30 August 2024

A TRUST AS A PARTY TO A SALE AGREEMENT

Where either party to an agreement of sale is a trust, the following should be kept in mind:

- Trustees of a trust can only act in their capacity as trustees once the Letter of Authority is issued by the Master of the High Court. No sale agreement can be signed for “a Trust to be formed”.

- A trust deed usually stipulates the minimum number of trustees that must be in office. It is therefore important to verify that the number of trustees on the Letter of Authority is equal to or more than the minimum number of trustees as stipulated in the Trust Deed. If the number of trustees are below the minimum, a new Letter of Authority will have to be obtained from the Master of the High Court. Any agreements signed whilst the number of trustees is not sufficient will be null and void.

- A resolution by all trustees must be signed, authorising the sale or purchase before a sale agreement is signed. **If no resolution was taken by the trustees before the signature of the sale agreement**, **such agreement is void**. A sale agreement can’t be ratified by the trustees.

- One trustee can be authorised by a resolution to sign all necessary transfer documents

It is therefore imperative to determine the number of trustees required, and to obtain a resolution from the trustee’s that authorises the transaction before an offer to purchase is signed by any trustees on behalf of a trust.