



Update

Property & Projects

May 2010

NSW Transfer Fee - commencing 1 July 2010

The NSW State Government has announced that a new transfer fee will be introduced on the transfer of properties valued over \$500,000. In his media release the Minister for Lands, Tony Kelly, advised that the fee will be introduced to “strengthen the equity of NSW property transactions and improve the security of the Torrens Title system”, although it is unclear as to how the fee will achieve these aims.

We expect that the new transfer fee will be charged as follows:

Value of property	Existing Transfer Fee	New Transfer fee	Total after 1 July 2010
\$0 to \$500,000	\$190	-	\$190
\$500,000 to \$1 million	\$190	0.2% of the value of the property over \$500,000	\$190 plus 0.2% of the value of the property over \$500,000
over \$1 million	\$190	\$1,000 plus 0.25% of the value of the property over \$1 million	\$1,190 plus 0.25% of the value of the property over \$1 million

The new transfer fee is said to commence as of 1 July 2010, although this date was not confirmed in the Minister's media release. It is also unclear as to whether any time limit will be imposed on payment, as it is with stamp duty, and also as to which government agency will be responsible for collecting the fee. The Land and Property Management Authority (LPMA) is responsible for the title registration system in NSW and currently charges a fixed fee of \$190 on all transfers, irrespective of value. However, the Office of State Revenue (OSR) is responsible in NSW for the collection of stamp duty on the transfer of dutiable property and has policies to deal with matters such as late payment and determining the value of property for stamping purposes.

The effect of the new transfer fee on the purchase of the average residential property is arguably not great. On a purchase price of \$750,000, the new transfer fee payable will be \$500 and on a purchase price of \$1.5 million, the fee is \$2,250.

However, on higher valued properties the new transfer fee may be significant. An additional \$23,500 will be payable on a price of \$10 million. On a price of \$200 million, a transfer fee of almost \$500,000 will be payable, an increase of over 4.5% on the current stamp duty collected on a transaction of this size.

Foreign Investment Review Board – Recent Policy Changes

On 24 April 2010, changes to the FIRB policy dealing with the purchase of residential property were announced by the Assistant Federal Treasurer, Senator Nick Sherry.

Prior to the changes, temporary residents did not require approval to purchase second-hand dwellings, provided that the dwelling was used as their principal place of residence. Under FIRB policy, a dwelling is considered 'second-hand' if it has been previously sold or, if not, has been occupied for more than 12 months.

Under the changes, temporary residents seeking to purchase second-hand dwellings must apply to FIRB for approval. This change means temporary residents will be subject to the same compulsory notification, screening and approval requirements required of foreign non-residents. This change will also include temporary residents here on foreign student visas.



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In addition, temporary residents who are approved will now have to:

1. compulsorily sell the dwelling when they depart Australia; and
2. where undeveloped land has been purchased, commence construction on the land within 24 months or have the land compulsorily sold.

Senator Sherry has stated that the existing criminal penalty regime will now be complemented by a comprehensive civil penalties regime, "adding another important tool to act against non-compliant transactions". This will include sanctions for vendors, purchasers, and agents being involved in transactions in breach of the Foreign Acquisitions and Takeovers Act 1975. There will also be an explicit compulsory divestment requirement where property has been purchased in breach of the real estate investment regime. In addition, the changes introduce an additional monetary penalty equivalent to any capital gain made by the breaching purchaser at the time of the forced sale, with the capital gain to be measured in accordance with the relevant tax legislation.

Collectively, these most recent changes are a response to the perceived public perception, particularly expressed in the media, that foreign non-residents are placing pressure on the availability of housing for Australians. By making these changes, the Federal Government has sought to ensure that investment in Australian residential property by temporary residents and foreign non-residents is subject to tight regulation that will encourage the purchase of new dwellings over second-hand dwellings.

Disclaimer

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