

REVENUE RULING NO. SD 199

COMMON ENQUIRIES MADE BY SENIOR CITIZENS CONCERNING STAMP DUTIES

PREAMBLE

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This Ruling deals with several of the common enquiries received by the Office of State Revenue from senior citizens in the community.

- It also explains the evidence required to enable the Office to deal with such matters.

RULING

- **The transfer of property to joint names**

Section 66E of the Stamp Duties Act provides for relief from stamp duty where a person may wish to transfer an interest in property, which is his or her principal place of residence, to a spouse, so as to hold the property jointly.

- The Section exempts from stamp duty certain conveyances of property where as a result of the conveyance the property is held by a married couple, which includes a de facto married couple, as joint tenants, tenants in common in equal shares and in some instances not in equal shares. There is also provision for relief from stamp duty, similar to above, where vacant land was purchased and a dwelling house subsequently erected on the property (Section 66E(3)).
- A statutory declaration should be lodged with the conveyance explaining the nature of the conveyance and confirming that the property has erected on it a private dwelling house and was the couple's principal place of residence as at the date of transfer.
- It should be noted that a transfer of property not coming under the above provisions will usually attract ad valorem stamp duty.

Death Duty

- Some persons are not aware that Death Duty is no longer payable in New South Wales. Death Duty was abolished in respect of estates of persons dying on or after 31 December, 1981.
- However if property is held in the name of a deceased person who died prior to 31 December, 1981, a clearance must be obtained from the Office of State Revenue, in order to transfer or deal with the property.

Requirements in respect of Real Property upon the Death of a joint

tenant, who died on or after 31 December 1981

- There is no requirement to attend the Office of State Revenue upon the death of a joint tenant. The only Department involved is the Land Titles Office. The Title Deeds and a "Notice of Death" should be lodged at the Land Titles Office together with the original death certificate.
- **Share transfers to a beneficiary of a deceased estate**

When shares are being transferred to the person beneficially entitled thereto under and in conformity with the trusts contained in a will or arising on an intestacy, a copy of the will should be lodged with the documents, or, if there is no will, a statutory declaration should be filed stating details of the persons entitled upon intestacy. The stamp duty is calculated at the rate of 6 cents for every \$10 (or part thereof) of the value of the shares as at the date of the transfer, with a minimum of \$2 and a maximum of \$10 payable on each transfer. The value of the shares in a public company will be calculated on the Stock Exchange quotes in the daily press. The stamp duty on shares in a private company or a company not quoted on the stock exchange should be assessed on an estimate of the value of the shares and a copy of the latest balance sheet of the company should be produced. However, the maximum stamp duty of \$10 on each transfer will be accepted in lieu of any evidence of value of the shares, if applicants choose not to provide it.

Exemption from stamp duty - leases of accommodation for aged

- There is no stamp duty payable on any residential lease which does not exceed a term (or a term together with any option period) of 5 years (Section 78F of the Stamp Duties Act) as well as **any** lease where the sole consideration is a rent of not more than \$3,000 per annum. In addition Section 78FA of the Stamp Duties Act provides for an exemption from stamp duty in respect of a lease granted by or on behalf of a corporation, society or institution if the purpose of the lease is to grant a retired or a disabled person the right to occupy a residence and the lease has not been granted for profit by the lessor.
- The Section goes on to define "disabled person" and "retired person", as follows -

"disabled person" means a person who has attained the age of 16 years and who is:

(a) permanently blind; or

(b) permanently incapacitated for work;

"retired person" means a person who has attained the age of 55 years or who has retired from full-time employment and includes a person who is or was the spouse or the de facto partner (within the meaning of the De Facto Relationships Act 1984) of such a person.

- Although Section 78FA of the Stamp Duties Act refers to leases not granted for profit, there are many nursing homes operated by other organisations whose leases are relieved from stamp duty.

The Federal Government has introduced legislation that will require the proprietors of nursing homes, approved under Part V of the National Health Act 1953, to enter into a standard written agreement.

Effective from 1 September 1991 these agreements are exempt from stamp duty.

Share Transfers generally

- Share transfer forms are not available at the Office of State Revenue. They may be obtained from a Stationer and should be fully completed prior to attending this Office for stamping.
- Share transfers are normally only liable to New South Wales stamp duty if the shares are on a register in New South Wales. In other instances they should be forwarded to the Stamp Duties Office of the State involved.
- After stamping, the share transfer and the share scrip should be forwarded to the appropriate share registrar of the particular company.

Transmission Applications - in respect of persons who have died on or after 31 December 1981

- A Transmission Application whereby an **executor** of a deceased estate is to become the registered proprietor of property is similar to a "Notice of Death" previously mentioned. There is no requirement to attend the Office of State Revenue. The Application should be forwarded to the Land Titles Office together with the title deeds.
- Transmission Applications for transfer of property to a **beneficiary** will usually be liable to \$10 stamp duty and should be lodged at this Office together with a copy of the Will of the deceased. If the deceased did not leave a will, evidence as to the beneficiaries entitled should be lodged. The Death Certificate may suffice.

A consent by an executor to a transmission application to a devisee is also liable to \$10 stamp duty.

B. BUCHANAN,
for Chief Commissioner of Stamp Duties
21 November 1991.

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