

**Document Class:** CONVEYANCE - OTHER  
**Document Name:** Disclaimer - Deceased Estate  
**Document Code:** VCO

### Introduction

This guide note explains how stamp duty is calculated on a disclaimer document where a person who is, or may be, entitled to share in the distribution of the estate of a deceased person:

- disclaims an interest in the estate; or
- disclaims an interest in the estate to another person.

In this guide note, the terms “disclaimer” and “disclaim” include a transfer, assignment or conveyance.

Pursuant to section 71(1) of the SD Act, the market value of the interest being conveyed must be declared in the document.

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

If the disclaimer document, is executed by parties other than the disclaimant, the document must be submitted for the Opinion of the Commissioner of State Taxation, together with a Statement of Assets and Liabilities of the deceased’s estate and a copy of the will (if applicable)

If the document is a “Deed of Family Arrangement” it must be submitted for the Opinion of the Commissioner of State Taxation, together with a Statement of Assets and Liabilities of the deceased’s estate and a copy of the will (if applicable).

### **What *documents* can I stamp under this document heading?**

The document can be in the form of:

- an Agreement in which one of the beneficiaries disclaims an interest in the estate of a deceased person; or
- a Deed in which one of the beneficiaries disclaims an interest in the estate of a deceased person.

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

A disclaimer is deemed **suitable** for self-stamping under this document heading where:

- the person disclaiming (the disclaimant) is a beneficiary or potential beneficiary of the estate of a deceased person; and
- no consideration is passing between the parties.

### What stamp duty is payable on this document?

The stamp duty is calculated using the *ad valorem* voluntary conveyance rate of stamp duty on the **net value** of the interest disclaimed.

To determine the net value follow these steps:

1. Refer to the “Statement of Assets and Liabilities” of the deceased’s estate to ascertain the value of the South Australian property.
2. Subtract the liabilities (referable to the South Australian Assets) of the deceased’s estate from the South Australian property to determine the net value of the deceased’s estate.
3. Ascertain the disclaimant’s entitlement in the deceased’s estate - is it a half interest or some other fractional interest? For example, if it is a half interest, the disclaimant’s entitlement is one half of the net value determined.
4. Stamp duty is calculated on the net value of the disclaimant’s entitlement using the *ad valorem* voluntary conveyance rate of 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 Statement of Assets and Liabilities of the deceased estate; and
- a copy of the will; or
- a copy of the Letters of Administration and a list of the names of the persons entitled to share in the distribution of the estate and their relationship to the deceased person.

### Example 1 – Beneficiary disclaiming an interest in a deceased estate

Fred has died **without** leaving a will. The persons entitled to share in the distribution of the estate, pursuant to the laws of intestacy under *Administration and Probate Act 1929*, are his mother and father.

His father has entered into a Deed to disclaim his entire interest in Fred’s estate. The net value of the Fred’s estate is \$112,156, and, therefore, the father’s interest in the estate, which is now disclaimed, is valued at \$56,078.

*Ad valorem* voluntary conveyance stamp duty is charged on \$56,078 (ie. \$1,293.50 stamp duty).

### What section of the SD Act applies?

Section 71AA