



How to deal with an existing form A restriction

When Tom and Mary bought 3 Lee Street they were registered as tenants in common so that the survivor of them could not give a valid receipt for capital moneys arising and a form A restriction was entered on the register as follows:

“RESTRICTION: No disposition by a sole proprietor of the registered estate (except a trust corporation) under which capital money arises is to be registered unless authorised by an order of the court.”

Please note that this is the current form A restriction but you may encounter earlier versions. (Form A is a standard form of restriction. For more information on standard and non standard restrictions please see Practice Guide 19.)

Tom and Mary now wish to transfer the legal estate, not for value, from both of them to Tom. Tom also wants to register a charge that he arranged in order to finance improvements to the property.

The transfer is not caught by the restriction so Tom can be registered as sole proprietor of the registered estate. However, the restriction will not be automatically cancelled so Tom's lender cannot register the new charge as Tom is unable to give a valid receipt for capital moneys (ie the loan) arising under it.

If, as a result of Tom acquiring Mary's share, the trust has come to an end, Tom must lodge evidence of this. He must apply in form RX3 to cancel the restriction and lodge a statutory declaration or statement of truth to the effect that, as a result of obtaining Mary's share, he has become entitled legally and beneficially to the whole of the registered land and that he has not incumbered his undivided share and has not received notice of any incumbrance on Mary's share.

If Tom has a conveyancer acting for him, we will normally accept a certificate by his conveyancer in place of a statutory declaration or statement of truth if the conveyancer is able to speak from personal knowledge of the facts.

This evidence will enable the form A restriction to be removed from the register and allow the charge to be registered.

However, if the evidence is not lodged only the transfer can be registered, as it's not for value. Any future transaction that includes capital money will be caught by the restriction unless the evidence mentioned above is lodged.

