

Document Class: EXEMPTIONS
Document Name: Conveyance - Land
Document Description: Pursuant to a Will or Intestacy
Document Code: EX

Introduction

This guide note refers to a conveyance of land pursuant to section 71(5)(h) of the SD Act. This section provides an exemption from *ad valorem* voluntary conveyance stamp duty on:

- the conveyance of property to an executor or administrator of a deceased person's estate, or
- the conveyance of property to the beneficiaries of the deceased person's estate pursuant to the terms of the will of the deceased; or
- the conveyance of property to the beneficiaries of the deceased person's estate pursuant to the laws of intestacy.

A Court Order pursuant to the *Inheritance (Family Provisions) Act 1972* or the *Wills Act 1936* and which amends the terms of a will is regarded as a codicil to the will. A conveyance of land pursuant to a Court Order of this type can be stamped under this document heading. If the transfer is pursuant to a Court Order other than the *Inheritance (Family Provisions) Act 1972* or the *Wills Act 1936*, it must be submitted for Opinion.

If the transfer is within these criteria it is exempt from stamp duty. An "Application to Transfer the Registration of a Motor Vehicle" to a beneficiary, is exempt from stamp duty, and must be stamped under the document heading:

- [Others – Transfer of Motor Vehicle – Pursuant to a Will](#) (EX).

The sale of any land by the executor or administrator to a beneficiary or another person is liable to *ad valorem* conveyance stamp duty. In some cases, there may be more than one beneficiary entitled to the land and an agreement is reached whereby one beneficiary (or the beneficiary with another person) will purchase the interests of the other beneficiaries. This can be effected on one document, rather than by a two document series.

If this is effected on **one document**, the transaction must be stamped under this document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL).

The document is not required to be stamped Exempt for the interest transferred to the beneficiary. A **two document series** would firstly involve a transfer to all the beneficiaries entitled pursuant to the terms of the will followed by a second transfer from those beneficiaries that are selling their entitlement to one of the other beneficiaries (or the beneficiary with another person).

The document must be stamped under the document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL).

If a beneficiary of an intestate estate **disclaims** his interest in the estate, the disclaimer document must be stamped under the document heading:

- [Conveyance – Other – Disclaimer Deceased Estate](#) (VC).

A Transmission Application or an Application to Note Death does **not** require stamping.

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 transfer of land pursuant to a Deed of Family Arrangement **must** be submitted for the Opinion of the Commissioner of State Taxation together with a copy of the will, a copy of the Deed of Family Arrangement and a detailed description of the transaction. Note: **All** Deeds of Family Arrangement are to be submitted for the Opinion of the Commissioner of State Taxation.

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; or
- any other document that conveys an interest in land pursuant to the terms of a will or the laws of intestacy.

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

A conveyance of land pursuant to the terms of a will, or the laws of intestacy, is deemed **suitable** for self-stamping under this document heading where:

- the conveyance is, pursuant to the terms of the will, or the laws of intestacy;
- there is **no** consideration passing between the parties;
- the property is conveyed to the beneficiary pursuant to the terms of the will, or the laws of intestacy, and to no other party; and
- the conveyance is **not** pursuant to a Deed of Family Arrangement.

What stamp duty is payable on this document?

Where the land is being conveyed to all of the beneficiaries entitled to the land in accordance with the terms of the will, or the laws of intestacy, the document is stamped Exempt.

Where the transfer to a beneficiary involves both a part interest transferred pursuant to the terms of a will and a part interest for a **consideration**, the transaction must be stamped under the document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL).

Where the transfer to a beneficiary involves both a part interest transfer pursuant to the terms of a will and a part interest for **no consideration**, the transaction must be stamped under the document heading:

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

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 will of the deceased or an explanation as to how the beneficiary is entitled to the property pursuant to the laws of intestacy;
- evidence of the market value of the land as at the date of conveyance – where an interest is conveyed that is **not** pursuant to the terms of the will of the deceased;
- a copy of the contract for sale and purchase of the land (if applicable); and
- a copy of the Court Order pursuant to the *Inheritance (Family Provisions) Act 1972* or the *Wills Act 1936* (if applicable).

Example 1 – Conveyance to beneficiaries pursuant to terms of will

Ann has been appointed the executor of Bob's estate. Pursuant to Bob's will, his net estate, which includes land, is bequeathed to Kate and Dave equally.

The consideration panel in the Memorandum of Transfer of Land (from Ann, as executor to Kate and Dave) recites "pursuant to the terms of the will of Bob deceased".

As the conditions of section 71(5)(h) of the SD Act have been satisfied, the document is stamped Exempt

Example 2 – Conveyance to a beneficiary pursuant to the terms of the will and some other person

Hugh has been appointed the executor of Fred's estate. Pursuant to Fred's will, his land is bequeathed to Pam. Pam has requested the executor to include her son John on the transfer, for a consideration of \$50,000 payable by John.

There are two conveyances involved here. Firstly the transfer of a half interest pursuant to the terms of the will, and secondly, a transfer of a half interest for a consideration of \$50,000.

The transfer is stamped with *ad valorem* conveyance stamp duty on the **consideration** or **market value** of the half interest for the land, WHICHEVER IS THE GREATER. This document is entered under the document heading:

- [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL).

Example 3 – Beneficiary takes land in lieu of money

Tom's will directs his executor to convert his estate to money and distribute this equally to his beneficiaries John, Kate and Lisa. The beneficiaries have agreed with the executor that John will take land equivalent in value of his entitlement in lieu of money.

This transfer is exempt from *ad valorem* duty pursuant to section 71A of the SD Act as an *in specie* distribution.

What section of the SD Act applies?

Section 71(5)(h)
Section 71A
Schedule 2, Part 2, General Exemption 29