

SOUTH AUSTRALIA



STATE TAXATION OFFICE

Stamp Duties

Circular No. 123

STAMP DUTY ON THE TRANSFER OF PROPERTY UPON THE BREAKDOWN OF A MARRIAGE OR DEFACTO RELATIONSHIP

Your attention is drawn to the provisions of the Stamp Duties (Miscellaneous) Amendment Act, 1994 which was assented to on 8 December, 1994. The information below is of necessity brief and the precise nature and scope of the changes must be taken from the reading of the provisions as set out in the Amending Act in conjunction with the Stamp Duties Act, 1923 (the Act).

This circular covers the sections of the Amending Act that deal with the transfer of property between two persons who have been married to one another or were in a defacto relationship where there has been an irretrievable breakdown of that relationship.

Previously couples whose marriage had irretrievably broken down had to obtain a registered maintenance agreement or Court order under the Family Law Act and be divorced before they could receive a stamp duty exemption on a property settlement. The latest amendments to the Act have removed the requirement that the couple be divorced.

Action has also been taken to give defacto couples who have been in long-term relationships that have broken down a stamp duty exemption on the transfer between themselves of their former matrimonial home and any motor vehicle(s).

The following provides a brief summary of the provisions as they will apply following the breakdown of a marriage or defacto relationship.

MARRIAGE BREAKDOWN

1. A stamp duty exemption is available where the following conditions are satisfied:

A. there must be a transfer which results from a registered maintenance agreement or a Family Court Order.

B. the transfer of property (including a motor vehicle transfer) can only be between the two people who are or have been married to each other; and

C. the marriage must be dissolved (including annulled) OR the Commissioner must be satisfied that the marriage has broken down irretrievably.

The exemption is available in respect of all property specifically provided for in the registered maintenance agreement or Court Order and includes any real property, motor vehicles, shares, units in a unit trust, interests in a licence, etc.

All applications for exemption must be accompanied by a statutory declaration. A sample statutory declaration is available from this Office.

The authority for this exemption is Section 71CA of the Act.

2. If the parties do not have a maintenance agreement registered or have not obtained a Court order, an exemption is still available in respect of an interest in the matrimonial home and/or the transfer of registration of any motor vehicle(s) if the parties satisfy the Commissioner that the marriage has broken down irretrievably.

The stamp duty exemption is not available if property other than the matrimonial home or motor vehicle(s) is transferred in the instrument.

The authority for this exemption is Section 71CB of the Act.

NOTES IN RELATION TO 1. AND 2.

The Commissioner will be satisfied that the marriage has irretrievably broken down if both parties complete a statutory declaration indicating that fact. A sample statutory declaration is available from this Office.

The matrimonial home is defined to be the parties last principal place of residence of which either or both or either is the owner.

DEFACTO RELATIONSHIPS

A defacto relationship for the purpose of this Amendment Act means a relationship where persons have cohabited continuously as defacto husband and wife for at least five years.

Where this type of relationship irretrievably breaks down, a stamp duty exemption is available on the transfer of an interest in the matrimonial home or registration of a motor vehicle(s).

The stamp duty exemption is not available if property **other than** the matrimonial home or motor vehicle(s) is transferred in the instrument.

The Commissioner must be satisfied that the relationship has irretrievably broken down. The statutory declaration must be completed in order to satisfy the Commissioner.

The authority for this exemption is Section 71CB of the Act.

DATE OF OPERATION

These provisions apply in relation to instruments executed after the date of commencement of this Amendment, namely 8 December, 1994.

REFUNDS OF DUTY ALREADY PAID

When the marriage is actually dissolved or annulled a refund of duty will be available for transfers executed prior to 8 December, 1994 that result from a registered maintenance agreement or Family Court order which occurred prior to the marriage being dissolved or annulled.

The Commissioner does not have any power to refund duty on these earlier transactions until the marriage is dissolved or annulled.

14 December, 1994

COMMISSIONER OF STAMPS

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