



Reducing Stamp Duty with Court Ordered Transfers

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Of all the assets owned by a married couple, the matrimonial home is generally one of the most significant for several reasons that will, of course, vary from couple to couple. What most couples have in common is that the matrimonial home not only demands a large investment of time and money but it also provides a home for the family.

Virtually everyone enters marriage with the intention of remaining in the union and maintaining a happy home for life, the matrimonial home forms integral part of that plan. The unfortunate reality is that "happily ever after" is not always achieved, a divorce results and the unhappy couple, and often the Court are faced with several decisions in respect of the matrimonial home. These decisions include, but are not limited to whether it is appropriate to retain the home and continue to utilize it as a home for one spouse, and if applicable the children, or to sell it to realize its monetary value. These decisions are not made easily by the couple or the Court, and many factors will be considered, not the least of which are the couple's financial ability to pay the mortgage and maintain the home in light of the significantly reduced disposable income. The Court will also want to be satisfied that both spouses have suitable accommodations - once all of the relevant factors have been considered, the Court may or may not allow the family to retain the matrimonial home.

It will assist couples in the process of negotiating a property settlement on divorce to know that if a decision is made to transfer the home there may be significant financial savings if the terms of the agreement are placed into the Court Order governing the division of assets. If the details of the transfer are included in the Court Order, the Stamp Duty payable on the conveyance will be \$200.00 plus an adjudication fee of \$125.00. If the transfer is made without a Court Order pursuant to divorce, the Stamp Duty will be based on the Stamp Duty Act scale and, for example on a home valued at \$350,000.00 will be \$9,500.00, on a home valued at \$500,000.00 the Stamp Duty payable will be \$14,000.00. As the value of the home increases, the amount of Stamp Duty payable increases exponentially if not made pursuant to a Court Order. If the Conveyance is made pursuant to a Court Order, the Stamp Duty payable and adjudication fee will remain the same regardless of the value of the home.

As you can see, the cost savings in Stamp Duty alone makes it well worth your while to carefully plan how the transfer of the matrimonial home is handled

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