

Document Type:	Conveyance of Land
Document Name:	Exemptions
Exemption Provision:	Pursuant to 71CBA

Introduction

This Document Guide Note applies to a conveyance of land pursuant to Section 71CBA. This section provides, *inter alia*, an exemption from stamp duty to a transfer of land between former domestic partners (or a trustee of a domestic partner's superannuation fund) who have cohabitated continuously as domestic partners for at least three years and the transfer is consequential upon a:

- certified domestic partnership agreement; or
- property adjustment order

A transfer of land from a company or trust to a domestic partner of the *domestic* relationship pursuant to the *Domestic Partners Property Act 1996* may be exempt from stamp duty. The transfer must be **submitted to the Commissioner for assessment** together with a copy of:

- the Order; and
- a copy of the trust deed (if applicable).

Your submission must also advise:

- the character of the property involved (e.g. the family home);
- the extent that the parties to the marriage own and/or control the company or trust involved (i.e. the extent to which the company itself could be said to be an asset of the domestic relationship);
- the identity and role of any other persons involved in the transfer;
- the identity and role of any other owners or beneficiaries of the company or trust; and
- the relationship between any other persons associated with the transfer and the parties to the domestic relationship.

Domestic partner is defined in the *Domestic Partners Property Act 1996* which states:

domestic partner means:

- a) a person in a registered relationship, and includes:
 - i) A person who is about to enter into a registered relationship; or
 - ii) A person who has been in a registered relationship; or

- b) a person who lives in a close personal relationship, and includes:
- i) a person who is about to enter a close personal relationship; or
 - ii) a person who has lived in a close personal relationship.

Close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include –

- the relationship between a legally married couple; or
- a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind.

Note: Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

Domestic relationship means the relationship between domestic partners.

Certificated domestic partnership agreement has the same meaning as in the *Domestic Partners Property Act 1996*.

Property adjustment order means an order of a court under Part 3 or 4 of the *Domestic Partners Property Act 1996*.

Registered relationship means a relationship that is registered under the *Relationships Register Act 2016*, and includes a corresponding law registered relationship under that Act.

You will need to indicate whether the land is used as **residential** or **non-residential**. For further advice on this refer to the [Document Guide](#) Page.

What documents can I self-determine under this document type?

The document can be in the form of:

- LTO Form T1 - Transfer.
- LTO Form RTC – Application for the Deposit of a Plan of Division

What types of transactions can I self-determine under this document type?

A conveyance of land pursuant to Section 71CBA is deemed **suitable** for self-determination under this document type where:

- the land is being transferred between the former domestic partners;

- the land is being transferred between a domestic partner and a trustee of the domestic partner's superannuation fund or between the trustees of the former domestic partner's superannuation funds;
- a [Section 71CBA Statutory Declaration](#) has been completed by the former domestic partners;
- the transfer of land is consequential upon either a certified domestic partnership agreement or a property adjustment order; and
- the domestic partners had been living in a domestic relationship continuously for at least three years.

The exemption applies regardless of whether or not there is consideration being paid.

The following similar transactions cannot be self-determined under this document type:

A conveyance of property (other than land) pursuant to Section 71CBA, refer to the document type:

[Conveyance of Land | Exemptions | Pursuant to 71CBA](#)

What evidence do I need to retain for audit purposes?

For audit purposes, you will need to retain the following documentation either in paper form or electronic form:

- copy of the documents;
- evidence that a stamp duty determination has been made (i.e. Certificate of Stamp Duty, Document ID or stamped document);
- completed [Section 71CBA Statutory Declaration](#); and
- copy of the certified domestic partnership agreement or the property adjustment order.

What Section(s) of the *Stamp Duties Act 1923* applies?

- Section 71CBA

What stamp duty is payable on this document?

This document is exempt from stamp duty.

Examples

Investment Home transferred between former domestic partners

Dave and Helen who have been living together as domestic partners separated on the 2 January. An investment property is currently registered in both Dave and Helen's names. A property adjustment order directs that the investment property be transferred to Helen.

On 15 January the following year, Dave and Helen executed a Transfer evidencing the above arrangement and a [Section 71CBA Statutory Declaration](#) stating that the relationship has irretrievably broken down.

The document is self-determined under this document type as **Exempt**.

Land transferred pursuant to a Property Adjustment Order from a trustee of a domestic partner's superannuation fund to a spouse of the domestic relationship

Rodney and Belinda were domestic partners and it is considered that their domestic relationship has broken down irretrievably. Rodney and Belinda have agreed upon the distribution of their assets and have obtained a Property Adjustment Order that details the distribution of their assets.

The Property Adjustment Order states that the trustee of Rodney's superannuation fund transfer certain land to Belinda.

Rodney and Belinda have executed a [Section 71CBA Statutory Declaration](#), stating that their domestic relationship has irretrievably broken down.

The document is self-determined under this document type as **Exempt**.

Land transferred pursuant to a Certified Domestic Partnership Agreement from a domestic partner to a trustee of a domestic partner's superannuation fund

Tony & Ellen were domestic partners and it is considered that their domestic relationship has broken down irretrievably. Tony and Ellen have agreed upon the distribution of their assets and have entered into a Certified Domestic Partnership Agreement that details the distribution of their assets.

The Certified Domestic Partnership Agreement states that Ellen transfer certain land to the trustee of Tony's superannuation fund.

Tony and Ellen have executed a [Section 71CBA Statutory Declaration](#), stating that their domestic relationship has irretrievably broken down.

The document is self-determined under this document type as **Exempt**.

Land transferred pursuant to a Property Adjustment Order from a trustee of a domestic partner's superannuation fund to a trustee of the other domestic partner's superannuation fund.

Adam and Kate were domestic partners and it is considered that their relationship has broken down. A Property Adjustment Order directs that a certain land be transferred from the trustee of Adam's superannuation fund to the trustee of Kate's superannuation fund.

Adam and Kate have executed a [Section 71CBA Statutory Declaration](#), stating that their domestic relationship has irretrievably broken down.

The document is self-determined under this document type as **Exempt**.

Land transferred pursuant to a Property Adjustment Order between former same sex domestic partners

Drew and Toby have been living together for over 4 years in a domestic relationship. They own a house together but have now separated. A property adjustment order directs that this property be transferred to Drew.

Drew and Toby execute a Transfer pursuant to this order and complete a [Section 71CBA statutory declaration](#) stating that their relationship has irretrievably broken down.

The document is self-determined under this document type as **Exempt**.

Version History

Version No.	Release Date
1	May 2018
2	November 2018
3	July 2019