



## Conditional Agreements

Sections 87 – 91 of the *Duties Act 2008*

As at 27 June 2016

### Introduction

As set out in sections 87-91 of the *Duties Act 2008* ('Duties Act'), a *conditional agreement* is an agreement for the transfer of dutiable property where completion of the agreement is conditional upon the happening of certain events specified in an instrument effecting or evidencing the agreement, and the parties to the agreement do not have control over these events happening.

A conditional agreement may be subject to the following conditions only:

- the purchaser obtaining a satisfactory private taxation ruling by the Commonwealth Commissioner of Taxation regarding the consequences of the agreement with respect to taxation under a law of the Commonwealth;
- the purchaser satisfactorily obtaining funds or approval to obtain funds to finance the purchase;
- the purchaser obtaining a satisfactory building inspection, geotechnical or environmental report from a third party in relation to the property the subject of the agreement;
- the vendor obtaining the consent of the Minister responsible for administering the *Land Administration Act 1997* to transfer a lease of leasehold land to a purchaser;
- the authorisation of the payment to the purchaser of a first home owner grant under the *First Home Owner Grant Act 2000*;
- the purchaser obtaining a licence to trade or the grant of a franchise;
- the vendor of a commercial property obtaining the renewal of an existing lease of the property;
- the vendor obtaining a new lease or an assignment of the current lease to a purchaser from the landlord of a leasehold business;
- the sale of another property by the purchaser;
- the vendor obtaining the approval for the subdivision of the land or the registration of a strata/survey strata plan;
- the purchaser obtaining approval from a regulatory body;
- 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 instrument effecting or evidencing the agreement;
- the issue of a certificate of title for the property;
- the purchaser obtaining consent required under the *Mining Act 1978* for the transfer of a mining tenement; or
- a prescribed event.

A conditional agreement excludes:

- a call option of a simultaneous put and call option taken to be an agreement for the transfer of option property under section 45 of the Duties Act; or
- an agreement that is subject to a condition which, in the opinion of the Commissioner, constitutes a scheme or arrangement, or part of a scheme or arrangement, the sole or dominant purpose of which is to defer the payment of duty.

## Classes of conditional agreements

### **Farming Land Conditional Agreement**

A farming land conditional agreement is a conditional agreement the subject of which is solely or dominantly farming land as defined in section 99(1) of the Duties Act.

### **Issue of Title Conditional Agreement**

An issue of title conditional agreement is either:

- an agreement for the sale of land conditional on the issue of a certificate of title for the land; or
- an agreement for the sale of land conditional on the vendor obtaining approval for subdivision of the land, or registration of a strata/survey strata plan; or
- an agreement for the sale of a strata lot and the construction on the lot (after the agreement is made) of a building for commercial, residential, or mixed use purposes.

### **Mining Tenement Conditional Agreement**

A mining tenement conditional agreement is a conditional agreement the subject of which is a mining tenement.

### **Subdivision Conditional Agreement**

A subdivision conditional agreement is a conditional agreement for the sale of land, the completion of which is conditional on the purchaser obtaining approval from the relevant authorities to subdivide the land or part of the land.

### **General Conditional Agreement**

A general conditional agreement is a conditional agreement other than an agreement described in the other classes.

## Lodgment requirements

All conditional agreements must be lodged within 2 months after the date when the agreement is made unless it is a general conditional agreement that has been terminated on relevant grounds within that 2 months period.

## Payment requirements

### **General, Farming Land or Mining Tenement Conditional Agreements**

Duty on a general, farming land or mining tenement conditional agreement is payable within 12 months after the date on which the agreement is made, or one month after the date of the assessment notice, whichever is the later.

### **Issue of Title or Subdivision Conditional Agreements**

Duty on an issue of title or subdivision conditional agreement is payable within three years after the date on which the agreement is made, or one month after the date of the assessment notice, whichever is the later.

## Cancelled conditional agreements

A cancelled transaction is a dutiable transaction that has not been, and will not be, carried into effect, provided the cancellation has not occurred so that a replacement transaction or a subsale transaction can be entered into.

For further information on cancelled transactions, please refer to the Duties Fact Sheet '[Cancelled Transactions](#)'.

## General Conditional Agreements

In accordance with section 88A of the Duties Act, a general conditional agreement is *terminated on relevant grounds* if it is not carried into effect because a condition to which it was subject was not fulfilled, and a replacement or subsale transaction has not been or will not be entered into.

A general conditional agreement that is terminated on relevant grounds within two months of execution of the instrument effecting or evidencing the agreement is not liable to duty and a transaction record for the transaction is not required to be lodged. In these circumstances there is no requirement to apply for the transaction to be cancelled.

Where a general conditional agreement is terminated on relevant grounds after it is required to be, or has been, lodged, a request to reassess the transaction may be made using Form FDA16 '[Terminated on Relevant Grounds](#)'.

## Farming Land, Mining Tenement, Issue of Title or Subdivision Conditional Agreements

Where one of these types of agreements is cancelled, its liability to duty is determined under section 107 of the Duties Act and Form FDA1 '[Exemption for Cancelled Transactions](#)' must be lodged.

## Contact the Office of State Revenue

<b>Office</b>	200 St Georges Terrace PERTH WA 6000	<b>Telephone</b>	(08) 9262 1100 1300 368 364 (WA country callers only – local call charge)
<b>Postal</b>	Office of State Revenue GPO Box T1600 PERTH WA 6845	<b>Web Enquiry</b> <b>Website</b>	<a href="http://www.osr.wa.gov.au/DutiesEnquiry">www.osr.wa.gov.au/DutiesEnquiry</a> <a href="http://www.osr.wa.gov.au">www.osr.wa.gov.au</a>

**Note:** The information contained in this DUTIES FACT SHEET is issued for guidance purposes only. It is not an exhaustive explanation of the provisions of the *Duties Act 2008* and reference should be made to the Act for complete details.