



## Transfer of Land by Seizure and Sale Order

This Commissioner's practice outlines how the Commissioner will assess the duty liability relating to the sale of property by a property (seizure and sale) order where a purchaser agrees to assume the liabilities of the vendor.

A property (seizure and sale) order authorises a bailiff to seize and sell as much of the judgment debtor's real or personal property as necessary to satisfy the judgment debt wholly or partially.<sup>1</sup>

### Background

#### *Duties Act*

Section 11(1) of the *Duties Act 2008* ('Duties Act') defines a dutiable transaction as a transfer of dutiable property or an agreement for the transfer of dutiable property, whether conditional or not.

Section 23(1) of the Duties Act provides that, within two months after the day on which liability for duty on the transaction arises, the person liable to pay duty on a dutiable transaction must lodge –

- (a) if the transaction is effected by an instrument in hard copy form – that instrument, and if there is more than one such instrument, each of them or
- (b) if the transaction is not effected by an instrument in hard copy form – an instrument in hard copy form that evidences the transaction, and if there is more than one such instrument, each of them, or a transfer duty statement for the transaction.

Division 5 of Chapter 2 of the Duties Act sets out how the dutiable value of dutiable transactions will be determined.

Unless otherwise provided for in Chapter 2 of the Duties Act, section 27 of the Duties Act provides that the dutiable value of a dutiable transaction is:

- (a) the consideration for the dutiable transaction or
- (b) the unencumbered value of the dutiable property the subject of the transaction when liability for duty on the transaction arises if –
  - (i) there is no consideration for the transaction or
  - (ii) the consideration cannot be ascertained when liability for duty on the transaction arises or
  - (iii) the unencumbered value is greater than the consideration for the transaction.

<sup>1</sup> A fact sheet about property (seizure and sale) orders is accessible online at [www.magistratescourt.wa.gov.au/files/Civil\\_factsheet\\_27.pdf](http://www.magistratescourt.wa.gov.au/files/Civil_factsheet_27.pdf)

The consideration for a dutiable transaction is provided for in section 30(1) of the Duties Act as including –

- (a) the amount of any liabilities assumed under the transaction, including an obligation, whether contingent or otherwise, to pay any unpaid purchase money payable under an agreement for the transfer of dutiable property and
- (b) the amount or value of any debt to the extent it is released or extinguished under the transaction.

Under section 36(1) of the Duties Act, the unencumbered value of property is the value of the property determined without regard to any encumbrance to which the property is subject, whether contingently or otherwise. Section 36(4)(b) of the Duties Act provides that, in applying the ordinary principles of valuation in order to determine the unencumbered value of property, it is to be assumed that a hypothetical purchaser would, when negotiating the price of property, have knowledge of all existing information relating to the property.

The instrument that effects the dutiable transaction may not accurately reflect the full consideration for the transaction because it may not include the amount of any liabilities assumed under the transaction.

### ***Taxation Administration Act***

Section 21 of the *Taxation Administration Act 2003* ('TAA') provides that the Commissioner may require a taxpayer to provide a written valuation by a *qualified valuer*<sup>2</sup> of the property, consideration or benefit, together with any documents or other records in the taxpayer's possession or control relevant to determining the value of the property, consideration or benefit.

Section 22 of the TAA provides that, regardless of whether the Commissioner has required the taxpayer to provide a valuation or whether the taxpayer has complied with such a requirement, the Commissioner may:

- (a) have a valuation made of any property, consideration or benefit or
- (b) adopt any available valuation of the property, consideration or benefit that the Commissioner considers appropriate.

### ***Application of other practices***

Commissioner's Practice [TAA 30 'Valuation of Land for Duties Purposes'](#) outlines the circumstances in which the Commissioner will obtain a valuation of residential or commercial land for duties purposes.

### **Commissioner's Practice**

1. Where the transfer of dutiable property is effected by a property (seizure and sale) order, the instrument effecting the transaction must be lodged regardless of whether the consideration for the transaction is paid or given or is required to be paid or given.

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<sup>2</sup> A *qualified valuer* is defined in the TAA as meaning a person licensed or registered under the *Land Valuers Licensing Act 1978* or a corresponding Act in another State or Territory, or a person who the Commissioner is satisfied is suitably qualified or experienced to provide a valuation.

2. A property (seizure and sale) order that is submitted for an assessment of duty should be accompanied by a completed 'Duties Document Lodgment and Assessment Form'.<sup>3</sup>
3. If the consideration stated on the property (seizure and sale) order does not reflect the full consideration for the transaction including all assumed liabilities, the taxpayer must provide a statement detailing the full extent of the liabilities that are assumed with the order.
4. The statement (referred to in paragraph 3) that details the full extent of the assumed liabilities should include amounts such as the cost of discharging the mortgage, and may be in the form of a statement of liabilities provided by a bailiff or a final settlement statement that details the total amount to be paid at settlement and the disbursement of these funds.
5. If the consideration stated on the property (seizure and sale) order reflects the full consideration for the transaction and no additional liabilities are assumed, the taxpayer must provide a statement confirming that no additional liabilities are assumed with the order.
6. The Commissioner will obtain a valuation of the property the subject of a property (seizure and sale) order following submission by the taxpayer of a completed valuation form, or alternatively consider a written valuation from a qualified valuer provided by the taxpayer.
7. Duty will be imposed on the consideration for the dutiable transaction or the unencumbered value of the dutiable property, whichever is the greater.

### Date of Effect

This Commissioner's practice takes effect from 8 May 2015.

Nicki Godecke  
 COMMISSIONER OF STATE REVENUE  
 8 May 2015

### Commissioner's Practice History

Document	Issued	Dates of effect	
		From	To
DA 33.0	16 September 2014	16 September 2014	7 May 2015
DA 33.1	8 May 2015	8 May 2015	Current

<sup>3</sup> The 'Duties Document Lodgment and Assessment Form' is available from the website at <https://www.wa.gov.au/government/publications/duties-form-fda0>