



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 30 September 2022

After the breakdown of a marriage or de facto relationship, property is often distributed to the parties of the relationship. If certain criteria are met, the transactions to distribute the property are chargeable with nominal transfer duty. Otherwise, transfer duty is charged at the general rate.

Transactions that qualify for nominal duty under sections 128 – 133 of the *Duties Act 2008* (Duties Act) are 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 section 205Z(1)(a), (b) or (c) of the *Family Court Act 1997*¹ (FCA).

A *matrimonial instrument*, to the extent it involves matrimonial property, is:

- a maintenance agreement registered or approved under section 86 or 87 of the *Family Law Act 1975* (Cth)² (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.

A *de facto relationship instrument*, to the extent it involves de facto relationship property, is:

- a financial agreement or a former financial agreement under section 205T of the FCA
- a court order under Part 5A of the FCA or Part VIII C of the FLA, or a Commonwealth, State or Territory law that substantially corresponds to Part 5A of the FCA or Part VIII C of the FLA, or
- a splitting agreement if it is:
 - a superannuation agreement (defined by 90YK of the FLA) that has effect under Part VIII C of the FLA or
 - a flag lifting agreement (defined by section 90YS of the FLA) that has effect under Part VIII C of the FLA.

Matrimonial property is property of the parties to the marriage, including a superannuation interest as defined in section 90XD of the FLA.

De facto relationship property is property of the parties to the de facto relationship and includes a superannuation interest as defined in section 90YD of the FLA.

¹ Access the Family Court Act from https://www.legislation.wa.gov.au/legislation/statutes.nsf/law_a1839.html

² Access the Family Law Act from <https://www.legislation.gov.au/Details/C2020C00374>

Revenue Ruling [DA 15 'Transfer of Matrimonial or De Facto Relationship Property Involving a Trust or Company'](#) provides information about property held by certain companies and trusts that is taken to be matrimonial or de facto relationship property.

Matrimonial and de facto relationship instruments

A dutiable transaction is exempt from duty under section 113 of the Duties Act to the extent that it is effected by a matrimonial or de facto relationship instrument.³ Transfers of land made in accordance with these instruments will be chargeable with nominal duty if:

- the relationship between the parties has irrevocably broken down
- the transfer relates to property of the marriage or de facto relationship and
- the property is transferred to either or both parties to the relationship, their children or children's trustee, or a trustee of their superannuation funds.

Example 1 – Family court order

Colin and Polly were married to each other and are jointly registered on the title to their family home. After their marriage irretrievably broke down, a family court order was issued that states Colin is to transfer his interest in the family home to Polly. Polly's agent submits the family court order and a transfer of land for duty assessment.

The court order providing for the transfer is exempt from duty. The transfer of land is chargeable with nominal duty.

Example 2 – Family court order

Kelly and Jacinta are de facto partners who are registered on the title to two properties. Their de facto relationship recently ended and a court order was issued to transfer one of the properties to Kelly and the other to Jacinta. Two transfers of land were prepared reflecting this.

The court order providing for the transfers is exempt from duty. Each transfer of land is chargeable with nominal duty.

Example 3 – Family court order to eligible and non-eligible parties

Jane and Mike were de facto partners who, as joint tenants, owned their family home and an investment property.

After they separated, Jane and Mike apply for consent orders to effect the split of their property following separation. Under the orders, Jane is to transfer her interest in the investment property to Mike and Mike is to transfer his interest in the family home to Jane and Jane's parents.

The court order providing for the transfers is exempt from duty. The transfer of Jane's interest in the investment property to Mike is charged with nominal duty. The transfer of Mike's interest in the family home to Jane and Jane's parents is chargeable with nominal duty plus duty at the general rate on the interest Jane's parents are receiving because they are not a party to the relationship.

Example 4 – financial agreement

During their marriage, Jim and Erin enter into a financial agreement that provides for the transfer of their family home to Jim if their marriage ends. When they divorce a few years later, they transfer the family home to Jim in accordance with the agreement.

The financial agreement giving rise to the transfer is exempt from duty. The transfer of land is chargeable with nominal duty.

³ As defined in the Duties Act ss 129(b) 129(c) and 130(a).

How to apply for nominal duty

Lodge the transfer of land, together with either the court order or the relevant agreement, within two months of it being created, along with the documents listed in the [Duties Information Requirements](#).⁴

Unless the instrument is a court order or maintenance agreement, you must provide evidence the relationship has ended.

If the transaction involves land or an interest in land, provide a completed [Form FDA41 'Foreign Transfer Duty Declaration'](#) for each person or entity receiving an interest in land.

If the transaction involves business assets, provide a completed [Form FDA18 'Transfer Duty Statement'](#).

Reassessments and refunds

When a transaction has been assessed for full transfer duty at the general rate, you can apply for reassessment at the nominal rate of duty if:

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

Example 5 - Reassessment and refund

Michael and Joanne have separated and agreed that Joanne will retain their jointly-owned family home on condition that she will refinance the mortgage into her own name, absolving Michael from further liability.

To enable the bank to refinance the mortgage quickly, Michael transferred his share of the property to Joanne, who paid full transfer duty on the transaction.

They applied to the Family Court for a consent order to confirm their agreement. The order was issued within 12 months of the date of transfer.

Joanne applied for a reassessment of duty on the transfer of Michael's share of the property. The transaction was reassessed at the nominal rate and the balance of duty previously paid was refunded to Joanne.

Contact RevenueWA

Web Enquiry	www.osr.wa.gov.au/DutiesEnquiry	Website	WA.gov.au
Office	200 St Georges Terrace Perth WA 6000	Phone	(08) 9262 1100 1300 368 364 (WA country landline callers)
Postal	GPO Box T1600 Perth WA 6845		

Note: This fact sheet provides guidance only. Refer to the Duties Act 2008 for complete details.

⁴ <https://www.wa.gov.au/government/multi-step-guides/duties-information-requirements/related-parties-duty-requirements/relationship-break-duty-requirements>