

Document Class: CONVEYANCE - LAND
Document Name: For Consideration
Document Description: Transfer of Lease
Document Code: CL

Introduction

This guide note explains how stamp duty is calculated on the transfer of a lessee's interest in a lease of land, whether registered or unregistered. It does **not** apply to a transfer of a Crown Lease by way of sale because these documents are stamped under the document heading:

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

Some examples of types of transactions that would be stamped under this document heading are:

- a transfer of a shack site lease;
- a transfer of a commercial lease where there is no sale of business (maybe consideration for other property, eg, chattels, fittings, plant and equipment); and
- a transfer of a lease as part of a company title scheme.

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:

If there is no consideration paid - refer to the document heading:

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

If the document conveys the lessor's interest in the lease pursuant to a sale of land – refer to the document heading:

- [Adjudged – Transfer of Lease – Pursuant to Conveyance of Land](#) (ADJ).

If the document conveys the lessee's interest in the lease pursuant to a sale of business – refer to the document heading:

- [Adjudged – Transfer of Lease – Pursuant to Conveyance of Business](#) (ADJ).

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

The document can be in the form of:

- a LTO Form T3 – Transfer of Lease, Mortgage or Encumbrance; or
- an Agreement or Deed that conveys the lessee's interest in a lease.

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

A transfer of a lease is deemed **suitable** for self-stamping under this document heading where:

- there is consideration passing between the parties; and
- the document conveys the lessee’s interest in the lease and other property (if any) and no other document exists.

The document can be stamped under this heading regardless of whether:

- the parties are related or unrelated; and/or
- a full or fractional interest is being conveyed.

What stamp duty is payable on this document?

The stamp duty is chargeable using the *ad valorem* conveyance rate of stamp duty on the **consideration** or **market value**, WHICHEVER IS THE GREATER.

If the transaction is *bona fide* arms length transaction between unrelated parties then pursuant to Section 60A(2) of the SD Act the consideration will be treated as the market value of the land.

Where a fractional interest is conveyed, the parties are related or the transaction is not at “arms length” you will need to obtain evidence of the market value of the land. For example:

- valuation from a suitably qualified valuer; or
- evidence of the current Valuer General’s value for the land (eg. a copy of the relevant Property Assist print-out).

If the consideration appears lower than the value, the Commissioner may cause a valuation of the leasehold interest to be made, and calculate stamp duty on that value.

Where there is a dispute regarding the market value of the property for stamp duty purposes, the document must be submitted for the Opinion of the Commissioner of State Taxation with full details as to why the value is being disputed and why the value shown represents the true market value.

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;
- evidence of the market value of the property as at the date of conveyance – where the parties are related or a fractional interest is being conveyed;

- a copy of the contract for sale and purchase (if applicable).

Example 1 – Transfer of a Leasehold Interest

Dave sells to Lisa his registered leasehold shack site and improvements for \$140,000. The parties are unrelated and the contract has been negotiated through a land agent.

The parties have executed an LTO Form T3 – Transfer of Lease, Mortgage or Encumbrance. Pursuant to section 60A (2) of the SD Act, the Commissioner will accept the consideration as the value and charge stamp duty on this document using the *ad valorem* conveyance rate of stamp duty (ie. \$4,430 stamp duty).

Example 2 – Transfer of a Leasehold Interest and Chattels

Tom has decided to relocate his business. He has sold the lease of his business premises to Sally for \$500, which includes some chattels (there is **no** sale of business).

The transfer is chargeable with the *ad valorem* conveyance rate of stamp duty on the consideration of \$500 (ie. \$5 stamp duty).

What section of the SD Act applies?

Section 60