



Transactions Related to the Break-Up of a Marriage or De Facto Relationship

Sections 128 – 133 of the *Duties Act 2008*

As at 1 July 2008

Introduction

After the breakdown of a marriage or de facto relationship, dutiable transactions often occur to distribute property to the parties to the relationship. These transactions may be chargeable with nominal transfer duty if certain criteria are met. If these criteria are not met, transfer duty will be charged at either the general rate or a concessional rate, as the case may be.

When nominal duty is chargeable

Matrimonial instrument

Nominal duty is chargeable on a dutiable transaction to the extent that it is effected by, or is in accordance with, a matrimonial instrument if:

- the parties to the marriage are separated or divorced or the marriage has irretrievably broken down; and
- the property of either or both of the parties to the marriage (which may include superannuation) is being transferred to either or both of the parties to the marriage, a child of either of the parties or a trustee of such a child, or a trustee of a superannuation fund.

A '**matrimonial instrument**' is a maintenance agreement registered or approved under section 86 or 87 of the *Family Law Act 1975* ('the FLA'), a financial agreement under section 90B, 90C or 90D of the FLA, a splitting agreement under Part VIII B of the FLA, or an order of a court under the FLA.

It should be noted that the property of either or both of the parties does not include property owned by companies or unit trusts in which either or both of the parties own some or all of the shares or units. For example, if a husband and wife own all the shares in a company that owns land, it is considered that the land is the property of the company and not of the husband and wife.

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De facto relationship instrument

Nominal duty is chargeable on a dutiable transaction to the extent that it is effected by, or is in accordance with, a de facto relationship instrument if:

- the de facto relationship between the de facto partners has ended; and
- the property of either or both of the partners to the de facto relationship (which does not include superannuation) is being transferred to either or both of the de facto partners to the relationship, or a child of either of the partners or a trustee of such a child.

A '**de facto relationship instrument**' is a financial agreement or a former financial agreement under section 205T of the *Family Court Act 1997* ('the FCA'), or a court order under Part 5A of the FCA or a Commonwealth, State or Territory law that substantially corresponds to Part 5A of the FCA.

It should be noted that a transfer of dutiable property to a trustee of a superannuation fund made pursuant to a de facto relationship instrument **will not** be charged with nominal duty.

Further, the property of either or both of the parties does not include property owned by companies or unit trusts in which either or both of the parties own some or all of the shares or units. For example, if de facto partners own all the shares in a company that owns land, it is considered that the land is the property of the company and not of the de facto partners.

Matrimonial and de facto relationship instruments are exempt from duty

Section 113 of the *Duties Act 2008* ('Duties Act') provides an exemption for a dutiable transaction to the extent that it is effected by certain matrimonial or de facto relationship instruments. For example, if under a financial agreement entered into during a marriage, a husband agrees to transfer dutiable property to his wife if the marriage ends, duty is not chargeable in respect of that dutiable transaction contained in the financial agreement.

However, the actual transfer of dutiable property to the wife if the marriage does come to an end, provided the criteria is met as set out in sections 128 – 133 of the Duties Act, will be chargeable with nominal duty.

How to apply

In order for a dutiable transaction to be charged with nominal duty, the relevant transaction record, together with a copy of the matrimonial or de facto relationship instrument, must be lodged with the Commissioner of State Revenue. It will also be necessary for evidence to be provided that the marriage or de facto relationship has ended (this may be a statutory declaration).

An application may also be made for a dutiable transaction to be reassessed with nominal duty where the dutiable transaction has been charged with transfer duty at the general or concessional rate, and a matrimonial or de facto relationship instrument comes into existence within 12 months after the liability to duty on the dutiable transaction arose. For further information refer to Circular 92 – Transactions Related to the Break-Up of a Marriage or De facto Relationship available from the Office of State Revenue website at www.osr.wa.gov.au

Contact the Office of State Revenue

Office	Plaza Level 200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
Office hours	8:00 am – 5:00 pm Monday to Friday	Facsimile	(08) 9226 0834
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	Web Enquiry Website	www.osr.wa.gov.au/DutiesEnquiry www.osr.wa.gov.au

Note: The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.