



## How to apply to disapply a management restriction

ABC Management Company (the management company) was formed by the residents of a block of flats to ensure that responsibility for the upkeep and management of the block was undertaken equally by all residents.

The following restriction was entered on each registered leasehold title in the block:

“RESTRICTION: No disposition of the registered estate (other than a charge) by the proprietor of the registered estate is to be registered without a certificate signed on behalf of ABC Management Company of 36 Tower Road, London EC1 9PL by a director, its secretary or its conveyancer that the provisions of clause 5 of the deed dated 18 January 2000 referred to in the charges register have been complied with.”

The restriction prevents any disposition by the proprietors of the registered leasehold titles in the block, apart from a charge, from being registered unless the appropriate certificate by the management company is supplied. Evidence other than a certificate will not be accepted as it places an unreasonable burden on the registrar to decide if it complies with clause 5 of the deed.

Joe and Katie Smith of Flat 1 are now in the process of selling

their property but before registration of the transfer to the purchaser can take place, they must comply with the restriction by obtaining the certificate from the management company. Although Joe and Katie have complied with the provisions of clause 5, the directors and secretary of the management company have not replied to the request for a certificate despite several reminders so Joe and Katie are unable to comply with the restriction.

### **How do they get registration despite non-compliance?**

If, despite their best efforts, the certificate is still not forthcoming, either from the management company or its conveyancer and the transferors can show that there is no reason why the transfer should not proceed, the registrar may make an order disapplying the restriction to enable the transfer to be registered. The transfer can then be registered. Application to disapply a restriction must be made in form RX2. Evidence of the efforts made to comply with the restriction must accompany the application. If the registrar decides to make an order he will also make an entry in the register noting the terms of the order along the lines set out overleaf. (Land Registration Rules 2003, r96(5)). (See Ruoff & Roper Chapter 44.019).



**What to do if management company is in liquidation, receivership or dissolved**

If the management company had gone into liquidation or receivership then application in form RX2 and similar evidence as overleaf should be lodged together with any correspondence with the liquidator or receiver. The consent by the liquidator/receiver to the disapplication of the restriction and evidence of their appointment should also be lodged.

If the management company had been dissolved then again, similar evidence should be lodged together with evidence of dissolution and a statement from the Treasury Solicitor stating he has no interest in the title.

In each case, unless an application to remove the restriction is received at the time the transfer is registered, it will remain on the register and a note will be entered along the following lines to reflect the terms of the order:

“NOTE:- By an order dated [ ] made under section 41(2) of the Land Registration Act 2002 the restriction set out above was disapplied in relation to any application to register a Transfer of the registered estate to [ ] provided the application to register the Transfer is made within three months of the date of the order and that the application is in due course completed by registration.”