

<b>Document Class:</b>	<b>EXEMPTIONS</b>
<b>Document Name:</b>	<b>Conveyance of Property Other Than 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 property (other than land) 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 the trustee of a superannuation fund (if relevant), takes or is entitled to take an interest in property in pursuance of the document; or
  - in the case of an application to transfer the registration of a motor vehicle – is consequential on a disposition of property between the parties to the marriage (or former marriage) or former *de facto* relationship; 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 Document 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, being Section 71CA(2)(a) which exempts 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 maintenance agreement;
- a financial agreement; or
- a splitting agreement.

**Family Law order** means an order of a court under Part VIII, VIIIA 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 Section 90B, 90C or 90D of the FL Act that, under that Act, is binding on the parties to the agreement.

**maintenance agreement** means:

- a maintenance agreement approved by a court by order under Section 87 of the FL Act; or
- 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 flag lifting agreement; or
- a 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) is exempt from stamp duty whether in agreement form or deed form and must be stamped under the document heading:

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

This exemption applies to a transfer of a full interest or part interest in all types of property. Some examples of the types of property that can be stamped under this document heading are:

- motor vehicles;
- financial products not quoted on the Australian Stock Exchange;
- units in a unit trust;
- a licence;
- a business; or
- an interest in a partnership.

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 **land** – refer to the document heading:

- [Exemptions – Conveyance of 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. Refer to the document headings:

- [Exemptions – Conveyance of Land – Pursuant to 71CB \(EX\)](#)
- [Exemptions – Transfer of Motor Vehicle – Pursuant to 71CB \(EX\)](#)
- [Exemptions – Conveyance of Land – Pursuant to 71CBA \(EX\)](#)
- [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:

- an Agreement or Deed which conveys property (other than land);
- an Application to Transfer the Registration of a Motor Vehicle;
- a Standard Transfer Form for financial products; or
- any other conveying document.

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

A conveyance of property (other than 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 the Family Law order:

- the property 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 property 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).

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

- the Family Law agreement or Family Law order;
- 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 business);
- 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 property is transferring to a party other than a spouse, former spouse, former *de facto* or trustee of their superannuation fund, the document 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 document(s);
  - 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 conveying document(s) 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 - Property (other than land) transferred pursuant to a Financial Agreement between parties of the marriage.**

John and Megan are husband and wife and it is considered that their marriage has irretrievably broken down. Upon their marriage John and Megan had entered into a Financial Agreement that detailed 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 business (owned as a sole trader) to Megan; and
- Megan will transfer her interest in the joint registration of their motor vehicle 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 an Agreement wherein they agree to transfer John's business to Megan and an Application to Transfer the Registration of a Motor Vehicle in respect of the transfer of Megan's interest in their motor vehicle to John. **Note:** if the agreement and application 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 conveying documents 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 operates a business. The Financial Agreement details that John and Megan will take steps to transfer the ownership of this business from the company to Megan. John and Megan as shareholders in the company (as transferor), and Megan (as transferee), have executed a relevant Agreement. The Agreement must be submitted for opinion with supporting information as detailed earlier in this Document Guide Note.

**Example 2 – Property (other than land) transferred pursuant to a Family Law order where a person other than a party to 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 joint business 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 – Other – For No Consideration – Property \(not land/shares/units\) \(VC\)](#)

**Example 3 – Unlisted financial products 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 unlisted marketable securities 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 Standard Transfer Form. **Note:** if the Standard Transfer Form 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 Standard Transfer Form is stamped 'Exempt' from stamp duty and can be self-determined via RevNet.

**Example 4 – Units in a unit trust 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 certain units in a unit trust 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 and a Separation Declaration under Section 90DA of the FL Act. The trustee of Tony's superannuation fund and the trustee of Ellen's superannuation

fund have executed a Standard Transfer Form. **Note:** if the Standard Transfer Form 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 Standard Transfer Form 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 business 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 document whereby Michelle transfers her interest in their joint business to Susan.

The conveying document 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, per the *Statutes Amendment (De Facto Relationships) Act 2011*, which was assented to on 21 July 2011).