



We know that the market is competitive for buyers and that getting in an offer on a property quickly is important. However, this does seem to be creating an increase in the number of queries from buyers about whether they can change the entity that is stated as the buyer on the contract for sale, and what impact this has on their stamp duty liability.

It is vital for buyers to determine the entity they want to use and have that entity established before entering into a contract for sale. That entity must be correctly stated on the contract for sale.

Changes to an executed contract may incur double stamp duty and cause significant delays or complications for settlement.

The rules that determine whether double stamp duty applies to a change in the buying entity (called, a substituted transferee) are complicated and may require advice from the buyer's accountant and a lawyer.

Getting the buyer right

Rules in Western Australia

In WA the contract of sale must include the full name of the buyer, and the buying entity must exist at the time of the contract is signed. This is different to the rules in some other states of Australia.

Individual as buyer	Trust as buyer
<p>If a trust is to be the buyer of a property, the contract for sale must include the full name of the buyer. For example:</p> <p style="text-align: center;">John Robert Smith</p>	<p>If a trust is to be the buyer of a property, the contract for sale must include the full name of both the trustee and the trust. For example:</p> <p style="text-align: center;">John Robert Smith as trustee for the Smith Family Trust</p> <p style="text-align: center;">ABC Pty Ltd ACN 111 222 333 ATF the Smith Family Trust</p>
Company as buyer	Self Managed Super Fund as buyer
<p>If a company is to be the buyer of a property, the <i>Corporations Act 2001</i> requires the company to use their full name and ACN on the contract. In addition, some lenders require the ACN of the buyer to be included in the contract for sale. For example:</p> <p style="text-align: center;">ABC Pty Ltd ACN 111 222 333</p> <p>Buyers can request the seller to enter into a variation to the signed contract for sale to include the ACN if required.</p>	<p>If a self managed super fund is to be the buyer of a property and it is borrowing money, the contract for sale must include the full name of the trustee and the trust for both the bare trust and the super fund. For example:</p> <p style="text-align: center;">[name of trustee of gearing trust] ATF [name of gearing bare trust] ATF [name of trustee of SMSF] ATF [name of SMSF trust]</p>

Get advice

If unsure, a buyer should seek advice from their accountant or financial advisor as to the correct buying entity for their property purchase *before signing the contract*. This is particularly the case when a buyer is a self managed superannuation fund as they can be set up in different ways.

Changing the buyer

Terminating the contract

We are sometimes contacted by a buyer wanting to change the buyer entity on the contract because they have made a mistake or received subsequent advice from their accountant or financial advisor. *Any changes to the buyer after the contract is signed must be considered in the context of RevenueWA's rules about substituted transferees. If the entity that is proposed as the changed buyer does not qualify under these rules, changing the buyer may result in double stamp duty applying to the whole purchase price.*

Once a contract is signed it is a dutiable transaction and must be assessed for stamp duty under the *Duties Act 2008*. *If a contract is terminated to allow the buyer to change the buying entity this may be seen as an evasion of duty and a breach of the anti-avoidance provisions of the legislation.*

Substituted transferee rules

To change the buying entity without incurring double stamp duty, the existing buyer and the changed buyer must have a qualifying relationship on or before the date of the contract.

There are various types of qualifying relationships. For example:

- If the buyer is an individual:
 - their spouse has a qualifying relationship;
 - a company of which they are the sole shareholder has a qualifying relationship;
- If the buyer is a company, the individual who is the sole shareholder of the company has a qualifying relationship;
- If the buyer is a trustee of a unit trust, the individual who is the sole unit holder in the unit trust has a qualifying relationship.

A buyer wanting to have a discretionary trust substituted for them (whether the buyer is an individual or a company) will be subject to double stamp duty.

If the parties do have a qualifying relationship, the buying entity can be changed without incurring double duty. Forms to confirm this must be prepared and lodged with RevenueWA, which can result in significant delays to the settlement date, and in some cases require the settlement to be conducted on paper rather than in PEXA.

Case study

A client had noted a company as the buyer on a signed contract for sale – but later realised that the contract did not reflect that the company was buying as trustee of a trust. This was a genuine oversight by the client – the trust existed before the contract was entered into and the deposit under the contract was paid from the trust's bank account.

After many emails and documents being exchanged between us, the buyer, the buyer's agent, the buyer's accountant and RevenueWA, the client was advised that, on the basis of the information provided, by adding the trust to the contract they would incur double stamp duty. The client was further advised that even if they had provided sufficient information to allow the addition of the trust without double duty, the settlement would have had to proceed on paper and not in PEXA.

For more information about qualifying relationships and the substituted transferee rules, please see RevenueWA's [fact sheet](#).

Please call us on 08 9561 6965 or email reception@avenueconveyancing.com.au should you have any queries.

Avenue Conveyancing