

STAMP DUTY - SUBSTITUTED PURCHASERS & AGENCY

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In Western Australia, stamp duty is charged at a proportional rate on contracts for the sale of property, including residential and commercial property. A recent ruling effective from 1 October 2007 by the Office of State Revenue ("OSR") means that double stamp duty may be charged if the contract is signed in the first instance by someone other than the intended purchaser.

Previously, OSR would assess and if appropriate, issue a single assessment of stamp duty payable if the contract was signed by someone other than the intended purchaser (as shown on the Transfer of Land), and the intended purchaser was named in the contract as the "nominee". This situation arose if the intended purchaser was absent and therefore unable to sign the contract in person at the time the contract was written.

The new rules for contracts signed after 1 October 2007 provide that two assessments of stamp duty may be issued by the OSR if a separate signatory and a nominee are involved in the transaction, unless one of two situations exists:

1. Substituted purchaser

A substituted purchaser application lodged with the contract at the time of assessment will avoid double stamp duty where the intended purchaser is "related" to the person signing the contract. "Related" includes (but is not limited to) the following relationships between the signatory and the intended purchaser as shown on the Transfer of Land:

1. the signatory's spouse or de facto partner;
2. a parent or direct ancestor (e.g. a grandparent), child or direct descendant, or a brother or sister of the signatory;
3. a corporation if the signatory is the sole shareholder, or is a shareholder and is "related" to each of the other shareholders;
4. a unit trustee in the trustee's capacity as trustee, if the purchaser is the sole unit holder in the trust, or is a unit holder and is "related" to each of the other unit holders.

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2. Agency

Where OSR is satisfied that the signatory of a contract was, at the time when that contract was executed, acting as the agent of the intended purchaser, the inclusion of the intended purchaser on the subsequent Transfer of Land will not incur double stamp duty.

The simplest way to demonstrate a relationship of agency is to name the agent and the intended purchaser in the contract, for example: "Jane Smith as agent for Joe Bloggs". If OSR is satisfied that the purchaser named in the contract was, at the time of signing, acting as the agent of the intended purchaser described on the Transfer of Land, double stamp duty will not be applied. It is not necessary to demonstrate agency if the signatory and intended purchaser are related as described above.

The signatory will be required to provide evidence to prove the agency relationship if that relationship is not clearly recorded in the contract. Double stamp duty may be incurred if the agency relationship is not adequately demonstrated.

It is essential that a potential purchaser considers any stamp duty implications before proceeding to enter into a contract, particularly those contracts entered into after 1 October 2007. Please note, this article provides general information only, and does not constitute specific legal advice. If you would like further information in relation to stamp duty, we recommend that you contact the Office of State Revenue or refer to its website: www.osr.wa.gov.au. If we can assist you, please email us at reception@hhg.com.au.

This is general information only, and does not constitute specific legal advice. If you would like further information in relation to Commercial Law or any other matters, or if we can assist you, please email us at reception@hhg.com.au.