



Transfer of Residential Property

Chapter 2 of the *Duties Act 2008*

As at 28 June 2016

Introduction

An eligible transaction involving land that is residential property will, upon application, be charged with transfer duty at the applicable residential concessional rate as set out in sections 147 A – G or section 147 of the *Duties Act 2008* ('Duties Act'). The rates apply to property used as a residence or land on which a residence is constructed within five years of the date on which liability to duty on the transaction arose.

Properties that are only partly used as a residence, for example, a restaurant with a residence above it, will also qualify for the residential rate of duty.

First homebuyers should refer to Duties Fact Sheet '[First Home Owner Rate of Duty](#)' to ascertain if their transaction qualifies for the first home owner rate ('FHOR') of duty. A transaction that is not eligible to be assessed at the FHOR may still be eligible for the residential rate of duty.

Terms used

Residential property means land in Western Australia, if at the date the liability to duty arose:

- there is a residence on the land; or
- the taxpayer has begun construction of a residence on the land; or
- the taxpayer has entered into a contract for the construction of a residence on the land; or
- the taxpayer has entered into a contract to purchase a movable building that will be affixed to the land and be used as a residence,

irrespective of whether the land is also used for another purpose.

A **residence** means a building, or part of a building, that:

- may lawfully be used; and
- in the Commissioner's opinion, is suitable to be used; and
- is intended by the taxpayer to be used;

as a place of residence for one or more individuals.

Residential rate of duty

The residential rate of transfer duty applies to an eligible transaction the subject of which is residential property. An *eligible transaction* is a transfer, an agreement to transfer, or a vesting by court order, of land in Western Australia.

Examples of circumstances where land is not residential property include situations where:

- the building has not been approved by the relevant local government for use as a residence; or

- the land included a residence at the time of purchase, but the transfer is subject to rezoning approval being obtained that indicates that the transferee does not intend for the property to be used as a place of residence.

Concessional rate of duty

The concessional rate of duty may be applied to an eligible transaction where:

- the dutiable property includes a dwelling house; and
- the dutiable value of the dutiable property does not exceed \$200,000; and
- the dutiable property has not been received as a gift; and
- the dutiable property is to be transferred to an *eligible purchaser*, or a combination of eligible purchasers and government bodies. An *eligible purchaser* is a person who:
 - occupies or will occupy the property as their principal place of residence for an indefinite period; and
 - is not acquiring, and does not intend to hold, the property as agent, trustee or otherwise on behalf of another person unless they are a trustee (as defined in clause 1 of the Glossary to the *Land Tax Assessment Act 2002*) acquiring property on behalf of one or more disabled beneficiaries if at least one beneficiary occupies or will occupy the property as their principal place of residence.

Residential rate on vacant land

Duty is chargeable at the general rate of transfer duty where, at the time the vacant land was acquired, the purchaser had not:

- commenced construction of a residence;
- entered into a contract for the construction of a residence; or
- entered into a contract to purchase a movable building that will be affixed to the vacant land.

An application for a reassessment at the residential rate of duty may be made if any of these actions commence within five years from the day on which the liability to duty arose (for example, execution date of the offer and acceptance to purchase the land).

An application must be made using Form FDA11 '[Residential Rate](#)' within five years of the original transaction or within 12 months of the date on which construction began or the contract was entered into, whichever is later.

Transfer duty rates

Residential rate

\$0 – \$120,000		\$1.90	per \$100 or part thereof
\$120,001 – \$150,000	\$2,280 +	\$2.85	per \$100 or part thereof above \$120,000
\$150,001 – \$360,000	\$3,135 +	\$3.80	per \$100 or part thereof above \$150,000
\$360,001 – \$725,000	\$11,115 +	\$4.75	per \$100 or part thereof above \$360,000
\$725,001 and upwards	\$28,453 +	\$5.15	per \$100 or part thereof above \$725,000

Concessional rate

\$ 0 – \$100,000		\$1.50	per \$100 or part thereof
\$ 100,001 – \$200,000	\$1,500 +	\$4.39	per \$100 or part thereof above \$ 100,000

General rate

\$0 – \$80,000		\$1.90	per \$100 or part thereof
\$80,001 – \$100,000	\$1,520 +	\$2.85	per \$100 or part thereof above \$80,000
\$100,001 – \$250,000	\$2,090 +	\$3.80	per \$100 or part thereof above \$100,000
\$250,001 – \$500,000	\$7,790 +	\$4.75	per \$100 or part thereof above \$250,000
\$500,001 and upwards	\$19,665 +	\$5.15	per \$100 or part thereof above \$500,000

Lodgment requirements

The Duties Act requires an instrument in hard copy form that effects or evidences a dutiable transaction to be lodged by the party responsible for the payment of the duty (usually the purchaser or transferee) within two months of the date liability for duty arises, or Form FDA18 '[Transfer Duty Statement](#)' where there is no hard copy instrument. See Duties Fact Sheet '[Lodgment and Payment Requirements](#)' for more information.

Important information

It is important that the intended purchaser be clearly established before entering into a dutiable transaction, as any subsequent variation of the purchaser may result in further transfer duty being payable.

Purchaser

Details of the purchaser of the dutiable property must be provided in full. Information must include whether the property is to be held as joint tenants or tenants in common. In the case of tenants in common, the percentage of each party's ownership must be clearly stated. If this is not disclosed, it will be presumed that the ownership is to be as tenants in common in equal shares.

If the purchaser is acting as a trustee for a trust, disclosure of the trustee and trust on the agreement at the time the agreement is entered into will assist in avoiding additional duty.

Transfer Under Agency Relationship

Where an agency relationship is disclosed in the agreement, and the principal and agent are clearly identified, the subsequent transfer of land in the name of the principal will not incur additional duty. However, in circumstances where the agency relationship is not clearly identified, additional transfer duty may be payable.

Substituted Transferee

In certain circumstances, relief from additional transfer duty may be available where the person named as transferee in a transfer of land differs from the person named in the agreement for purchase as the purchaser. It is necessary to submit the agreement for transfer (for example, offer and acceptance) and transfer of land form together with Form FDA14 '[Substituted Transferees](#)'. For more information, see Duties Fact Sheet '[Substituted Transferees](#)'.

Further Duty Payable

Further transfer duty may be incurred when a transfer (such as a transfer of land) is not in accordance with the agreement for the transfer of dutiable property (for example, if there is a different purchaser or a different percentage of ownership) or if the new purchaser is not recognised as the principal under an agency relationship or as a substituted transferee.

Contact the Office of State Revenue

Office	200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country callers only – local call charge)
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.