

Document Class:	EXEMPTIONS
Document Name:	Conveyance - Land
Document Description:	By Way of Partition
Document Code:	EX

Introduction

This guide note refers to a division of land ownership by way of partition (ie. the division of land from common ownership to separate ownership(s)).

Section 71B of the SD Act provides an exemption from *ad valorem* stamp duty on conveyances for the partition or division of property between **members of the same family group**.

Section 71(15) of the SD Act provides a definition for “family group” which means a group of persons connected by an unbroken series of relationships of consanguinity or affinity. The definition of family group does **not** include domestic partners.

Consanguinity means related by blood (eg. brothers, sisters, parents, grandparents, children, grandchildren, etc) whereas affinity means related by marriage (eg. husband, wife, in-laws etc).

The exemption will apply providing:

- the transfers are between members of the same family group;
- the consideration expressed in any of the transfers does not exceed \$200;
- all the land is located in South Australia; and
- all parties are TRANSFERORS on all of the partition documents and TRANSFEREES on at least one of the documents.

The exemption does **not** apply where members of a family group change their ownership interests in a Certificate of Title and those members remain as Registered Proprietors.

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](#).

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 to Deposit a Plan of Division; or
- any other document that conveys land by way of partition.

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

A conveyance of land by way of partition is deemed **suitable** for self-stamping under this document heading where:

- the transfers are between members of the same family group;
- the consideration expressed in any of the transfers does not exceed \$200;
- all the land is located in South Australia; and
- all parties are TRANSFERORS on all partition documents and TRANSFEREES on at least one of the documents.

What stamp duty is payable on these documents?

The conveying documents are exempt where there is **no** consideration paid or where the consideration paid for equality **does not exceed** \$200.

Where the consideration for equality **exceeds** \$200, conveyance rates apply to that consideration.

Stamp duty will only be charged on these transfers where the consideration paid or given for equality exceeds \$200. For example, if \$5,000 is paid for equality, stamp duty is payable on \$5,000 (ie \$50 stamp duty applies) **regardless** of the value of the property. In this situation the document must be stamped under the document heading:

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

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
- evidence of the family relationship (eg. marriage certificate, birth certificate).

Example 1 – Partition of Property for no consideration

Max and Mercedes (father and daughter) jointly own houses at Victor Harbor and Morphett Vale.

They decide to divide the properties into single ownerships so that Mercedes becomes the owner of the Victor Harbor property and Max becomes the owner of the Morphett Vale property.

An Agreement is entered into by the parties to record their intentions. No consideration is paid by either party.

The consideration clause in each Memorandum of Transfer states the transfer is pursuant to terms and conditions set out in the Agreement.

Ad valorem voluntary conveyance stamp duty is not payable on the Memorandum of Transfers because:

- Max and Mercedes are members of the same family group - they are related by **consanguinity** (blood);
- no consideration has been paid or given and
- the transfers satisfy the provisions of section 71B of the Act.

Each Memorandum of Transfer is Exempt from stamp duty as a “Conveyance for the partition of any property, being a conveyance of the kind referred to in section 71B(4)” pursuant to Schedule 2 of the SD Act.

Example 2 – Partition of Property where there is a consideration paid for equality

Using the same example as above, however, if Max agrees to pay Mercedes \$3,000 for equality, the stamp duty charged on the Memorandum of Transfers is as follows:

- The transfer from Max to Mercedes for no consideration is stamped Exempt pursuant to Section 71B of the SD Act, and
- The transfer from Mercedes to Max with the consideration of \$3,000 is stamped under the document heading:
 - [Conveyance of Land – For Consideration – Conveyance of Land](#) (CL).

What section of the SD Act applies?

Section 71B