



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

Sections 128 – 133 and 205Y of the *Duties Act 2008*

As at 1 January 2019

Introduction

After the breakdown of a marriage or de facto relationship, dutiable transactions often result in the distribution of property to the parties to the relationship. These transactions are chargeable with nominal transfer duty if certain criteria are met. Where these criteria are not met, transfer duty will be charged at either the general rate or a concessional rate.

Transactions that qualify for nominal duty under section 128 – 133 of the Duties Act will be exempt from foreign transfer duty.

Terms used

A *child* means a person who is under 18 years of age.

A *de facto relationship* means a de facto relationship that falls within the *Family Court Act 1997* ('FCA') section 205Z(1)(a), (b) or (c).

A *matrimonial instrument* is:

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

A *de facto relationship instrument* is:

- a financial agreement or a former financial agreement under section 205T of the FCA ('de facto financial agreement'); 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.

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 parties to the marriage (which may include a superannuation interest) is transferred to either or both parties to the marriage, a child of either party or a trustee of such a child, or a trustee of a superannuation fund.

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 partners to the de facto relationship (which does not include superannuation) is transferred to either or both partners, or a child of either partner or a trustee of such a child.

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.

Revenue Ruling [DA 15 'Transfer of Matrimonial or De Facto Relationship Property Involving a Trust or Company'](#) provides further information relating to property of either or both parties to the marriage or de facto relationship that may include property owned by companies, discretionary trusts or unit trusts. Certain transactions relating to property held by a trust or a company, which is taken to be the *alter ego* of the parties to the marriage or de facto relationship, may also be eligible for nominal duty.

Endorsement of matrimonial and de facto relationship instruments

Section 113 of the *Duties Act 2008* ('Duties Act') provides an exemption for a dutiable transaction to the extent that it is effected by a:

- matrimonial financial agreement;
- splitting agreement; or
- de facto financial agreement.

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 exempt in respect of that agreement. However, the actual transfer of that dutiable property will be chargeable with nominal duty provided the criteria as set out in sections 128 – 133 of the Duties Act is met.

How to apply

To apply for 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 within two months after the date that liability for duty on the dutiable transaction arises. Evidence that the marriage or de facto relationship has ended must also be provided.

Transactions involving the land (or any interest in land), must be accompanied by a completed [Form FDA41 'Foreign Transfer Duty Declaration'](#) for each person or entity receiving the land.

Where a dutiable transaction has been assessed for transfer duty at the general or concessional rate, an application for reassessment at the nominal rate of duty can be made where:

- a matrimonial or de facto relationship instrument comes into existence within 12 months after liability to duty on the dutiable transaction arose (generally the date of the contract for sale or transfer of land which was subject to duty); and
- the application for reassessment is made within five years from the date the matrimonial or de facto relationship instrument comes into existence.

The [Duties Information Requirements](#) set out the standard information that should accompany the transaction record in order to determine the correct transfer duty application to the transaction.

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	www.osr.wa.gov.au/DutiesEnquiry
		Website	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.