



## How to apply for a restriction to protect a beneficiary under a trust

\* See Fact Sheet 9 for the latest amendments on this form of restriction

When John and Karen purchased 6 Mill Lane they were registered as tenants in common with the following form A restriction:

“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.”

However, Karen’s brother, Bill, put up some of the purchase money and it was agreed between the parties that he also has a beneficial interest in the property. Bill did not wish to be registered as one of the joint proprietors of the land but entered into a trust deed with John and Karen. The trust deed set out conditions under which the property could be sold, leased or charged and made provision for the distribution of moneys realised from the sale. Bill was to get a 60 per cent share.

Bill’s conveyancer advised him to not just rely on the form A restriction to protect his interest under the trust because if John and Karen were both parties to a transfer, the restriction would be overreached. In the unlikely event of John and Karen committing a fraud, Bill would then need to pursue them for his share of the proceeds of sale. In the circumstances the

parties consented to the following restriction in form B being entered in addition to the form A restriction. Application was made in Form RX1.

“RESTRICTION: No disposition by the proprietors of the registered estate is to be registered unless one or more of them make a statutory declaration or statement of truth, or their conveyancer gives a certificate, that the disposition is in accordance with the terms of the trust deed dated 12 December 2002 made between (1) John Smyth and Karen Smyth and (2) Bill Wright or some variation thereof referred to in the declaration or certificate or some variation thereof referred to in the declaration, statement or certificate.” \*

See Practice Guide 24 – *Private trusts of land*, for more information.



Fact sheet

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