



Prompt Legal Services

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Transferring Real Estate from a Trust to a Beneficiary stamp duty exempt.

Overview

Sometimes there is a need to transfer real estate from a Trustee of a Trust to a Beneficiary of that Trust. In such a situation it may be possible to exempt stamp duty for the transfer.

How this can be achieved?

A detailed submission must be made to the State Revenue Office (SRO) with details surrounding the transfer. The submission is then assessed and processed by SRO complex team.

No Consideration

In order for the above transfer to occur whilst being exempt from stamp duty, it is imperative that no consideration be paid for the transfer. That is, if it is found that consideration was in fact paid, then the transfer would be considered to be a "sale of land" upon which stamp duty must be paid. It must be appreciated that consideration not only can take the form of a cash payment, but can include such things as the forgiveness of a loan. You should speak to your accountant to ensure that a loan is not being forgiven "on the books" or consideration paid in some other form.

Is success guaranteed?

If all documents are in order, there is a high probability that the transaction may be exempted from stamp duty. There are many circumstances in these types of matters that may exclude exemption and success cannot be guaranteed.

It must be remembered that the SRO examines these matters very closely as in effect you are alleviating them of sometimes substantial stamp duty.

How long does the process take?

On average, the process will take about 3-4 months. This is made up of a month to gather documents from you and prepare paperwork, then 60 days at the SRO. SRO may have further requisitions, which could delay the matter further.

What documents are required from you?

- A copy of the full Trust Deed (stamped);
- Address of the property (and volume and folio number if known);

- If subdivided, new title details of the subdivided properties;
- Curbside valuation of the property less than 3 months old.;
- Bank account statements for the last 3 months;
- Loan account statements for the last 3 months;
- If refinancing for a transferring loan, details of that new loan;
- Your accountant's details so that we may confer with him/her.

What if a Trust holding in trust for another Trustee?

Often, a Trust is holding property in trust for another Trustee (and possibly a chain of them). The exempt duty transfer is still possible but further documentation will be required. The important aspect is that the ultimate transferee is the ultimate beneficiary of the trust.

Our costs

As costs vary in each individual case, please discuss costs with us for a free quote.

Evidence of wrongdoing

Of course it goes without saying that if there is any evidence of wrongdoing in the above process, we will immediately remove ourselves from the dealing and you will be liable for pro-rata costs. Wrongdoing includes claiming the above exemption when payment is being made to make the transfer, i.e. a sale of land.

Example

Paul and Sally set up a family trust 20 years ago where they were both the primary beneficiaries. At that time they purchased a residential property in Essendon under the corporate trustee of the trust. Sally now wants to transfer the property, now worth \$880,000, to her name.

In the above scenario it is likely that the transaction would be exempted from \$47,870 stamp duty if all the necessary paperwork was in place.