

This bulletin outlines the new land use entitlement provisions in the *Duties Act 2000* ('the Duties Act'). The new provisions apply to transactions occurring after 16 June 2004 resulting from a written agreement entered into after 13 May 2004.

Land Use Entitlements General Information Bulletin

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Land Use Entitlements – Company share flats *Duties Act 2000*

Prior to the introduction of specific strata titles legislation, separate ownership of flats and home units was achieved by what are commonly known as "share flat companies" or "home unit companies". Under these structures, a company is registered on title as the owner of a complex of flats or units. An individual owning shares in the company is then entitled to exclusive use and occupation of a specific flat or unit in the building, rather than owning a fee simple interest in land.

As the right to use and occupy a flat or unit in a share flat or home unit company attaches to a specific share or number of shares in the company, no conveyance duty was payable on the sale and transfer of the shares entitling the holder to those rights. The only duty payable was marketable securities duty, which was abolished in Victoria on 1 July 2002.

The *State Taxation Acts (Tax Reform) Act 2004* ('the Tax Reform Act') has introduced specific provisions in the *Duties Act* imposing duty on transactions involving entitlements to occupy land conferred through ownership of shares in companies such as share flat and home unit companies. Transactions involving entitlements to occupy land through unit holdings in unit trust schemes are also caught under the new provisions. For the purposes of the *Duties Act*, these entitlements are referred to as "land use entitlements".

What are Land Use Entitlements?

A "land use entitlement" is defined in the *Duties Act* as "an entitlement to occupy land in Victoria conferred through an ownership of shares in a company or units in a unit trust scheme, or a combination of a shareholding or ownership of units together with a lease or licence".

The rights attaching to shares of traditional share flat and home unit companies are land use entitlements within the meaning of this definition.

The definition of dutiable property now includes a land use entitlement as an interest in land in Victoria. Consequently, a transfer of a land use entitlement is a dutiable transaction chargeable with duty under Chapter 2 of the *Duties Act* unless an exemption applies.

Where the acquisition of a land use entitlement is through the allotment of shares or the issue of units rather than the transfer of existing shares or units, the acquisition is dutiable under Part 5 of Chapter 3 of the *Duties Act*.

What duty is payable?

If an existing land use entitlement is *transferred* after 16 June 2004 resulting from a written contract that is entered into on or after 13 May 2004, a liability to duty arises under Chapter 2 of the *Duties Act*. The liability arises when the beneficial ownership passes on settlement of the contract. This usually coincides with the execution of the relevant share transfer instrument.

Similarly, if a person *acquires* a land use entitlement by the allotment of shares or the issue of units after 16 June 2004, but which arises from a written contract entered into on or after 13 May 2004, a liability to duty arises under Part 5 of Chapter 3 of the *Duties Act*. The duty imposed is at the same rates as charged under Chapter 2 on the transfer of a land use entitlement.

In both cases, duty is charged on the dutiable value of the land use entitlement. The dutiable value is the greater of the consideration paid, or the unencumbered value of the land use entitlement acquired. Duty must be paid within

3 months of the date of transfer or acquisition of the land use entitlement, and a land use entitlement acquisition statement must be lodged with the Commissioner of State Revenue. In the case of a transfer of a land use entitlement, the transferee may lodge the share transfer instrument with the SRO, rather than completing an acquisition statement.

Exemption on Conversion of a land use entitlement

Subject to certain requirements, if a person converts their land use entitlement to a lot on a plan of subdivision, no duty is payable provided:

- (a) Duty was paid on the acquisition of the entitlement;
or
- (b) The acquisition of the entitlement was exempt from duty under certain circumstances.

Further information

Further information on the land use entitlements is available from the Land Rich Unit of the State Revenue Office

Internet	www.sro.vic.gov.au
Email	sro@sro.vic.gov.au
Telephone	13 2161 (cost of a local call) or 03 9628 0123
Facsimile	03 9628 6631
By correspondence	Land Rich Unit State Revenue Office GPO Box 1641N Melbourne VIC 3001
	or DX 260090 Melbourne
In person	State Revenue Office Level 2 121 Exhibition Street Melbourne

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