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maplawyers.com.au • contact@maplawyers.com.au • 1300 680 584





TRANSFER DUTY

We have several clients and financiers ask us questions around the calculation of transfer duty and we have summarised some of the more common issues that arise.



1. FIRST HOME AND HOME CONCESSION

Buyers can claim a First Home Concession for transfer duty when purchasing their first residence provided, they met the eligibility requirements. The First Home Concession only applies to a home valued under \$550,000.00 (*the Home Concession may still apply for a home valued over \$550,000.00).

THE FIRST HOME CONCESSION ONLY
APPLIES TO HOMES VALUED UNDER

\$550,000.00*

- The Home Concession applies to applicants who have previously held an interest in property before and are purchasing the property as their principal place of residence. Applicants do not have to be Australian citizens or permanent residents but must meet the other eligibility criteria.
- One of the eligibility requirements for the First Home Concession is that an applicant must never have held an interest in another residence anywhere in Australia or overseas. If one applicant has previously owned an interest in property and the other has not, then one party may be entitled to claim the First Home Concession for their share, and the Home Concession for the other's share. In this instance, the Buyers may consider holding the property as Tenants in Common in uneven shares to maximise the benefit of the concession.
- Applicants must also move into the property and live there on a daily basis within 1 year of settlement and not dispose (sell, transfer, lease or otherwise grant exclusive possession) of all or part of the property before they move in. If a Buyer is purchasing a property subject to a tenancy in place, the existing tenants must move out when their lease expires or within 6 months of settlement, whichever is the earlier, for the Buyer to remain eligible for the concession. A Buyer cannot decide to extend or renew the lease of the current tenants past that 6-month date after settlement. A Buyer also cannot claim the concession where they want to buy a home and live in it at some point but decide to rent it out first beforehand.





2. FIRST HOME VACANT LAND CONCESSION

Where a Buyer purchases vacant land or a house and land package with two contracts (one for the land and one for the build), the Buyer may be entitled to the First Home Vacant Land Concession.

This concession applies to First Home Buyers acquiring vacant land to build their first home. The concession only applies to vacant land valued under \$400,000.00 and the applicant must build their first home on the land and move into it and live there on a daily basis within 2 years of settlement.

The property cannot be rented or lived in prior to the applicant moving in and there must be no building or part of a building on the land when the land is acquired.

If a Buyer is purchasing vacant land to build their home on it and they have previously held an interest in property in Australia or overseas, they will not be eligible for any concessions and will have to pay the full rate of transfer duty on the land purchase.



3. ADDITIONAL FOREIGN ACQUIRER DUTY

If an applicant is a temporary or foreign resident, they may be subject to Additional Foreign Acquirer Duty (AFAD) which is charged on top of the standard transfer duty liability. An applicant is considered a foreign individual if they are not an Australian citizen or permanent resident. A permanent resident holds a permanent visa or is a New Zealand citizen with a special category visa.

AFAD will continue to apply to a transaction even if the foreign status changes to an Australian citizen or permanent resident at a later date.

Importantly, AFAD is calculated based on the foreign acquirer's interest of the dutiable value of the AFAD residential land. Therefore, if there are two applicants, one who is an Australian citizen and one who is a temporary resident, then the temporary resident will only pay AFAD on his/her share of the interest they hold in the property. It is for this reason that some couples elect to hold the property as Tenants in Common in uneven shares (eg. 90/10 split) to minimise the amount of AFAD payable.



4. AGGREGATION OF TRANSFER DUTY

Buyers are often caught out if they purchase two or more properties from the same Seller (eg. one to live in and one to rent out as an investment, or two investments) by the transfer duty aggregation rule. Transfer duty increases at progressive rates, depending on the value of the property. Where two or more transactions are grouped together, the taxes are to be aggregated and taxed as one arrangement for the purposes of calculating transfer duty.

The effect of this is that the Buyer pays a higher rate of transfer duty on the total combined value of the properties, rather than the transfer duty which would be payable on each separate transaction.

The following factors are relevant in considering whether the aggregation rule is triggered:

- If the transactions are both put into the one contract
- If the transactions are put into separate contracts but they are conditional upon the completion of other transactions
- Whether the parties to the transactions are the same or related
- The time frame over which the transactions take place
- Whether, before the transaction takes place, the properties were used together or dependently by the Seller; or
- Whether, after the transaction takes place, the dutiable properties are used together or dependently by the Buyer.

If a client is unsure as to whether the aggregation rule applies, they may find the questionnaire on the following link of some assistance: <https://www.business.qld.gov.au/industries/service-industries-professionals/professional-financial-services/transfer-duty/self-assessors/interactive-help/section-30>





5. FINANCE CONDITIONS

It is noted that exact time frames in which banks can provide formal finance approval can vary due to many factors such as the specific process time of a bank, the individual applicant, and also the current economic environment. Due to these factors, there will be clients that are not able to have their finance confirmed within the initial agreed finance condition requiring a purchaser to seek an extension of the finance condition. If an extension is not agreed to by the Seller prior to 5pm on the due date, the Seller has the ability to terminate the Contract and accept another offer (which is a dangerous cocktail where the market is competitive, and the banks are not keeping up). We therefore check with our clients and their brokers the day prior to the due date and suggest that an extension request be sought the day prior to the due date if possible, to give time for the Seller's solicitor to obtain instructions from the Seller.



6. THE PROCESS TO SETTLEMENT

Once the Contract goes unconditional, we like to check in with the broker managing the file to ensure that:

- The financier has everything they need from us to ensure a smooth transition to settlement;
- To confirm the approximate funds available for settlement including any LMI that may be payable; and
- To confirm if there is an authority for shortfall funds or if funds need to come into our trust account.

We find that we often don't know the answers to these questions from the lender until very close to the settlement date and getting last minute funds transferred across from the client can be stressful and inconvenient for a Buyer. It is therefore our preference to work together to provide a seamless experience for our client. It is also beneficial for you to know if there are any delays or issues so that they can be escalated.

HOW WE WORK

At MAP Lawyers, we enjoy working with like minded professionals who enjoy providing a seamless transaction for our clients. We pride ourselves on the level of client care we provide and because of this, we have fostered positive relationships with a range of industry partners.

If you are interested in working alongside us and extending a positive property journey to your clients, we can assure you of the following:

- An exceptional level of service for your clients at an affordable price point (see our [website](#) for our online quote calculator which provides a complete breakdown of our fees and search costs which are specific to your client's property)
- You will be kept informed and up to date as the matter progresses; and
- You will not find a more committed and reliable team than the team at MAP Lawyers – let us prove it to you and your clients.

We're here to help, get in touch with us

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