

Document Type:	Conveyance of Land
Document Name:	Exemptions
Exemption Provision:	Pursuant to a Will or Intestacy

## Introduction

This Document Guide Note refers to a conveyance of land pursuant to Section 71(5)(h). This section provides an exemption from *ad valorem* voluntary conveyance stamp duty on:

- the conveyance of property to an executor or administrator of a deceased person's estate;
- the conveyance of property to the beneficiaries of the deceased person's estate pursuant to the terms of the will of the deceased; or
- the conveyance of property to the beneficiaries of the deceased person's estate pursuant to the laws of intestacy.

A Court Order pursuant to the *Inheritance (Family Provisions) Act 1972* or the *Wills Act 1936* and which amends the terms of a will is regarded as a codicil to the will. A conveyance of land pursuant to a Court Order of this type can be self-determined under this document type. If the transfer is pursuant to a Court Order other than *the Inheritance (Family Provisions) Act 1972* or the *Wills Act 1936*, it must be **submitted to the Commissioner for assessment**.

If the transfer is within these criteria it is exempt from stamp duty. An 'Application to Transfer the Registration of a Motor Vehicle' to a beneficiary, is exempt from stamp duty, and must be self-determined under the document type:

[Exemptions - Transfer of Motor Vehicle | Pursuant to a Will or Intestacy](#)

The sale of any land by the executor or administrator to a beneficiary or another person is liable to *ad valorem* conveyance stamp duty. In some cases, there may be more than one beneficiary entitled to the land and an agreement is reached whereby one beneficiary (or the beneficiary with another person) will purchase the interests of the other beneficiaries. This can be effected on one document, rather than by a two document series.

If this is effected on **one document**, the transaction must be self-determined under this document type:

[Conveyance of Land | Residential Land/Primary Production Land](#)

[Conveyance of Land | Qualifying Land](#)

The document is not required to be self-determined Exempt for the interest transferred to the beneficiary. A **two document series** would firstly involve a transfer to all the beneficiaries entitled pursuant to the terms of the will followed by a second transfer from those beneficiaries that are selling their entitlement to one of the other beneficiaries (or the beneficiary with another person).

The document must be self-determined under the document type:

[Conveyance of Land | Residential Land/Primary Production Land](#)

[Conveyance of Land | Qualifying Land](#)

If a beneficiary of an intestate estate **disclaims** an interest in the estate, the disclaimer document must be **submitted to the Commissioner for assessment**.

A Transmission Application or an Application to Note Death is not required to be self-determined on RevenueSA Online.

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.

This exemption applies where the beneficiary under the will takes the property as a trustee, e.g., the will directs the property to the ABC Family Trust. A transfer is drawn from the executor to a person who takes the property as trustee of the ABC Family Trust. The transfer is self-determined under this document type.

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

The document can be in the form of:

- LTO Form T1 - Transfer; or
- any other document that conveys an interest in land pursuant to the terms of a will or the laws of intestacy.

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

A conveyance of land pursuant to the terms of a will, or the laws of intestacy, is deemed **suitable** for self-determination under this document type where:

- the conveyance is, pursuant to the terms of the will, or the laws of intestacy;
- there is **no** consideration passing between the parties;
- the property is conveyed to the beneficiary pursuant to the terms of the will, or the laws of intestacy, and to no other party; and
- the conveyance is **not** pursuant to a Deed of Family Arrangement.

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

A transfer of land pursuant to a Deed of Family Arrangement must be **submitted to the Commissioner for assessment** together with a copy of the will, a copy of the Deed of Family Arrangement and a detailed description of the transaction.

Note: All Deeds of Family Arrangement are to be **submitted to the Commissioner for assessment**.

## 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:

- a copy of the documents;
- evidence that a stamp duty determination has been made (i.e. Certificate of Stamp Duty, Document ID or stamped document);
- a copy of the will of the deceased or an explanation as to how the beneficiary is entitled to the property pursuant to the laws of intestacy;
- evidence of the market value of the land as at the date of conveyance – where an interest is conveyed that is **not** pursuant to the terms of the will of the deceased;
- a copy of the contract for sale and purchase of the land (if applicable); and
- a copy of the Court Order pursuant to the *Inheritance (Family Provisions) Act 1972* or the *Wills Act 1936* (if applicable).

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

- Section 71(5)(h)
- Section 71A
- Schedule 2, Part 2, General Exemption 29

## What stamp duty is payable on this document?

Where the land is being conveyed to all of the beneficiaries entitled to the land in accordance with the terms of the will, or the laws of intestacy, the document is **Exempt**.

Where the transfer to a beneficiary involves both a part interest transferred pursuant to the terms of a will and a part interest either for consideration or no consideration, the transaction must be self-determined under the document type:

[Conveyance of Land | Residential Land/Primary Production Land](#)

[Conveyance of Land | Qualifying Land](#)

## Examples

### Conveyance to beneficiaries pursuant to terms of will

Ann has been appointed the executor of Bob's estate. Pursuant to Bob's will, his net estate, which includes land, is bequeathed to Kate and Dave equally.

The consideration panel in the Transfer (from Ann, as executor to Kate and Dave) recites 'pursuant to the terms of the will of Bob deceased'.

As the conditions of Section 71(5)(h) have been satisfied, the document is self-determined under this document type as **Exempt**.

### Conveyance to a beneficiary pursuant to the terms of the will and some other person

Hugh has been appointed the executor of Fred's estate. Pursuant to Fred's will, his land is bequeathed to Pam. Pam has requested the executor to include her son John on the transfer, for a consideration of \$50 000 payable by John.

There are two conveyances involved here. Firstly the transfer of a half interest pursuant to the terms of the will, and secondly, a transfer of a half interest for a consideration of \$50,000.

The transfer is self-determined with *ad valorem* conveyance stamp duty on the **consideration** or **market value** of the half interest for the land, WHICHEVER IS THE GREATER. This document is entered under the document type:

[Conveyance of Land | Residential Land/Primary Production Land](#)

[Conveyance of Land | Qualifying Land](#)

## Beneficiary takes land in lieu of money

Tom's will directs his executor to convert his estate to money and distribute this equally to his beneficiaries John, Kate and Lisa. The beneficiaries have agreed with the executor that John will take land equivalent in value of his entitlement in lieu of money.

This transfer is **Exempt** from *ad valorem* duty pursuant to Section 71A as an *in specie* distribution.

## Version History

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