

Document Class:	EXEMPTIONS
Document Name:	Conveyance of Land
Document Description:	Pursuant to 71CBA
Document Code:	EX

Introduction

This guide note applies to a conveyance of land pursuant to section 71CBA of the SD Act. This section provides, *inter alia*, an exemption from stamp duty to a transfer of land between former domestic partners (or a trustee of a domestic partner's superannuation fund) who have cohabitated continuously as domestic partners for at least 3 years and the transfer is consequential upon a:

- certified domestic partnership agreement; or
- property adjustment order

A transfer of land from a company or trust to a domestic partner of the *domestic* relationship pursuant to the *Domestic Partners Property Act 1996* may be exempt from stamp duty. The transfer must be submitted for opinion together with a copy of:

- the Order; and
- a copy of the trust deed (if applicable).

Your submission must also advise:

- the character of the property involved (eg the family home);
- the extent that the parties to the marriage own and/or control the company or trust involved (i.e. the extent to which the company itself could be said to be an asset of the domestic relationship);
- the identity and role of any other persons involved in the transfer;
- the identity and role of any other owners or beneficiaries of the company or trust; and
- the relationship between any other persons associated with the transfer and the parties to the domestic relationship.

domestic partner means a person who lives in a close personal relationship.

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.

domestic relationship means the relationship between domestic partners.

certificated domestic partnership agreement has the same meaning as in the *Domestic Partners Property Act 1993*.

property adjustment order means an order of a court under Part 3 or 4 of the *Domestic Partners Property Act 1996*;

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:

A conveyance of property (other than land) pursuant to section 71CBA of the SD Act, refer to the document heading:

- [Exemptions – Conveyance of Property – 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.
- 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 71CBA of the SD Act is deemed **suitable** for self-stamping under this document heading where:

- the land is being transferred between domestic partners;
- the land is being transferred between a domestic partner and a trustee of the domestic partner's superannuation fund or between the trustees of the domestic partner's superannuation funds;
- a section 71CBA Statutory Declaration has been completed by the domestic partners;
- the transfer of land is consequential upon either a certified domestic partnership agreement or a property adjustment order, and
- the domestic partners had been living in a domestic relationship continuously for at least 3 years.

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

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 71CBA Statutory Declaration; and
- a copy of the certified domestic partnership agreement or the property adjustment order.

Example 1 – Investment Home transferred between former domestic partners

Dave and Helen who have been living together as domestic partners separated on the 2 January 2004. An investment property is currently registered in both Dave and Helen’s names. A property adjustment order directs that the investment property be transferred to Helen.

On 15 January 2005, Dave and Helen executed a Memorandum of Transfer of Land evidencing the above arrangement and a section 71CBA Statutory Declaration stating that the relationship has irretrievably broken down.

The document is “Exempt” from stamp duty.

Example 2 – Land transferred pursuant to a Property Adjustment Order from a trustee of a domestic partner’s superannuation fund to a spouse of the domestic relationship.

Rodney and Belinda were domestic partners and it is considered that their domestic relationship has broken down irretrievably. Rodney and Belinda have agreed upon the distribution of their assets and have obtained a Property Adjustment Order that details the distribution of their assets.

The Property Adjustment Order states that the trustee of Rodney’s superannuation fund transfer certain land to Belinda.

Rodney and Belinda have executed a Statutory Declaration pursuant to Section 71CBA of the *Stamp Duties Act 1923*, stating that their domestic relationship has irretrievably broken down.

The document is “Exempt” from stamp duty.

Example 3 – Land transferred pursuant to a Certified Domestic Partnership Agreement from a domestic partner to a trustee of a domestic partner’s superannuation fund.

Tony & Ellen were domestic partners and it is considered that their domestic relationship has broken down irretrievably. Tony and Ellen have agreed upon the distribution of their assets and have entered into a Certified Domestic Partnership Agreement that details the distribution of their assets.

The Certified Domestic Partnership Agreement states that Ellen transfer certain land to the trustee of Tony's superannuation fund.

Tony and Ellen have executed a Statutory Declaration pursuant to Section 71CBA of the *Stamp Duties Act 1923*, stating that their domestic relationship has irretrievably broken down.

The document is "Exempt" from stamp duty.

Example 4 – Land transferred pursuant to a Property Adjustment Order from a trustee of a domestic partner's superannuation fund to a trustee of the other domestic partner's superannuation fund.

Adam and Kate were domestic partners and it is considered that their relationship has broken down. A Property Adjustment Order directs that a certain land be transferred from the trustee of Adam's superannuation fund to the trustee of Kate's superannuation fund.

Adam and Kate have executed a Statutory Declaration pursuant to Section 71CBA of the *Stamp Duties Act 1923*, stating that their domestic relationship has irretrievably broken down.

The document is "Exempt" from stamp duty.

Example 5 – land transferred pursuant to a Property Adjustment Order between former same sex domestic partners

Drew and Toby have been living together for over 4 years in a domestic relationship. They own a house together but have now separated. A property adjustment order directs that this property be transferred to Drew.

Drew and Toby execute a Memorandum of Transfer pursuant to this order and complete a section 71CBA statutory declaration stating that their relationship has irretrievably broken down.

The document is "Exempt" from duty.

What section of the SD Act applies?

Section 71CBA