

# Legal Q&A

## Your legal questions answered

**Gerri Forsaith examines the implications of transferring ownership between generations**

**A** My father currently owns a one-third share of a property in NSW and would like to transfer his ownership to his two sons.

**What are the required steps in transferring his share of the property into his sons' names, and what are the fees/costs involved?**

**Q** When transferring property between family members, your conveyancer or solicitor is able to act for both parties, that is, in this case, for both the father and the sons. This arrangement assists in simplifying the transfer process as well as reducing fees.

It is important to ensure that the transfer of ownership is an arms-length transaction, in particular for stamp duty requirements. The NSW Office of State Revenue (OSR) administers the *Duties Act 1997*. Under this Act, a transfer duty liability is created when a person enters into a dutiable transaction relating to dutiable property in NSW.

Your conveyancer or solicitor will prepare a transfer document noting the title details, agreed price and details of the transferor (father) and transferee (sons).

An original valuation no more than six months old, carried out by a certified valuer as opposed to a real estate agent, is required to accompany the transfer document when stamp duty is paid to the OSR. Stamp duty is calculated on the higher amount of the valuation amount and the agreed price for the purchase of the property. The proportion of the acquisition, in this scenario, one third, is payable on the stamp duty amount. Stamp duty is required to be paid before registration of the transfer.

If there is an existing mortgage on the title, the mortgage will be required to be discharged on registration of the transfer. If the transferees have a mortgage then their mortgage will be registered after the discharge of existing mortgage has taken place.

Your conveyancer or solicitor will provide you with a written costs agreement before undertaking any work and should set out the related fees and costs. Legal fees can range between \$200 and \$800. Registration fees payable to the Land and Property Management Authority (previously known as the Department of Lands) [and is currently being restructured so check with your solicitor/conveyancer as to the payment details – ed] are currently as follows:

**Transfer:** \$194

**Mortgage:** \$97

**Discharge of mortgage:** \$97

There may also be related fees regarding the mortgagees and you would be wise to check with your bank.

Nevertheless, as every situation is different, we recommend you seek legal advice from your conveyancer or solicitor.

### Legal expert



**Gerri Forsaith**

Gerri Forsaith is the founder of Sydney Property Conveyancing and has over 15 years of conveyancing experience. Visit [www.sydneypropertyconveyancing.com.au](http://www.sydneypropertyconveyancing.com.au) or call 1300 367 176 for more information

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