

Document Class:	EXEMPTIONS
Document Name:	Conveyance of Other
Document Description:	Pursuant to 71CA
Document Code:	EX

Introduction

This guide note applies to a conveyance of property (other than land) pursuant to section 71CA of the SD Act. This section of the SD Act provides, inter alia, an exemption from stamp duty on a conveyance of property transferred pursuant to a Family Law instrument where the conveyance is between:

- spouses following the irretrievable breakdown of their marriage; or
- two persons who have been married to each other and the marriage has been dissolved or annulled

and the transfer provides for the disposition of land between the parties to the marriage (or former marriage) and no other person other than the trustee of a superannuation fund (if relevant) takes or is entitled to take an interest in the land pursuant to the transfer.

Family Law instruments include:

Family Law agreement means-

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

Family Law order means an order of a court under Part VIII, VIIIA or VIIIB of the *Family Law Act 1975* of the Commonwealth;

flag lifting agreement has the same meaning as in Part VIIIB of the *Family Law Act 1975* of the Commonwealth;

financial agreement means a financial agreement made under section 90B, 90C or 90D of the *Family Law Act 1975* of the Commonwealth 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 *Family Law Act 1975* of the Commonwealth; or
- (b) a maintenance agreement registered in a court under section 86 of the *Family Law Act 1975* of the Commonwealth or under regulations made pursuant to section 89 of that Act;

splitting agreement means –

- (a) a flag lifting agreement; or
- (b) a superannuation agreement,

that has effect under Part VIII B of *Family Law Act 1975* of the Commonwealth.

superannuation agreement has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

The above family law instruments are exempt from stamp duty whether in agreement form or deed form and must be stamped under the document heading:

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

This guide note applies to all types of property (other than land), some examples of the types of property that could be stamped exempt under this document heading are:

- motor vehicles;
- financial products not quoted on the Australian Stock Exchange;
- units in a unit trust;
- interests in a licence;
- a business; or
- 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 \(EX\)](#).

This exemption **does not** apply to conveyances between a **de facto couple**. If the conveyance is between a *de facto* couple you will need to refer to the document heading:

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

What documents can I stamp under this document heading?

The document can be in the form of:

- an Agreement or Deed to transfer an interest in a Business/Partnership;
- an Agreement or Deed which conveys property;
- 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 two persons who are or have been married to each other or between a spouse and a trustee of a spouse's superannuation fund or between the trustees of the spouses' superannuation funds;
- the transfer is pursuant to the terms of a Family Law instrument ;
- no person other than the parties of the marriage or a trustee of a spouse's superannuation fund is entitled to take an interest in the property ;
- the property (other than land) is being transferred in the manner set out in the Family Law instrument ; and
- the Decree Nisi has become absolute and has the seal of the Family Court, or, a section 71CA Statutory Declaration has been completed by the spouses/former spouses stating that the marriage has irretrievably broken down.

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;
- a copy of the Family Law instrument ; and
- evidence that the marriage has irretrievably broken down in the form of either:
 - a copy of the Decree Absolute; or
 - a completed Statutory Declaration pursuant to section 71CA of the SD Act stating that the marriage has irretrievably broken down.

Example 1 - Property transferred pursuant to a Financial Agreement between parties of the marriage.

John and Megan White are husband and wife. John and Megan separated on the 26 September 2003. It is considered that their marriage has irretrievably broken down. In February 2004, John and Megan agreed on the distribution of their assets and have executed a Financial Agreement that details the distribution of these assets between them.

The Financial Agreement states that:

- John will transfer his interest in their business to Megan; and
- Megan will transfer her interest in her Motor Vehicle to John.

John and Megan are separated but not divorced and have executed a Statutory Declaration pursuant to section 71CA of the Act stating that the marriage has irretrievably broken down. John and Megan have executed documents wherein they agree to transfer the interest in the Business and an interest in the Application to Transfer the Registration of the Motor Vehicle.

Both documents are “Exempt” from stamp duty.

Example 2 – Unlisted financial products transferred pursuant to a Family Court Order from a trustee of a spouse’s superannuation fund to a spouse of the marriage.

Rodney and Belinda are husband and wife and it is considered that their marriage has broken down irretrievably. Rodney and Brenda 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 (which shows the seal of the Family Court) states that the trustee of Rodney’s superannuation fund transfer certain unlisted marketable securities to Belinda.

Rodney and Belinda are separated but not divorced and have therefore executed a Statutory Declaration pursuant to section 71CA of the *Stamp Duty Act 1923*, stating that their marriage has irretrievably broken down.

The transfer is executed by the trustee of Rodney’s superannuation fund and Belinda. The transfer is stamped “Exempt”.

Example 3 – Units in a unit trust transferred pursuant to a Financial Agreement from a spouse to a trustee of a 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 entered into a Financial Agreement that details the distribution of their assets.

The Financial Agreement states that Ellen transfer certain units to the trustee of Tony’s superannuation fund.

Tony and Ellen are separated but not divorced and have therefore executed a Statutory Declaration pursuant to section 71CA of the *Stamp Duty Act 1923*, stating that their marriage has irretrievably broken down.

The transfer is executed by Ellen and the trustee of Tony's superannuation fund. The transfer is stamped "Exempt".

Example 4 – Unlisted financial products transferred pursuant to a Superannuation Agreement from a trustee of a spouse's superannuation fund to a trustee of the other spouse's superannuation fund.

Adam and Kate were husband and wife and have divorced. A Superannuation Agreement directs that a certain unlisted financial products be transferred from the trustee of Adam's superannuation fund to the trustee of Kate's superannuation fund.

The transfer is executed by the respective trustees and stamped "Exempt".

What section of the SD Act applies?

Section 71CA