

Duties Fact Sheet

Substituted Purchasers

Sections 42(2) and 43 of the *Duties Act 2008*

As at 1 July 2008

Introduction

Section 42(2) of the *Duties Act 2008* ('Duties Act') provides that duty is not charged in certain circumstances where there is a transfer of dutiable property (e.g. a transfer of land) to a person ('substituted purchaser') other than the person named as the purchaser in the relevant agreement to transfer the dutiable property ('original purchaser').

It should be noted that the purpose of the substituted purchaser provisions of the Duties Act is to provide relief from transfer duty on an eligible substitution which involves a related party. The provisions should not be construed as having any legal effect in relation to the parties' rights and obligations under the agreement.

When is this applicable?

Section 42(2) is applicable where the substituted purchaser was related to the original purchaser, as set out in section 43 of the Duties Act (refer to the Qualifying Relationships section below), at the time liability to duty on the agreement arose. The original purchaser may be an individual, a corporation or a trustee of a unit trust.

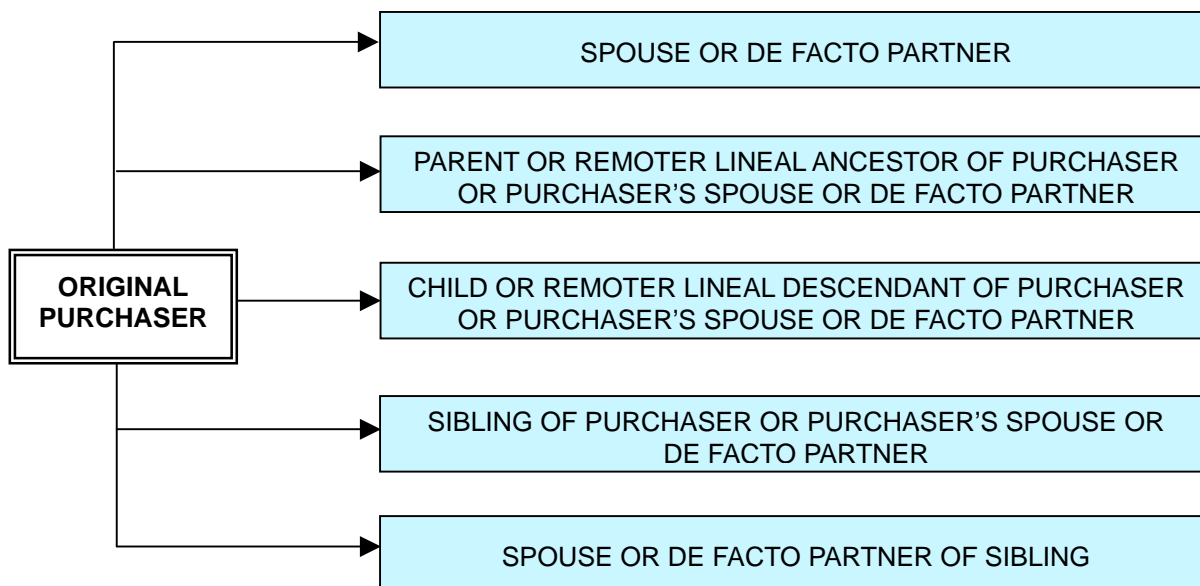
Important information

The Duties Act specifically excludes relief in circumstances where the substituted purchaser will not be the legal and beneficial owner of the property (unless the beneficial owner is also related to the original purchaser). Common examples of where relief will **not** be provided are where the substituted purchaser is:

- a trustee of a discretionary trust;
- a trustee of a unit trust, **unless** the original purchaser is the sole unit holder in the unit trust scheme or is a unit holder in the unit trust scheme and is related to each of the other unit holders;
- a trustee of another trust (other than a discretionary trust or unit trust scheme) **unless** the beneficiary and the trustee are also related; or
- a trustee of a superannuation fund.

Qualifying Relationships

If the original purchaser is an individual, the following persons are 'related' for duty relief purposes:



NB: The terms *Remoter Lineal Ancestor* and *Remoter Lineal Descendant* refer to persons who are related directly as ancestors or descendants of a person e.g. a direct line of relationship that can be traced up through a person's parent, grandparent etc. or down through a person's child, grandchild etc. Aunts/uncles and nieces/nephews do not qualify as lineal ancestors or descendants.

A **corporation** is related to an **original purchaser** who is an **individual** if:

- the original purchaser is the sole shareholder of the corporation; or
- the original purchaser is a shareholder of the corporation and is related to each of the other shareholders by a relationship shown in the above diagram.

A **trustee of a unit trust scheme** is related to an **original purchaser** who is an **individual** if:

- the original purchaser is the sole unit holder in the unit trust scheme; or
- the original purchaser is a unit holder in the unit trust scheme and is related to each of the other unit holders by a relationship shown in the above diagram.

Where the **original purchaser** is a **corporation**, the substituted purchaser is related if:

- the substituted purchaser is the sole shareholder of that corporation; or
- the substituted purchaser is a shareholder of that corporation and is related to each of the other shareholders by a relationship shown in the diagram above.

Where the **original purchaser** is a **trustee of a unit trust scheme**, the substituted purchaser is related if:

- the substituted purchaser is the sole unit holder in that unit trust scheme; or
- the substituted purchaser is a unit holder in that unit trust scheme and is related to each of the other unit holders by a relationship shown in the diagram above.

How to apply

All relevant transaction records, e.g. contract or agreement, and the transfer of land, which evidences the substitution of the purchaser/transferee, should be submitted together with the application form '[Transfer to Substituted Purchaser](#)', which is available on the website at www.osr.wa.gov.au

Contact the Office of State Revenue

Office	Plaza Level 200 St Georges Terrace PERTH WA 6000	Telephone	(08) 9262 1100 1300 368 364 (WA country STD callers only – local call charge)
Office hours	8:00 am – 5:00 pm Monday to Friday	Facsimile	(08) 9226 0834
Postal	Office of State Revenue GPO Box T1600 PERTH WA 6845	E-mail	duties@dtf.wa.gov.au
		Website	www.osr.wa.gov.au

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.