



Overview

The *Duties Act 2001* (the Act) provides an exemption from duty for the transfer of property following the breakdown of a relationship, provided certain criteria are met.

The exemption types are:

- section 56 - breakdown of marriages;
- section 56A - breakdown of de facto relationships; and
- section 57 - breakdown of personal relationships.

Prior to claiming one of these exemptions, it is important to know the type of relationship because different evidence is required for each exemption.

For example, in the case of the breakdown of a de facto relationship, if a financial agreement has been made in accordance with the *Family Law Act 1975*, the exemption would be claimed under Section 56A of the Act. Conversely, if the agreement was made in accordance with the *Relationships Act 2003*, the exemption would be claimed under Section 57 of the Act.

What evidence is required to claim the exemption?

The documentary evidence guidelines for the exemptions referred to above are as follows:

Section 56 and 56A

- Original transfer instrument and either of the following:
 - a certified copy of a document registered or approved under the *Family Law Act 1975* of the Commonwealth; or
 - a certified copy of a financial agreement made under section 90B, 90C or 90D of that Act (if applying for an exemption under Section 56 of the *Duties Act 2001*); or
 - a certified copy of a financial agreement made under section 90UB, 90UC or 90UD of that Act (if applying for an exemption under Section 56A of the *Duties Act 2001*); or
 - a certified copy of an order of a court under that Act.
- Where appropriate, evidence to satisfy the Commissioner that the property purchased at public auction was, immediately before the auction, relationship property.

Section 57

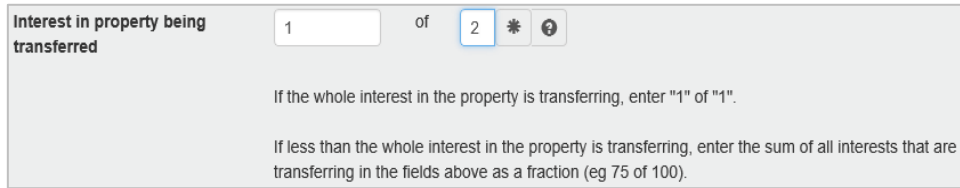
- Original transfer instrument and either of the following:
 - a certified copy of the order made under the *Relationships Act 2003*; or
 - a certified copy of the personal relationship agreement made in accordance with the *Relationships Act 2003*; or
 - a certified copy of the separation agreement made in accordance with the *Relationships Act 2003*.
- Where appropriate, evidence that the parties sought independent legal advice in relation to the personal relationship agreement or separation agreement.
- Where appropriate, evidence to satisfy the Commissioner that the property purchased at public auction was, immediately before the auction, relationship property.

For more information

- a) [Evidence of Value Ruling](#) b) [Documentary Evidence Requirements Guideline](#)

Entering the transaction in TRO

- The transaction should be entered as a *Property Transfer*.
- On the *Property information* screen, enter the interest being transferred.



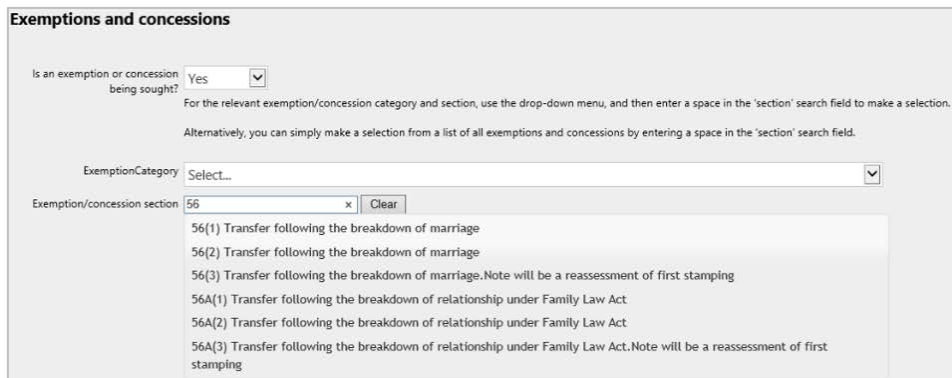
Interest in property being transferred

1 of 2

If the whole interest in the property is transferring, enter "1" of "1".

If less than the whole interest in the property is transferring, enter the sum of all interests that are transferring in the fields above as a fraction (eg 75 of 100).

- **Equal shares:** If the parties held the property as Joint Tenants or as Tenants in Common in equal shares, the interest transferring should be entered as 1 of 2 or 50 of 100, and so on.
- **Unequal shares:** If the parties held the property as Tenants in Common in unequal shares, enter the share transferring.
- On the *Transaction information* screen:
 - Enter the transfer date (this will be reflected on the transfer instrument);
 - Enter the consideration if any. If no consideration changed hands, enter 0.00;
 - If there was no consideration, you are required to enter the non-monetary consideration. In this situation, the non-monetary consideration would generally be a Court requirement.
- On the *Exemptions and concessions* screen:
 - If claiming an exemption, enter the section of the Act relating to the exemption. A list of all exemptions contained within that section will be displayed. Select the relevant exemption, such as 56(1), 56A(1), 57(1) and so on.



Exemptions and concessions

Is an exemption or concession being sought? Yes

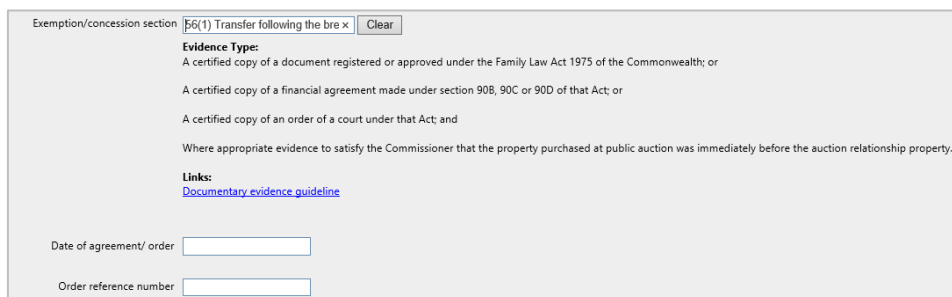
For the relevant exemption/concession category and section, use the drop-down menu, and then enter a space in the 'section' search field to make a selection. Alternatively, you can simply make a selection from a list of all exemptions and concessions by entering a space in the 'section' search field.

ExemptionCategory Select...

Exemption/concession section 56

- 56(1) Transfer following the breakdown of marriage
- 56(2) Transfer following the breakdown of marriage
- 56(3) Transfer following the breakdown of marriage.Note will be a reassessment of first stamping
- 56A(1) Transfer following the breakdown of relationship under Family Law Act
- 56A(2) Transfer following the breakdown of relationship under Family Law Act
- 56A(3) Transfer following the breakdown of relationship under Family Law Act.Note will be a reassessment of first stamping

- Enter the *Date of agreement/order* and *Order reference number*



Exemption/concession section 56(1) Transfer following the bre x Clear

Evidence Type:

- A certified copy of a document registered or approved under the Family Law Act 1975 of the Commonwealth; or
- A certified copy of a financial agreement made under section 90B, 90C or 90D of that Act; or
- A certified copy of an order of a court under that Act; and

Where appropriate evidence to satisfy the Commissioner that the property purchased at public auction was immediately before the auction relationship property.

Links:

[Documentary evidence guideline](#)

Date of agreement/ order

Order reference number

- If an exemption is claimed, the *Duty calculations* screen will show the Duty on dutiable value as 0.00. Otherwise the dutiable value will be displayed as the Adjusted Government Valuation or the consideration paid, whichever is the greater.

Frequently Asked Questions

Situation: The property held jointly between the husband and wife is transferring to the wife following the breakdown of the marriage. The transferors noted on the transfer instrument are both husband and wife.

Question: Should I enter both the husband and wife as the transferors in the TRO duty transaction, and enter the interest transferring as 1 of 1?

Answer: No. The dutiable transaction must be entered into TRO, not necessarily the details recorded on the transfer instrument. The dutiable transaction is a transfer of the half interest in the property from the husband to the wife. Therefore, you should enter the husband's details in the *Transferor information* screen and the wife's details in the *Transferee information* screen. The interest being transferred should be recorded on the *Property information* screen as 1 of 2.

It is important to enter the correct interest being transferred because TRO uses this information to determine the correct dutiable value. If the transaction does not meet the exemption requirements, the dutiable value will be determined on the Adjusted Government Valuation (AGV). If the interest transferring is entered as 1 of 1, the dutiable value will be calculated on 100 per cent of the AGV.

Situation: I have endorsed the transaction without an exemption. My client now has the appropriate evidence to claim the exemption.

Question: Can my client get a refund of the duty paid?

Answer: Yes. To update the transaction to include the exemption:

- Open the transaction using the *View/update* function and click on *Amend*. If you do not have the relevant TRO access to amend a transaction, you will need to contact your TRO System Administrator.
- Enter the exemption being claimed (56, 56A or 57) in the Exemptions and concessions field on the *Exemptions and concessions* tab.
- If the exemption is under Section 56 or 56A, please select subsection 3 i.e. 56(3) or 56A(3). If the exemption is under Section 57, please select subsection 2 i.e. 57(2).
- Once updated, you can self-endorse the transaction.
- If the transaction has not been paid, the duty payable will become 0.00.
- If the transaction has been paid, the SRO will need to review the transaction and approve the refund. To ensure this process is not delayed you should provide the supporting evidence using the transactions mail function in TRO.

Situation: The parties to the relationship have amicably divided their assets. There are no court orders or equivalent in place.

Question: Can I proceed with endorsing the transaction?

Answer: Yes. However, duty on the interest transferring will be payable.

Situation: My client does not have a certified copy of the court order, but they do have a photocopy of that order.

Question: Is this sufficient evidence?

Answer: No. It must be a certified copy of the order to satisfy the documentary evidence requirements.

Question: How do I know if a financial agreement is a binding financial agreement?

Answer: The agreement must specify the relevant provisions of the particular Act that it has been made under, for example, *This agreement is an agreement made under Section 90D of the Family Law Act 1975*. Typically, this would be contained at the beginning or on the signing page of the agreement. The parties' legal representatives must **also** sign the document for it to be a binding financial agreement.