

REFORM TO STAMP DUTY IN WESTERN AUSTRALIA PART 4 – DUTIABLE PROPERTY

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Few people enjoy paying stamp duty. Before entering into any property transaction or signing any legal document regarding property or money, you should get advice on the duty implications and any alternative ways of structuring the transaction or property ownership. The Law has recently undergone massive change and we have written about this before. The legislation in question is the *Duties Act 2008*, which replaced the previous *Stamp Act 1921* for all documents signed (or transactions entered into) from 1 July 2008.

The Stamp Act was focused on written documents recording a transaction, known as 'instruments'. A contract for the sale of land was a typical instrument. Property subject to stamp duty included land, business property, mortgages and insurance contracts.

The new legislation now targets the transaction itself – the written document is now only a record of that transaction. Duty is payable on 'dutable transactions' (including transfers, declarations of trust, or vesting of trust property) that relate to 'dutable property'. Dutable property includes much of the property covered by the Stamp Act, but excludes mortgages (from 1 July 2008) and business assets (from 1 July 2010). Duty is generally chargeable on the higher of the consideration paid or the unencumbered value of the dutable property.

The Duties Act also imposes duty on the surrender of certain rights (known as 'special dutable property'), which includes surrender of a life interest in land, a lease, (if consideration is paid for the surrender of the lease), and a right of way.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to this matter or other legal matters please contact our office at reception@hhg.com.au.

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