

Information Circular No: 30

Stamp Duties Act 1923

Conveyance of property between *de facto* partners

Issued 21 July 2011

The *Statutes Amendment (De Facto Relationships) Act 2011* (the “Amending Act”) was today assented to by His Excellency the Governor.

The Amending Act is consequential upon the *Commonwealth Powers (De Facto Relationships) Act 2009* (the “Referral Act”), which came into force in South Australia on 1 July 2010. The Referral Act referred South Australian legislative power to the Commonwealth, in relation to the making of laws concerning the division of property of *de facto* partners upon their separation, with effect from 1 July 2010.

Accordingly, Part VIIIAB of the *Family Law Act 1975* of the Commonwealth (the “FLA”) applies in South Australia from 1 July 2010 upon the breakdown of a *de facto* relationship. Part VIIIAB of the FLA enables the Family Court to decide property, maintenance and superannuation rights of *de facto* couples upon separation, and establishes a regime for the making and recognition of ‘Part VIIIAB financial agreements’ by parties of the *de facto* relationship.

Currently, Section 71CA of the *Stamp Duties Act 1923* (the “SDA”) exempts from stamp duty deeds or other instruments that give effect to or are consequential on a Family Law agreement or a Family Law order that provides for the disposition of property between the parties to a marriage or former marriage.

The Amending Act extends the exemption in Section 71CA of the SDA to apply to deeds or other instruments between the parties to former *de facto* relationships which are covered by Part VIIIAB of the FLA.

It should be noted however that the parties to a ‘companion couple relationship’ are still covered by the *Domestic Partners Property Act 1996* and that Section 71CBA of the SDA applies to those persons.

Retrospective Application of the Amendments

As the Amending Act operates retrospectively from 1 July 2010, some *de facto* couples who have paid stamp duty on a relevant instrument since 1 July 2010 may be entitled to a refund.

The appropriate refund application form can be found [here](#) or on the RevenueSA website.

If persons affected by this change have an outstanding unpaid assessment of stamp duty, RevenueSA will need to be advised so that issue of a reassessment can be considered.

Further Information

Further information can be obtained from RevenueSA.

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