

## SOUTH AUSTRALIA



RevenueSA

**Stamp Duties**

**Circular No. 179**

### **STANDARD REQUISITIONS AND REQUIREMENTS**

This Circular replaces Circular No. 2 and is issued for the information of Accountants, Conveyancers, Solicitors, and other persons lodging documents with RevenueSA for assessment of stamp duty.

It sets out the information usually required by RevenueSA to enable the assessment of duty on the classes of instrument specified and which instruments can be stamped directly over the counter and which instruments are required to be submitted for the opinion of the Commissioner of State Taxation.

To avoid delay in assessment of duty, full information should be given in all cases when an instrument is presented for stamping. Please make sure that your name is always marked clearly on all documents that are lodged in this Office.

Instruments to be stamped over the counter must be listed on a Stamp Duties Lodgement form. This form is available in either hard copy or on disk from RevenueSA, Ground Floor, State Administration Centre, Victoria Square East, or can be downloaded from our Internet site on <http://www.treasury.sa.gov.au/tax.html>

For opinion assessments, full facts and circumstances should be set out on the opinion form in relation to the instruments. (Refer *Taxation Administration Act 1996*, Section 11). Attention should be drawn to any particular matter in doubt on which an opinion is desired if this is not apparent from the instrument.

In this Circular, a reference to a section is a reference to a section of the *Stamp Duties Act 1923*. A reference to a Circular is a reference to a Commissioner's Circular. Circulars can be obtained from RevenueSA, Ground floor, State Administration Centre, Victoria Square, Adelaide, via our Internet site or from our Circular distribution list.

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## **I AGREEMENTS**

### **1 Agreement for dissolution of partnership:**

- (1) To be submitted for opinion;
- (2) Balance Sheet as at date of dissolution together with evidence of current market value of assets to be produced.

### **2 Agreement to transfer an interest in a partnership:**

- (1) To be submitted for opinion;
- (2) Partnership Valuation to be produced, if available;
- (3) Profit and Loss Statements and Balance Sheets for the last 3 years or other evidence of value to be produced.

### **3 Agreement for Sale and Purchase of a Business:**

- (1) If a full interest between unrelated parties can be stamped over the counter;
- (2) Stock certificate to be produced.

### **4 If a fractional interest of a business or transfer between related parties or transfer for no consideration:**

- (1) To be submitted for opinion;
- (2) Business Valuation to be produced, if available;
- (3) Stock certificate to be produced;
- (4) Profit and Loss statements and Balance Sheets for the last 3 years or other evidence of value to be produced.

### **5 Transfer/Assignment of lease pursuant to an Agreement for Sale and purchase of a Business:**

- (1) If the Agreement for Sale and Purchase of a Business is stamped over the counter, the Transfer/Assignment of lease can be stamped over the counter at the same time;
- (2) If the Agreement for Sale and Purchase of a Business is submitted for opinion the Transfer/Assignment of lease must be submitted for opinion;
- (3) These documents will not be released until all duty has been paid on the Agreement for Sale and Purchase of Business.
- (4) If the conveyance of Business was stamped on a previous occasion, the transfer of lease can be done over the counter providing the stamped conveyance of business is produced at the time of lodgement.

If the Transfer/Assignment of lease is required for settlement and the assessment has not been completed due to stocktake, the Agreement for Sale and Purchase of Business must be submitted for opinion together with an estimate of the stock. An assessment will be issued, and after payment the Transfer/Assignment of Lease will be stamped and available for settlement. The Agreement for Sale and Purchase of Business will be retained pending the production of the stock certificate, and will be reassessed after this is produced. An amended assessment will then be issued.

The stock certificate must be signed by the parties to the transaction or by a valuer appointed by the parties to value the stock.

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## II

### 1 **Application to Deposit a Plan of Community Division:**

- (1) If the registered proprietors for the units listed in the Schedule of Mode of Issue are the same persons for each unit, the Application can be stamped over the counter;
- (2) If the registered proprietors for the units listed in the Mode of Issue are NOT the same persons for each unit, the Application must be submitted for opinion together with copies of the relevant Certificate of Titles and a copy of the Community plan.

### 2 **Application for Amendment of a Deposited Community Plan:**

- (1) To be submitted for opinion advising the effect of the Amendment;
- (2) If the Amendment effects a conveyance of land, a copy of the original Community Plan and the new Community Plan should be lodged.

### 3 **Application for the Deposit of a Strata Plan:**

#### - *For an Existing Scheme*

- (1) If the registered proprietors for the units listed in the Mode of Issue are different persons for each unit the Application must be submitted for opinion;
- (2) If the registered proprietors for the units listed in the Mode of Issue are the same persons for each unit, the Application can be stamped over the counter.

#### - *For a New Scheme*

- (1) Can be stamped over the counter.

### 4 **Application for the Amendment of a Strata Plan:**

- (1) To be submitted for opinion and advise the effect of the Amendment;
- (2) If the Amendment effects a conveyance of land, a copy of the original Strata Plan and the new Strata Plan should be lodged.

## III CONVEYANCES

**Note 1:** Where evidence of current market value of land is required, the following is acceptable to RevenueSA (See Circular No 166):

- (a) Current valuation by a licensed valuer;
- (b) In all cases where available, the Valuation Assessment number and your estimate of the value of the land is required to be shown on the opinion form to facilitate checking the consideration of the land value, with the Valuer General's Office.

**Note 2: Nominee Contracts:**

In all cases where a person or company authorises another person or company to act on their or its behalf to negotiate the purchase of a property, the authority must be given prior to the contract being entered into. Any letter of agency, authority or nomination given afterwards is not accepted as creating an agency for the purpose of

that purchase. If a company nominates an individual to sign a contract, a copy of the Certificate of Incorporation of the company is required.

Historical Use Only

**Note 3: Promoter Company:**

If a contract has been entered into between a vendor and a promoter of a company and the subsequent transfer is between the vendor and the newly incorporated company, then, upon RevenueSA being satisfied that the contract was duly ratified under the *Corporations Law* and that the person was acting as a promoter, the duty will only be charged on the transfer.

**1 Sale of improved land – (Full interest between unrelated parties for fair value):**

- (a) Stamped over the counter;
- (b) Contract for sale and purchase to be produced;
- (c) If no written contract has been prepared, the transfer must be submitted for opinion;
  - (i) Valuation Assessment number to be included on opinion form;
  - (ii) Description of improvements on the land, if any, to be included on opinion form.

**2 Sale of vacant land – (Full interest between unrelated parties for fair value):**

- (a) Stamped over the counter;
- (b) No contract for sale and purchase is required to be produced if a declaration as to vacant land is embodied in the transfer, and the value of the land does not exceed \$50,000;
- (c) A certificate concerning the application of Section 67 is required in the body of the transfer.

**3 Land:**

- **Sale of fractional interest;**
- **Sale between related parties (including associated companies, company and its shareholders or officers);**
- **Exchange;**
- (a) To be submitted for opinion;
- (b) Current valuation from a licensed valuer to be produced (Refer Circular No 166);
- (c) If a valuation is not available:
  - (i) full description of land and valuation number to be included on opinion form;
  - (ii) brief description of the improvements on the land to be included on opinion form; and
  - (iii) value of property to be included on opinion form.
- (d) If a transfer is drawn subject to a mortgage the transfer must state that the consideration includes the amount outstanding under the mortgage, or if it does not, then a certificate is required from the mortgagee stating the balance of the mortgage outstanding as at the date of sale.



- 4 Assignment of a purchaser's interest in a contract:**
- (a) The assignment and transfer must be submitted for opinion together with the contract for sale and purchase.
- 5 Conveyances arising from or forming one transaction or one series of transactions (Section 67):**
- If you agree that Section 67 does apply, the transfers can be stamped over the counter. If not,
- (a) To be submitted for opinion, giving reasons why Section 67 should not apply;
- (b) In circumstances where instruments have been executed within 12 months of one another a person conveys property (or an interest in property) to the same person (whether that person accepts alone or with different persons) it will be presumed that the transactions form one transaction or one series of transactions unless the Commissioner is satisfied to the contrary (Section 67(4)).
- 6 Conveyance operating as a voluntary conveyance *inter vivos*:**
- (1) To be submitted for opinion;
- (2) Value of property to be included in the instrument (Section 71(1)).
- 7 Conveyance re in specie distribution of a company in liquidation (Section 71(5)(b)):**
- (1) To be submitted for opinion;
- (2) Statement required from the liquidator advising names of the shareholders of the company in liquidation.
- 8 Appointment/Resignation/Retirement of trustee:**
- (1) To be submitted for opinion.
- 9 Conveyance to a trustee:**
- (1) To be submitted for opinion;
- (2) Value of property to be declared in the instrument.
- 10 Conveyance from a trustee:**
- (1) To be submitted for opinion;
- (2) Value of property to be declared in the instrument;
- (3) Stamped Declaration or Deed of Trust or other documentary evidence of trust to be produced.
- 11 Conveyance of land pursuant to will (Section 71 (5)(h)):**
- (1) Stamped over the counter;
- (2) Probate or certified copy of the will of the deceased to be produced.
- 12 Change of tenancy:**
- (1) Stamped over the counter if there is no change to the proportions held.

**13 Transfer of a mortgage:**

- (1) Stamped over the counter.

**14 Partition (Section 71B applies to members of a family group only):**

- (1) All documents of partition must be submitted for opinion;
- (2) Advise the relationship between the parties (Section 71(15)).

**15 Conveyances relating to concessional rates of stamp duty on a purchase of a first home (Section 71C) (refer Circular No's 24, 122, 139, 145):**

- (a) To be submitted for opinion if:
  - the parties are related, and/or;
  - the transfer is of a part interest in the land, and/or;
  - the transfer is pursuant to an assignment of interest in the contract, and/or;
  - the consideration is for less than market value, and/or;
  - the land area is greater than 0.8 Hectare.

“Arms length” bona fide transfers can be assessed over the counter.

- (a) Contract for sale and purchase must be produced;
- (b) A Letter of Agency must be produced if the contract has been signed by an agent on behalf of the purchaser;
- (c) Where an application relates to the purchase of vacant land, the building contract must also be lodged;  
(In this case only, applicant(s) must occupy the completed dwelling house as their principal place of residence within 12 months of the date of completion of construction);
- (e) Where a Name Title Information search (from the LTO) is required to be lodged;
- (f) Where the sale is between related parties refer Section III, Part 3;
- (g) Where the sale includes primary production property, refer Circular No. 93;
- (h) Applicants who are applying for a refund of duty such as owner builders and applicants not entering into a building contract at time of sale must be in occupation of the dwelling within 12 months of the date of the conveyance.

**Note:** The applicant is only entitled to a first home concession if the applicant has not previously occupied (except as a minor) a dwelling house in which the applicant held a relevant interest, or shares conferring a right to occupy.

**16 Conveyance of property pursuant to Section 71CA:**

- (1) Stamped over the counter;
- (2) Copy of Family Court Order required;
- (3) Copy of Decree Absolute required or statutory declaration pursuant to Section 71CA.

**Note:** Conveyance must be pursuant to:

- (a) A maintenance agreement registered under Part VIII of the *Family Law Act 1975* of the Commonwealth; or
- (b) An order under Part VIII of the *Family Law Act 1975* of the Commonwealth and must be between two persons who are or have been married to each other and no other person takes or is entitled to take an interest in the property.

**17 Transfer of interest in the matrimonial home between spouses or former spouses (Section 71CB):**

- (1) Stamped over the counter;
- (2) 71CB statutory declaration to be completed by both parties;
- (3) To be submitted for opinion if:
  - the matrimonial home is situated over two or more Certificates of Title/Crown Leases, and/or;
  - the transfer includes property which forms part of industrial or commercial premises, and/or;
  - any part of the property is used for primary production. Advise separate values for:
    - (a) House & Curtilage\*;
    - (b) Remaining Area.

*\*Note: House and curtilage is described for stamp duty purposes as being land used for household purposes, usually including the immediate area surrounding the house including garden sheds, garages, etc.*

**18 Conveyance of a family farm pursuant to Section 71CC (refer Circulars 109 and 138):**

- (1) To be submitted for opinion together with a completed 71CC statutory declaration;
- (2) If a trust is involved, a copy of the deed establishing the trust must be lodged;
- (3) Estimate of the market value of the land being conveyed to be included on the opinion form.

**19 Conveyance of property by bankruptcy trustee pursuant to Section 71CD (refer Circular No 155):**

- (1) To be submitted for opinion.

**20 Conveyance of an interest in an exploration tenement pursuant to Section 71D:**

- (1) To be submitted for opinion;
- (2) Refer to Section 71D for lodging requirements.

**21 Conveyances between superannuation funds pursuant to Section 71DA (refer Circular No 155):**

- (1) To be submitted for opinion.

**22 Assignment of insurance policies:**

- (1) To be submitted for opinion;
- (2) Statement of surrender value required from the insurance company where the beneficial interest passes by assignment.

**23 Transactions effected without creating a dutiable instrument (Section 71E) (refer Circular No 67):**

- (1) A statement and statutory declaration pursuant to Section 71E to be submitted for opinion.

**Note:** This Section applies to a transaction which results in a change in the ownership of a legal or equitable interest in:

- (i) Land;
- (ii) A business, or part of a business, situated in the state; or
- (iii) An interest in a partnership.

**Note:** Stamp Duty is payable on the statement as if it were a conveyance effecting the transaction to which it relates.

**24 Easements – Creation/Variation/Extinguishment:**

- (1) If for consideration can be stamped over the counter;
- (2) If for nil consideration, to be submitted for opinion and value to be declared in the instrument.

**25 Ex-Service persons exemption:**

- (1) To be submitted for opinion;
- (2) Evidence of war service to be produced.

**26 Road Closure:**

- (1) To be submitted for opinion;
- (2) If no consideration expressed, require copy of the plan and estimate of value of interest being conveyed to be declared in the instrument.

**27 Application for plan of division (RTC / RTU):**

- (1) To be submitted for opinion;
- (2) If land is vested, require copy of Deposited Plan and Certificate of Titles;
- (3) Value/consideration to be included in consideration/value panel of RTC.

**28 Transfer of shares:**

- (1) Listed shares by way of sale or voluntary conveyance stamped over the counter;
- (2) Non-listed Company share transfers:
  - (a) To be submitted for opinion;
  - (b) Copy of any valuation of shares made in connection with the transfer to be submitted;

- (c) Certified Balance Sheet and Profit and Loss and ancillary accounts for the last three years to be produced;
- (d) If differing classes of shares issued, state fully the rights of each, and submit a copy of the Memorandum and Articles of Association; and
- (e) If Nominee Company, the following details are required:
  - Latest balance sheet or detailed schedule of assets and liabilities to be produced;
  - Description of property which is held in trust;
  - Market value of property.
- (3) Transfer of shares to a Trustee, see Section III, 9;
- (4) Transfer of shares from a Trustee, see Section III, 10;
- (5) Transfer of shares pursuant to will, to be submitted for opinion with a copy of the will or probate of the deceased.

**Note:** Conveyance of shares by way of sale or gift are dutiable at *ad valorem* marketable securities rates.

Marketable security (listed) charged at \$0.30 / \$100.

Marketable security (unlisted) charged at \$0.60 / \$100.

## **29 Transfer / Redemption of units:**

**Note:** A transfer of units also includes a redemption of units or a further issue of units, which is not on a pro rata basis.

- (1) Transfer to be submitted for opinion;
- (2) Certified Balance Sheet and Profit and Loss and ancillary accounts for the last three years to be produced;
- (3) Advise how many issued units in the Trust and their par value.

## **IV DEEDS**

It is not possible to list all types of deeds here, but some common examples which are:

- (1) Stamped over the counter:
  - Deed of Priority;
  - Deed of Guarantee;
  - Deed of Indemnity;
  - Deed of Release;
  - Deed establishing a Family Trust or Unit Trust where the property/initial settled sum does not exceed \$1000;
  - Deed establishing a Superannuation Fund.
- (2) To be submitted for opinion:
  - Deed of Disclaimer;
  - Deed of Revocation;
  - Deed of Family Arrangement;
  - Deed establishing a Joint Venture arrangement;
  - Deed of Dissolution of Partnership – see under Agreements;
  - Deed of Variation of a Trust;
  - Deed of Gift.

**Declaration/Acknowledgment of Trust:**

- (1) To be submitted for opinion.

**V LEASES (Section 72)****1 Lease /Agreement to Lease**

- (1) If the first year's annual rental is stated in the instrument and this is a current market rent, the instrument can be stamped over the counter;
- (2) If not, to be submitted for opinion.

**2 Extension of lease for a period not exceeding 1 day:**

- (1) Providing this is to vary covenants only can be stamped over the counter for \$10;
- (2) Stamped original lease (or copy thereof) to be produced.

**3 Extension of lease for greater than 1 day:**

- (1) Can be stamped over the counter if the rental for the first year of the extension period is stated in the lease. If not stated, to be submitted for opinion and first year's annual rental of the extension period stated in the submission;
- (2) Stamped original lease (or copy thereof) to be produced.

**4 Lease made in conformity with a duly stamped agreement for lease:**

- (1) To be submitted for opinion together with Duly Stamped Agreement for Lease (or copy thereof).

**5 Lease of property to a natural person to be used as residential premises:**

- (1) To be submitted for opinion (exempt from duty).

**6 Surrender of lease:**

- (1) If for nil consideration, can be stamped over the counter;
- (2) If for consideration, to be submitted for opinion and submission to state who is paying consideration.

**7 Assignment of lease:**

- (1) Refer Section I, Part 5;
- (2) If this does not apply, to be submitted for opinion.

**VI MORTGAGES (Section 76)****1 Collateral or Substituted Security:**

- (1) To be submitted for opinion;
- (2) Primary mortgage to be produced;
- (3) Where mortgage is a substituted security, produce the full discharge of the mortgage;

- (4) All collateral and substitute security instruments to be linked to primary mortgage; and
- (5) Where a primary and collateral security exist and the primary is to be discharged and the collateral to become the prime security, the lodging party should –
  - (i) Produce the primary security;
  - (ii) Produce the collateral security;
  - (iii) Produce the full discharge of the primary security; and
  - (iv) Form F1 to be produced.

**2 Mortgage assessed under Section 81B** (Duty chargeable on proportion of SA property):

- (1) To be submitted for opinion together with Statutory Declaration stating total assets in Australia, total assets in South Australia and to what security the document is to be stamped;
- (2) If a Security does not create a charge on property in South Australia it may be stamped with a stamp indicating that no *ad valorem* duty is payable. However, this type of security is not required to be lodged with this Office.

**3 Caveats (Section 82):**

- (1) Stamped over the counter;
- (2) If mortgage unstamped chargeable mortgage rates plus \$10;
- (3) If mortgage has been stamped, chargeable \$10;
- (4) If the caveat does not protect an interest arising under a mortgage, to be submitted for opinion.

**Note:** If stamp duty is paid on a caveat in respect of a mortgage that has not been stamped and the mortgage is subsequently produced, the mortgage is not chargeable with duty to the extent to which duty in respect of the mortgage has been paid on the caveat.

**4 Discharge of Mortgage / Encumbrance:**

- (1) Can be stamped over the counter or \$10 adhesive duty stamp affixed and cancelled.

**5 Refinancing of primary producers' loans (see Circular No 162, Section 81D):**

- (1) To be submitted for opinion;
- (2) Full Discharge of Mortgage required;
- (3) Section 81D Application form to be produced;
- (4) Prime security or copy to be produced.

**6 Refinancing of loan due to rural branch closure (see Circular No 162, Section 81E):**

- (1) To be submitted for opinion;
- (2) Full Discharge of Mortgage required;
- (3) Section 81E Application form to be produced;
- (4) Prime security or copy to be produced.

**VII POWER OF ATTORNEY**

**Enduring Power of Attorney / General Power of Attorney:**

- (1) Not required to be lodged.

**FURTHER INFORMATION**

***Location***

RevenueSA  
State Administration Centre  
200 Victoria Square East  
ADELAIDE SA 5000

***Postal***

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RevenueSA  
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COMMISSIONER OF STATE TAXATION

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