

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

## Introduction

This guide note applies to a conveyance of land pursuant to section 71CB of the SD Act. This section provides an exemption from stamp duty to a document of which the sole effect is to transfer an interest in:

1. the **shared residence** between spouses or domestic partners; or
2. the last **shared residence** between former spouses or former domestic partners following the irretrievable breakdown of the relationship.

A person is, on a certain date, the *domestic partner* of another person if he or she is, on that date, living with that person in a close personal relationship and –

- (a) he or she –
  - (i) has so lived with that other person continuously for the period of 3 years immediately preceding that date; or
  - (ii) has during the period of 4 years immediately preceding that date so lived with that other person for periods aggregating not less than 3 years; or
- (b) a child, of whom he or she and the other person are the parents, has been born (whether or not the child is still living at that date)

*close personal relationship* means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include –

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind.

Note – two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

A person is the spouse of another if they are legally married.

*Shared residence* means –

- (a) in relation to spouses or domestic partners – their principal place of residence of which both or either of them is owner, or
- (b) in relation to former spouses or domestic partners – their last principal place of residence of which both or either of them was owner

but does not include premises that form part of industrial or commercial premises.

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](#).

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

Should the transfer include property that forms part of **industrial or commercial premises** the exemption will not apply and the Memorandum of Transfer of Land is liable for *ad valorem* conveyance stamp duty or *ad valorem* voluntary conveyance stamp duty. Refer to the appropriate document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL); or
- [Conveyance of Land – For No Consideration – Conveyance of Land](#) (VC).

If the sole purpose of the transfer is to effect a change in the mode of holding (ie. joint tenancy to tenants in common or vice versa), refer to the document heading:

- [Conveyance of Land – Change in Tenancy, No Change in Ownership Share](#) (EX).

Should the property include **land used for primary production purposes** the document must be submitted for the Opinion of the Commissioner of State Taxation, together with separate values for house and curtilage, and the remaining area and a section 71CB Statutory Declaration.

If the Transfer includes **two or more Titles** it must be submitted for the Opinion of the Commissioner of State Taxation, together with a detailed description of what the land is used for, on which title the house is located and a completed section 71CB Statutory Declaration.

### **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.

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

A conveyance of land pursuant to section 71CB of the SD Act is deemed **suitable** for self-stamping under this document heading where:

- the land is being transferred between two spouses who are or have been married to each other; or
- the land is being transferred between domestic partners who are or have been living in a domestic relationship (as defined) and
- a section 71CB Statutory Declaration has been completed by the spouses or former spouses or domestic partners or former domestic partners; and
- the instrument is transferring an interest in the shared residence between spouses or domestic partners or the instrument is transferring an interest in the former shared residence between former spouses or former domestic partners and

- the property does not form part of industrial or commercial premises or land used for primary production.

The exemption applies regardless of whether or not there is a consideration being paid.

Note: For the exemption to apply to former spouses or former domestic partners the relationship must have 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; and
- a completed section 71CB Statutory Declaration.

### **Example 1 - Shared residence transferred between domestic partners**

Drew and Toby have resided as *domestic partners* for seven years. The house at Glenelg in which they reside is currently registered in Drew’s name. On 1 June 2007, they executed a Memorandum of Transfer of Land whereby Drew transferred a half interest in the property at Glenelg to Toby. They will continue to reside in this house as their principal place of residence.

Drew and Toby have executed a Memorandum of Transfer of Land and a section 71CB Statutory Declaration.

The document is “Exempt” from stamp duty.

### **Example 2 – Shared residence transferred between former spouses**

Dave and Helen separated on the 18 March 2006, after being married 10 years. The shared residence is currently registered in both Dave and Helen’s names. After a period of negotiation it was agreed that Helen would transfer her interest in the shared residence to Dave.

On 12 September 2006, Dave and Helen executed a Memorandum of Transfer of Land evidencing the above arrangement and a section 71CB Statutory Declaration stating that the relationship has irretrievably broken down.

The Memorandum of Transfer of Land does not include land used for industrial or commercial purposes, nor does it include land used for primary production purposes.

The document is “Exempt” from stamp duty.

**Example 3 – Shared residence transferred between spouses where another person is registered on the Certificate of Title**

The Certificate of Title lists the registered owners as Fred and Kate (husband and wife) and their daughter Megan, as joint tenants.

Fred and Kate agree that Fred will transfer his interest in the property to Kate. A Memorandum of Transfer of Land is executed by Fred (as transferor) and Kate (as transferee) for Fred's one third interest (ie. Kate now owns two thirds of the property and Megan owns one third).

The document is "Exempt" from stamp duty. The exemption applies even though Megan is a registered proprietor. This is because the transfer occurred solely between the spouses.

**What section of the SD Act applies?**

Section 71CB