

## SALES INVOLVING TRUSTS – WHAT YOU NEED TO KNOW

When dealing with a trust, it is imperative that you carry out important preliminary work before the deed of sale is signed, otherwise you run the risk of losing the sale. This is what you need to do:

1. Get a copy of the trust deed from the client to check the minimum number of trustees required to be appointed for the trust to operate. All trust deeds have such a clause.
2. Obtain the latest Letters of Authority (sometimes called the Master's Certificate) which is issued by the Master of the High Court. This document shows who the trustees are. Use this document to check that the minimum number of trustees are indeed appointed - and all of them are still alive! If there are insufficient trustees in office, the trust will not be able to buy or sell (or carry out any other juristic acts).
3. Check the trust deed to confirm that the trust is authorized to buy or sell immoveable property. Not all trusts have this power (but most do).
4. Obtain a written resolution signed by a sufficient number of trustees authorizing the sale or purchase and appointing one of them (or a 3rd party) to sign on the trust's behalf. If there is any doubt about who needs to sign the resolution, get all the trustees to sign.
5. Only once all of this is in place you can proceed to take a mandate from or present an offer to a trust that is selling or take an offer from a trust that is buying.
6. Failure to get a proper resolution in place before the trust signs any contract, including a mandate, means the transaction will not be legally binding and either of the parties to the contract would then be able to walk away.
7. You cannot buy on behalf of a trust which must still be formed. The trust must be in existence and the Letters of Authority / Master's Certificate must be in place. Until then a trust can do nothing. There are no exceptions to this.
8. If you are in doubt about how to deal with a trust, refer to your attorney at Miltons, we will be only too happy to assist.

We TRUST this will be of use to you!