

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 2

STANDARD REQUISITIONS AND REQUIREMENTS

This circular is issued for the information of Solicitors, Licensed Land Brokers and other persons lodging documents at the Stamp Duties Office for Assessment of Stamp Duty.

It sets out the information usually required by the Stamp Duties Office to enable the assessment of duty on the classes of instrument specified.

To avoid delay in assessment of duty, full information should be given in all cases when an instrument is presented for stamping. Attention should be drawn to any particular matter in doubt on which an opinion is desired if this is not apparent from the instrument. Full facts and circumstances should be set out on the opinion form in relation to the instruments when lodging for opinion. Please make sure that your name is always marked clearly on all documents that are lodged in this Office.

1. 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 for sale and purchase of a business--Stock Certificate to be produced.

Note: Where assignments of lease are submitted for opinion stating that they are being assigned pursuant to the terms of a business contract note, the business contract must be produced; if there is no contract, then a value must be declared in the assignment.

Walk-in/Walk-out sale of primary producing property as a going concern--

(1) Transfer to be submitted for opinion.

(2) Contract to set out separately consideration for the land and consideration for stock and plant

(3) Schedules of stock and plant and considerations for each item to be attached to contract.

(4) Consideration in transfer to be separated as to land, stock and plant. If the Commissioner is of the opinion that the consideration specified as being payable for the land, represents the value of the land, then the contract is certified to that effect.

II. CONVEYANCES

Note: Where evidence of current market value of land is required, the following is acceptable to the Stamp Duties Office:--

(a) Current valuation by a licensed valuer,

(b) In all cases where available, the Valuation Assessment number is required to be shown on the opinion form to facilitate checking the consideration of the land value, with the Valuer General's Office.

1. Conveyance on Sale--

(I) Conveyances relating to concessional rates of Stamp Duty on a purchase of First Home (Section 71c).

(a) To be submitted for opinion on application form. All questions on the statutory declaration must be completed by applicant(s).

(b) Contract for sale to be produced.

(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.)

(d) Where the sale is between related parties refer "Conveyances" I(IV).

(e) 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.

Applicant(s) must intend to occupy the dwelling as their principal place of residence within 12 months of the date of the conveyance.

(II) Sale of improved property--

(a) Contract for sale to be produced.

(b) If no written contract has been prepared, the conveyance must be submitted for opinion.

Note: In all cases where one 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.

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 the Stamp Duties Office being satisfied that the contract was duly ratified under the Companies (South Australia) Code and that the person was acting as a promoter, then the duty will only be charged on the transfer.

(III) Sale of vacant land--

(a) No contract for sale is required to be produced if a declaration as to vacant land is embodied in the memorandum of transfer, and the value of the land does not exceed \$50,000.

(b) A certificate concerning the application of section 67 is required in the body of the transfer.

(IV) Sale of fractional interests--Sale between related parties (including associated companies, company and its shareholders or officers)

(a) To be submitted for opinion.

(b) Full description of land and Valuation Assessment Number to be shown on opinion form.

(c) Brief description of improvements, if any, to be shown on opinion form.

(d) Evidence of value to be produced if available.

(e) Value of property to be declared on opinion form.

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 as at the date of sale.

(V) Conveyances arising from or forming one transaction or one series of transactions (Section 67)

(a) to be submitted for opinion.

(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 (S. 67(4)).

Note: This section also relates to voluntary conveyances (S. 67(1)(b)).

(VI) Assignment of a purchaser's interest in a contract--

(a) The assignment and transfer must be submitted for opinion together with the contract.

(b) The assignment must be recited in the consideration clause in the transfer.

2. Instruments operating by way of Voluntary Conveyance inter vivos

- (1) To be submitted for opinion
- (2) Value to be declared in the conveyance.
- (3) Evidence of value to be produced if available.
- (4) Full description of land and Valuation Assessment number to be shown on opinion form.
- (5) Description of improvements, if any, to be shown.

3. Conveyance of property pursuant to Section 71ca--

- (1) To be submitted for opinion.
- (2) Registered deed or agreement to be produced.
- (3) Copy of Court Order required.
- (4) Copy of Decree Absolute required.

Note: Transfer must be for the purpose of or consequential upon:

- (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 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.

Where subsequent to the stamping of a document, the marriage of two persons is dissolved or annulled and the above criteria are fulfilled, then an application for refund of duty can be lodged.

4. Conveyance of a Mortgage--

- (1) To be submitted for opinion.

5. Conveyance pursuant to will--

- (1) Probate or certified copy of will to be produced.

6. Conveyance to or from Trustee--

- (1) Declaration or Deed of Trust or other documentary evidence of trust to be produced. Documents are to be submitted for opinion.

7. Assignment of Insurance Policies

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

8. Partition--

- (1) To be submitted for opinion.
- (2) All documents of partition must be submitted.
- (3) Evidence of relationship between parties required.

9. Transfer of Shares

- (l) Sale between related parties--evidence required that consideration has passed between the parties.
- (2) Voluntary Conveyance--value to be declared in transfer and evidence of value required.
- (3) Non-listed Company share transfers--
 - (a) To be submitted for opinion.
 - (b) Certified Balance Sheet and Profit and Loss and ancillary accounts for the last five years to be produced.
 - (c) Profit shown in accounts to be reconciled with taxable income determined by Australian Taxation Office.
 - (d) Copy of any valuation of shares made in connection with the transfer to be submitted.
 - (e) Details of nature of company's business to be supplied.
 - (f) If differing types of shares issued, state fully the rights of each, or submit copy of Memorandum and Articles of Association.
 - (g) If Nominee Company, the following details are required:
 - (i) Reason for Transfer
 - (ii) Description of property which is held in trust
 - (iii) Market value of property
 - (iv) Any change in the beneficial ownership of the trust

Note: Transfers of shares by way of sale are dutiable at ad valorem marketable securities rates. Transfer of shares not by way of sale are dutiable at ad valorem conveyance rates.

10. Transfer of interest in the matrimonial home between spouses (Section 71cb)--

- (1) To be submitted for opinion.
- (2) Statutory declaration to be completed by both parties.

Note: A matrimonial home is the principal place of residence of *both* the husband and wife or a defacto husband and wife who have been cohabiting for at least five years.

11. Transactions effected without creating a dutiable instrument (Section 71e)--

- (1) A statement must be forwarded to the Commissioner
- (2) The statement is required to be submitted for opinion
- (3) Duty is payable on the statement as if it were a conveyance effecting the transaction to which it relates

Note: This section applies to changes in the ownership of a legal or equitable interest in:

- (i) Land
 - (ii) a business, or the goodwill of a business, situated in South Australia.
- or
- (iii) An interest in a partnership

III DEEDS

- 1. Deed of Dissolution of Partnership--
 - (1) See under "Agreements" I
- 2. Deed establishing a Trust--
 - (1) To be submitted for opinion

IV FIRST HOME CONCESSIONS (see under Conveyances I(I))

V LEASES

1. Extension of Lease--

- (1) Stamped lessee's copy of lease to be produced.

2. Lease made in conformity with stamped Agreement for Lease--

- (1) To be submitted for opinion with Stamped Agreement for lease.

3. Lease of property to a natural person to be used as residential premises

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

VI MORTGAGES

1. Collateral or substituted security--

- (1) To be submitted for opinion.
- (2) Primary mortgage to be produced and linking clause required.
- (3) Where mortgage is a substituted security, the fully discharged primary security to be produced.

(4) Where a primary and collateral security exist and the primary is to be discharged and the collateral to become the principal security, the lodging party should-

- (i) produce fully discharged primary security;
- (ii) lodge prescribed form of declaration (Form F)

2. mortgage of a mortgage over land used as a dwelling house

(1) To be submitted for opinion with details of improvements on the land.

3. Mortgage assessed under Section 81b (a)

(1) To be submitted for opinion together with Statutory Declaration stating total assets in Australia. total assets in South Australia and to what extent the document is to be secured.

(2) S. 81b(b)

(1) Statutory Declaration required stating that assets are not situated in South Australia.

4. Caveats assessed as mortgages - Section 82

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. (see 1 above).

VII EXEMPTIONS

1. All instruments which are claimed to be exempt for stamp duty to be submitted for opinion.

2. Authority for exemption to be stated.

Any enquiries should be directed to the Stamp Duties enquiry area on telephone (08) 226 3750 or (08) 226 3719.

11 December, 1990

COMMISSIONER OF STAMPS