

Resolutions where a trust, company or CC is selling or buying immovable property are frequently problematic. Resolutions by a CC or company authorising the sale or purchase of immovable property should preferably be signed prior to signature of an agreement but if that is not possible, it is not fatal as the Company's Act permits ratification.

There should be a clause in the agreement which binds the signatory personally should the entity not ratify the agreement. The resolution should also nominate a signatory to act on behalf of the company or CC and state what the company or CC has resolved i.e. to buy or sell the property and its legal description.

All members of a CC must sign the resolution, and with regards to a company, all directors must sign. In certain instances the shareholders of the company (where it is the sale of a major asset of the company) must sign a shareholders' resolution as well. We can assist in this regard.

As mentioned, the Company's Act, which deals with Companies and CCs, allows ratification after signature but one must be mindful of:

1. What if all the directors are not on board and won't sign the resolution during the process?
2. What if the shareholders are required to sign and also don't agree to the sale?

With regards to trusts, either all the trustees must sign the agreement, or a resolution signed by all the trustees must be obtained PRIOR to the signing of the agreement authorising one or more of the trustees to sign the agreement.

If the resolution authorising the sale or purchase has not been signed prior to the signing of the agreement, the signatory is not authorised, and the agreement will be invalid.

Should you have failed to obtain the necessary resolution prior to having the agreement signed, you must ensure that the correct steps are followed and have the agreement resigned otherwise you will compromise your transaction and put your clients and your commission at risk.

Another important difference between trusts and companies is that a property can be purchased by a company to be formed. Usually the agreement would allow the purchaser a certain period in which to register the company. In the case of trusts however; this is not possible. The trust must be in existence i.e. letters of authority must have been issued for the trust by the Master of the High Court, in order for a property to be purchased by a trust.

We do have some suggestions to deal with this situation and you are welcome to contact us if you need some assistance.

This information is general and basic and does not constitute legal advice or opinion. Please contact us if there is any aspect you require more clarity on.

Author: Sheralee Mullen