



Stamp duty exemptions when transferring property to include a partner or spouse

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If you own property in NSW in only your name, it may be possible to add your spouse or partner to the title of the property without incurring stamp duty. This blog looks at how to transfer a property title between family members in NSW and is intended to explore some of the important considerations before you proceed further with adding your partner to the title, including:

- stamp duty exemptions;
- transfer of ownership to either joint tenants or tenants in common; and
- the implications of any mortgage on the property.

There are a number of reasons someone in a relationship may own property in their own name only:

1. It was purchased before you met your spouse;
2. You received it as a gift from an estate;
3. You intentionally purchased it in only one name for wealth protection purposes that are no longer relevant for you; or
4. any other reason.

Whatever the reason, before you add another property owner to the Title, it's important to understand the various implications.

Stamp duty on transfer of property

Stamp duty ordinarily applies to the transfer of an interest in a property, even where the transfer is between family members unless you qualify for an exemption or concession.

The stamp duty payable is calculated on the market value of the interest that you are transferring. For example, if you are transferring a half interest in a property valued at \$2,000,000, the stamp duty payable is calculated on a purchase price of \$1,000,000.

You can [estimate the stamp duty payable using this Revenue NSW stamp duty calculator](#).

A common question to follow is, "Is stamp duty payable on transfer of property between family members?"

Stamp duty exemptions in NSW when transferring to a partner or spouse

A stamp duty exemption applies, and no stamp duty is payable, for the transfer of a property between couples who are married or in a de-facto relationship if the following conditions apply:

1. The property being transferred is the family home at the time of the transfer, i.e. it is the couple's principal place of residence;
2. The property is used only for residential purposes; and
3. The property will be held in equal shares by the couple following the transfer (see below for the options with respect to this).

The exemption also applies to vacant land where a home that will become the principal place of residence of the couple will be, or is in the process of being, erected.

While the definition of 'de-facto' is flexible in other areas of law, for this stamp duty exemption to apply, the couple must have lived together for a minimum of 2 years before the transfer.

If the property is used for mixed purposes, for example, the property is a family home but part of the home is used for commercial purposes that you claim a tax deduction for, then you may receive a stamp duty concession (instead of an exemption).

This would mean that the stamp duty is exempt for the part of the property that is used for residential purposes, but full stamp duty is payable for the part of the property that is used for non-residential purposes. Additional considerations would apply to this situation that are not covered in this blog. You can contact us for further information about commercial use considerations: [02 9997 2111](tel:0299972111)

Transfer of property between family members, specifically spouses and partners

The transfer of an interest in property must be registered with the NSW Land Registry Services. When transferring an interest in property that is in your name only, to include your partner or spouse, the transfer must provide that you own the property either as "joint tenants", or as "tenants in common" in equal shares.

Joint tenants vs tenants in common

1. Joint tenants

The couple would both own the whole property jointly, and if either individual passed away, then the ownership would pass to the survivor automatically. The interest in the property would not be dealt with under [the Will](#), of the first party to die. Consequently, a [Grant of Probate](#) would not be required to arrange for the property to be transferred to the survivor upon the death of one of the joint tenants. This is the most common ownership for married couples or long-term de-facto couples provided it correlates with their intentions under their Will.

2. Tenants in common in equal shares

the couple would each own 50% of the property and if either individual passed away, then their share of the property would be dealt with under their Will. It would not automatically pass to the survivor.

Your [lawyer or conveyancer](#) will be able to assist in registering the transfer through PEXA; the online platform for property transfers.

Standard NSW Land Registry Services registration fees would apply.

Transferring property that has a mortgage

For the transfer to be registered with NSW Land Registry Services, the Certificate of Title will be required. If you have a mortgage on the title, then the bank/mortgagee would need to consent to the proposed transfer and produce the Certificate of Title for registration.

If a mortgage was obtained by one of the partners when they originally acquired the property in their sole name, then it is likely that they were also the sole mortgagor. The bank/mortgagee would require that your spouse who is coming onto the title is also subject to the mortgage. Each bank/mortgagee has a different process with respect to this, and you should speak to your broker or contact at the bank regarding their requirements.

As your bank/mortgagee may impose several requirements, it can be preferable to arrange for this transfer to a partner either:

1. at the time of a re-finance with the same or a different mortgagee; or
2. following a discharge of mortgage.

Otherwise, if after discussing the mortgagee's requirements with your broker or bank representative it is not overly onerous on you or your partner, then you may wish to simply proceed with the transfer. There is often a production fee payable to the bank/mortgagee before they will produce the Certificate of Title for registration of your transfer.

Get help from a property lawyer

Ownership of a property can be transferred from a sole name to be held jointly with a partner without paying stamp duty if you meet certain requirements. To ensure that you meet all of the requirements before attempting the transfer, advice from a properly qualified practitioner should be obtained.

Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

[02 9997 2111](tel:0299972111)

info@ealawyers.com.au

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