

Family Law Property Settlements and the payment of Stamp Duty

The division of assets, and more specifically, the transfer of property from one party of the relationship to the other, is one of the most common outcomes that many couples face during divorce. However, what many couples do not realise is that they can avoid paying costly stamp duty fees on these transfers.

Who is exempt from paying stamp duty?

In family law property settlements, there will often be an agreement whereby one party is required to sell or transfer their share in the former matrimonial home, or investment property, to the other party. This agreement is normally formalised by way of Consent Orders filed with the Family Court of Australia, or by way of a Financial Agreement. Many believe stamp duty will attach to this sale/transfer.

However, parties will be exempt from paying stamp duty if:

1. the parties have entered into Consent Orders, which have been filed and sealed by the Family Court of Australia, and the Consent Orders are dated prior to the date of the transfer; and
2. the parties have entered into a Financial Agreement with the Financial Agreement being dated prior to the date of the transfer.

This stamp duty exemption will apply in Family Law property settlements irrespective of whether the parties are married or in a de facto relationship.

The exemption on stamp duty under Consent Orders, Financial Agreements or Recognised Separation Agreements is however only applicable if the transfer of property, whether it is real property or a motor vehicle, is specifically referred to in the Orders or Agreement. To enable the exemption to be processed, the Office of State Revenue must stamp a copy of the Consent Orders, Financial Agreement or a Recognised Separation Agreement at the date of assessment.

Case studies

1. A husband and wife hold the former matrimonial home as tenants in common with the husband holding an 80% interest in the property, and the wife a 20% interest. Two investment properties are held in the husband's sole name. A Consent Order was made in the Family Court of Australia in respect of a property settlement between the husband and wife. Under the terms of the Consent Order, the Court has ordered that the husband transfer his share of the former matrimonial home to the wife and that the husband also transfer all of his interest in one of the two investment properties to the wife. The instrument transferring the husband's interest in the two properties to the wife is exempt from duty.
2. A de facto couple own an investment property as joint tenants. A Recognised Separation Agreement containing a statement of all significant property was signed by the couple and witnessed by a Solicitor. The agreement stated that the couple were in a valid and continuous relationship for two and a half years prior to their separation. The Agreement provides for the de facto wife to transfer her share of the property to the de facto husband. This instrument would be exempt from duty as the parties have lived together in a valid and continuous relationship for at least two years.
3. A husband and wife own an investment property as joint tenants. A Consent Order has been made in the Family Court of Australia in respect of a property settlement between the husband and wife. Under the terms of the Consent Order, the Court has ordered the wife to transfer her share of the property to the husband's trustee company. The transfer under this instrument would be exempt from duty.

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Note: In some instances, authorised legal offices such as **msl | michael sing lawyers** can stamp instruments in house. In other instances, instruments must be sent to the Office of State Revenue for assessment. Every transfer must be supported with evidence as to the value of the property. The evidence needs to be either a valuation provided by a registered valuer, or a real estate appraisal that lists three comparative property sales.

What does this mean for YOU?

Incorrectly paying stamp duty can result in significant costs to both parties, running to several thousands of dollars. If you are separating from your partner, it is essential that you obtain the correct legal advice in respect to Family Law financial settlements to avoid paying more than you have to.



To find out if you are exempt from paying stamp duty or for assistance with any of your family law needs, email us at info@msslawyers.com.au or visit our website www.msslawyers.com.au. Alternatively, contact our specialised professional team at either our Gold Coast or Brisbane office.

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