

LEGAL UPDATE

Stamp Duty – Call Options

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From 19 May 2022, the Duties Act 1997 (NSW) was amended by imposing duty on any “transaction that results in a change in beneficial ownership of dutiable property, other than an excluded transaction.” One key change to this legislation includes the requirement to lodge put or call options for stamping, which are classified as dutiable transactions.

A put or call option granted over dutiable property in New South Wales is classified as a “change in beneficial ownership”, meaning that ad valorem duty is payable on any call option fee or consideration paid for the grant of an option entered into after 19 May 2022.

Any duty paid on the grant of an option is not credited toward the duty payable if and when the option is exercised. In the event that the call option is not exercised, a refund of duty will not be issued for any duty paid for the grant of the option.

Unless the parties are related persons, evidence of value will not be required for the grant of an option, or unless there is a pre-existing arrangement between the grantor and grantee where the parties are not acting at arm’s length.

The person liable to pay the duty is the transferee and duty must be paid within three months after the liability arises. Where there is a nomination or novation, a transferee includes a person who obtains the right to exercise the option or purchase the land.