

**Trustee Consent to Sale of (Trust) Property and
Consent to Removal of Restrictions at HM Land Registry**

Trust Consent for sale of property (and restrictions at HMLR)

Circumstances

This most usually applies where a trust is a Discretionary Trust or a Life Interest Trust and the general circumstances are such that the assets are vested in a named beneficiary (or beneficiaries) who themselves manage the assets – the trust itself being largely dormant save for a restriction notice protecting a Trust interest in a loan advancement or life interest to such beneficiary.

When a sale of property takes place, the process is to seek a consent to the sale from the trustees of the Trust and that process can include a full removal of the restriction notice or indeed a removal and replacement of the notice to a new property purchased out of the proceeds of sale.

The work required usually includes three processes:

- Communication: holding a meeting or discussion with co-trustees;
- Evaluation: undertaking a due process along the lines as set out below and;
- Decision-Making: agreeing a course of action

Communications

Initially this can be by email or phone but then usually followed up with a meeting with the Trustees (or zoom/video conference call) and then subsequently arranging for documentation to be emailed for approval before executing consents and further documents.

Evaluation Process

- Value of the Trust Fund being protected by the restriction
- Current Legal Owner(s) of the property
- Names of beneficiaries who are currently protected by the restriction
- Reason for the request for consent or removal; sale or re-mortgage?
- Is there a related purchase using sale proceeds? Can a new Eq Charge be created on the new property?
- What is the value of the new property? Is the value commensurate with the existing property?
- What are the wishes and instructions of other co-Trustees?

- Do the remainder beneficiaries know and consent to the removal or consent?
- What are the instructions contained in the Trust; particularly the Memorandum of Wishes or Supplemental Trust Deeds?
- Is there any other existing security for the loan or value of the Trust Fund? (this could be a restriction on another property for example)
- If not, are there any other assets on which security or restriction notices could be placed?

Decision Options

Include:

- Consenting to a sale of property
- Consenting to a mortgage or re-mortgage.
- Retaining the existing restriction in favour of the Trust on the existing HMLR title.
- Consenting to removal of the restriction on condition that a new Equitable Charge restriction notice is placed on the new property purchased from the proceeds or other suitable property.
- Removal and agreement that no further Equitable Charge or restriction shall be entered and/or instead that a Deed of Promissory Note executed to replace the existing restriction and Equitable Charge.

Likely Work Involved

Usually the process would involve:

- A review of the Trust
- A discussion or meeting with any co-trustees and with relevant beneficiaries
- Completion of Minute of Decision covering all aspects
- Communications with any co-trustee on decision and subsequent documentation
- Assisting with preparation or execution of appropriate documentations

Contact Us

For more information and for an initial discussion for advice please contact us on:

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