

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

Introduction

This guide note applies to a conveyance of property, other than land pursuant to section 71CBA of the SD Act. This section provides, inter alia, an exemption from stamp duty to a transfer of property 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 property (other than 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; or
- a copy of the trust deed (if applicable)

Your submission must also advise:

- the character of the property involved (eg unlisted marketable securities);
- the extent that the parties to the domestic relationship 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.

domestic relationship means the relationship between domestic partners.

certified domestic partnership agreement has the same meaning as in the *Domestic Partners Property Act 1996*

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

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

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

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

A conveyance of land pursuant to section 71CBA of the SD Act, refer to the document heading:

- [Exemptions – Conveyance of Land – 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 to transfer an interest in a business or partnership;
- an Agreement or Deed that conveys property;
- an Application to Transfer the Registration of a Motor Vehicle;
- a standard transfer from for financial products; and
- any other conveying document.

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

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

- the property is being transferred between domestic partners;
- the property is being transferred between a trustee of the domestic partner's superannuation fund or between the trustees of the domestic partner's superannuation funds pursuant to either a certified domestic partnership agreement or a property adjustment order;
- the domestic partners have been living in a domestic relationship continuously for at least 3 years;
- a section 71CBA Statutory Declaration has been completed by the domestic partners; and
- the instrument is transferring an interest in the property.

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 – Transfer of property between former same sex domestic partners

Martina and Ellen who have been living together as domestic partners separated on the 2 January 2007. They owned shares together in an unlisted company. A property adjustment order directs that the shares be transferred to Helen.

On 1 June 2007, Martina and Ellen executed a Standard Transfer Form evidencing the above arrangement and a section 71CBA Statutory Declaration stating that they have cohabitated as domestic partners

The document is "Exempt" from stamp duty.

Example 2 – Interest in a partnership transferred pursuant to a Property Adjustment Order from a trustee of a domestic partner's superannuation fund to a domestic partner.

Fred and Wilma have lived as domestic partners for 6 years and have now separated and obtained a property adjustment order. This order directs that Wilma transfer her interest in their partnership to Fred.

A document evidencing the transfer of the partnership interest is executed by the parties. They have executed a 71CBA Statutory Declaration stating that they have cohabitated in a domestic relationship

The document is “Exempt” from stamp duty.

Example 3 – Unlisted financial products transferred pursuant to a Property Adjustment Order from a trustee of a domestic partner’s superannuation fund to a domestic partner.

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 unlisted financial products 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 transfer is “Exempt” from stamp duty.

Example 4 – Units in a unit trust transferred pursuant to a Certificated Cohabitation 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 units in a unit trust 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 transfer is “Exempt” from stamp duty.

Example 5 – Unlisted financial products transferred pursuant to a Property Adjustment Order from a trustee of a domestic partner’ 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 domestic relationship has broken down. A Property Adjustment Order 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.

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 transfer is “Exempt” from stamp duty.

What section of the SD Act applies?

Section 71CBA