



EXTENSIONS OF TIME TO PAY STAMP DUTY & CLARIFICATION OF STAMP DUTY ON LEASES AND MORTGAGES

The Western Australian Government has tabled legislation extending the time periods for lodgement of dutiable instruments and removing duty payable on most deeds evidencing lease and mortgage arrangements. These changes are to take effect from 1 July 2004.

“General conditional contracts”

Under existing legislation, a purchaser is often required to pay stamp duty even though a contract to purchase has not yet become unconditional, for example where a contract is conditional on finance approval. From 1 July 2004, “general conditional contracts” will attract different lodgement and payment requirements to unconditional contracts under the Stamp Act 1921 (WA).

General conditional contracts are contracts for the sale of property where completion is conditional on the happening of one or more of the following events:

- (a) the obtaining by the purchaser of a satisfactory private taxation ruling by the Commissioner of Taxation of the Commonwealth as to the consequences of the contract with respect to taxation under a law of the Commonwealth;
- (b) the obtaining to the satisfaction of a purchaser under the contract of funds or approval to obtain funds to finance the purchase;
- (c) the obtaining by the purchaser of a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property to be sold or conveyed under the contract;
- (d) the obtaining by a vendor of the consent of the Minister responsible for administering the *Land Administration Act 1997* to transfer a lease of leasehold land to a purchaser;
- (e) the authorisation of the payment to the purchaser of a first home owner grant under the *First Home Owner Grant Act 2000*;
- (f) the obtaining by the purchaser of a licence to trade or the grant of a franchise;
- (g) the obtaining by the vendor of a commercial property or the renewal of an existing lease of the property;
- (h) the obtaining from the landlord of a leasehold business by the vendor of the business a new lease, or of an assignment of the lease to a purchaser;
- (i) the sale of another property by the purchaser;
- (j) the obtaining by the vendor of the registration of a plan of subdivision, or of a strata plan or survey strata plan;
- (k) the obtaining by the purchaser of approval from a regulatory body;
- (l) the results of the making of due diligence inquiries by the purchaser where the results are to be measured against objective criteria set out in the contract;
- (m) the issue of a certificate of title (however described) for the property that is the subject of the contract;
- (n) other events prescribed from time to time.

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Extensions of time for lodgement

From 1 July 2004, a general conditional contract is required to be lodged –

- (a) within 1 month after the date the contract becomes unconditional; or,
- (b) within 12 months after the date on which the contract was first executed, whichever is earlier.

However, if the general conditional contract becomes unconditional within 1 month after the date on which it was first executed, the contract must be lodged within 2 months of the date it was first executed.

Extensions of time for payment of duty

From 1 July 2004, duty on off-the-plan conditional contracts and subdivision conditional contracts must be paid within 2 years of the date the contract was first executed or 1 month after the date of the assessment notice, whichever is the later.

Until 1 July 2004 –

- Off-the-plan conditional contracts for residential strata building sales must be lodged within 12 months of the date the contract was first executed;
- Off-the-plan conditional contracts for commercial strata buildings must be lodged within 6 months of the date the contract was first executed; and,
- Subdivision conditional contracts for residential strata building sales must be lodged within 6 months of the date the contract was first executed.

Duty not payable on most lease and mortgage deeds

On 6 May 2004, we issued a newsletter regarding Commissioner's Practice SD 41.0. In it we highlighted the Commissioner's practice of assessing leases and mortgages executed as deeds as dutiable under Item 8 of the Second Schedule of the Stamp Act 1921 (WA).

From 1 July 2004, specifically exempted from duty will be deeds that evidence –

- (a) a lease or an agreement to lease; or
- (b) mortgages not securing an "advance", "loan" or an amount contingently payable in connection with an advance.

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