of Transfer of Land; or
- a LTO Form RTC – Application for the Deposit of a Plan of Division.

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

A conveyance of land pursuant to Section 71CA of the SD Act is deemed **suitable** for self-stamping under this document heading where the transfer is between (see also Notes 1 and 2 below):

- two persons who are or have been married to each other; or
- two persons who were in a *de facto* relationship with each other; or
- a spouse or former spouse and a trustee of the other spouse's or former spouse's superannuation fund (or *vice versa*); or
- a former *de facto* and a trustee of the other former *de facto*'s superannuation fund (or *vice versa*); or
- the trustees of the spouses' or former spouses superannuation funds; or
- the trustees of the former *de facto*'s superannuation funds.

Where the transfer is pursuant to the terms of a Family Law order:

- the land must be transferred in the manner set out in the Family Law order (see also Notes 1 and 2 below); and
- no person, other than a trustee of a spouse's (or former spouse's) or former *de facto*'s superannuation fund (if applicable), takes or is entitled to take an interest in the land;

and

- the marriage has been dissolved or annulled (as evidenced by a Decree Absolute, Certificate of Divorce or a Divorce Order); or
- the marriage or *de facto* relationship has broken down irretrievably (as evidenced by a Statutory Declaration under Section 71CA of the SD Act).

Where the transfer is pursuant to the terms of a Family Law Agreement:

- the land must be transferred in the manner set out in the Family Law agreement (see also Notes 1 and 2 below); and
- no person, other than a trustee of a spouse's (or former spouse's) or former *de facto's* superannuation fund (if applicable), takes or is entitled to take an interest in the land;

and

- the marriage has broken down irretrievably (as evidenced by a Separation Declaration under Section 90DA of the FL Act and a Statutory Declaration under Section 71CA of the SD Act); or
- the *de facto* relationship has broken down irretrievably (as evidenced by a Separation Declaration under Section 90UF of the FL Act and a Statutory Declaration under Section 71CA of the SD Act).

You will need to indicate whether the land is used as residential or non-residential. For further advice on this refer to the Stamp Duty Guide Glossary.

**Note 1:** Where land is transferring from a party other than a spouse, former spouse, former *de facto* or trustee of their superannuation fund (e.g. the land is transferred from a non-superannuation trustee company, a trust, another joint owner), the transfer may be exempt from stamp duty. The transfer **must be submitted for opinion** together with:

- a copy of the Family Law agreement or Family Law order;
- a copy of the trust deed (if applicable);
- a Separation Declaration (if applicable); and
- a Decree Absolute, Certificate of Divorce or Divorce Order (if applicable);

and a submission detailing:

- the character of the property involved (e.g. the family home);
- the extent that the parties to the marriage (or former marriage) or former *de facto* relationship own and/or control any company or trust involved (i.e. the extent to which the company or trust itself could be said to be an asset of the marriage (or former marriage) or former *de facto* relationship);
- the identity and role of any other person, company or trust involved in the transfer;
- the identity and role of any other owner or beneficiary of any company or trust; and
- the relationship between any other person, company or trust associated with the transfer and the parties to the marriage (or former marriage) or former *de facto* relationship.

**Note 2:** Where land is transferring to a party other than a spouse, former spouse, former *de facto* or trustee of their superannuation fund, the transfer is not exempt from duty.

### What stamp duty is payable on this document?

The document is 'Exempt' from stamp duty.

### 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 transfer;
- a copy of the Family Law order, or the Family Law agreement (and Separation Declaration);

and:

- evidence that the marriage has been dissolved or annulled, in the form of a copy of the Decree Absolute, Certificate of Divorce or Divorce Order; or
- evidence that the marriage or *de facto* relationship has broken down irretrievably and that at the time of the execution of the transfer the parties were, or had been, married to, or in a *de facto* relationship with, each other, in the form of a completed Statutory Declaration pursuant to Section 71CA of the SD Act.

### Examples

#### Example 1 - Land transferred pursuant to Financial Agreement between parties of the marriage.

John and Megan are husband and wife and it is considered that their marriage has broken down irretrievably. Upon their marriage, John and Megan had entered into a Financial Agreement that indicated the distribution of their assets if they were to separate and/or divorce. They have now agreed to distribute their assets between them as contemplated in the Financial Agreement, as follows:

- John will transfer his interest in the matrimonial home to Megan; and
- Megan will transfer her interest in their holiday home to John.

As John and Megan are separated but not divorced, they have executed a Statutory Declaration pursuant to Section 71CA of the SD Act stating that their marriage has broken down irretrievably and a Separation Declaration under Section 90DA of the FL Act. John and Megan have executed two Memorandum of Transfer. **Note:** if the transfers are executed after John and Megan are divorced, no Statutory Declaration pursuant to Section 71CA of the SD Act is required if a copy of the Decree Absolute, Certificate of Divorce or Divorce Order is produced.

Both transfers are stamped 'Exempt' from stamp duty and can be self-determined via RevNet.

Note: John and Megan also own all the shares in a company which owns land. The Financial Agreement details that John and Megan will take steps to transfer the ownership of this land from the company to Megan. John and Megan as shareholders in the company (as transferor), and Megan (as transferee), have executed a relevant Memorandum of Transfer. The Transfer must be submitted for opinion with supporting information as detailed earlier in this Document Guide Note.

**Example 2 - Land transferred pursuant to a Family Law order where a person other than a party of the marriage takes or is entitled to take an interest in the property.**

Fred and Jane have separated and it is considered that their marriage has broken down irretrievably. Fred and Jane have agreed upon the distribution of their assets and have obtained a Family Law order that details the distribution of their assets.

The Family Law order states that Jane must transfer her interest in their matrimonial home to their son, Tim, for no consideration. Fred and Jane are not divorced.

The exemption **does not** apply because the transfer results in a person other than a party to the marriage taking an interest in the property. The conveyance is chargeable with *ad valorem* voluntary conveyance stamp duty. Refer to the document heading:

- [Conveyance of Land – For No Consideration – Conveyance of Land \(VC\)](#)

**Example 3 - Land transferred pursuant to a Family Law Order between parties of the marriage.**

Rodney and Belinda are husband and wife and it is considered that their marriage has broken down irretrievably. Rodney and Belinda have agreed upon the distribution of their assets and have obtained a Family Law order that details the distribution of their assets.

The Family Law order states that Rodney must transfer certain land to Belinda.

As Rodney and Belinda are separated but not divorced, they have executed a Statutory Declaration pursuant to Section 71CA of the SD Act stating that their marriage has broken down irretrievably. Rodney and Belinda have executed a Memorandum of Transfer. **Note:** if the transfer is executed after Rodney and Belinda are divorced, no Statutory Declaration pursuant to Section 71CA of the SD Act is required if a copy of the Decree Absolute, Certificate of Divorce or Divorce Order is produced.

The transfer is stamped 'Exempt' from stamp duty and can be self-determined via RevNet.

**Example 4 - Land transferred pursuant to a Financial Agreement from the trustee of a spouse's superannuation fund to the trustee of the other spouse's superannuation fund.**

Tony and Ellen are husband and wife and it is considered that their marriage has broken down irretrievably. Tony and Ellen have agreed upon the distribution of their assets and have now entered into a Financial Agreement (inclusive of a Separation Declaration) that details the distribution of their assets.

The Financial Agreement states that the trustee of Tony's superannuation fund must transfer a half interest in the matrimonial home to the trustee of Ellen's superannuation fund.

As Tony and Ellen are separated but not divorced, they have executed a Statutory Declaration pursuant to Section 71CA of the SD Act stating that their marriage has broken down irretrievably. The trustee of Tony's superannuation fund and the trustee of Ellen's superannuation fund have executed a Memorandum of Transfer. **Note:** if the transfer is executed after Tony and Ellen are divorced, no Statutory Declaration pursuant

to Section 71CA of the SD Act is required if a copy of the Decree Absolute, Certificate of Divorce or Divorce Order is produced.

The transfer is stamped 'Exempt' from stamp duty and can be self-determined via RevNet.

### **Example 5 - Property transferred pursuant to a Family Court order between former *de facto* partners.**

Michelle and Susan were in a *de facto* relationship for over two years and it is considered that their relationship has broken down irretrievably. Michelle and Susan have obtained a Family Court order that details the distribution of their assets.

The Family Law order states that Michelle must transfer her interest in their land to Susan.

Michelle and Susan have executed a Statutory Declaration pursuant to Section 71CA of the SD Act stating that their *de facto* relationship has broken down irretrievably. Michelle and Susan have also executed a Memorandum of Transfer.

The transfer is stamped 'Exempt' from stamp duty and can be self-determined via RevNet.

### **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.