



RESOLUTION FOR A TRUST

One always has to be extremely careful when one of the contracting parties is a trust. The Supreme Court of Appeal has ruled that in the case of a trust, a deed of sale signed by one or more of the trustees on behalf of the trust will not be valid unless all the trustees have signed the agreement or have, before the agreement is signed, authorized in writing the relevant trustee/s to sign the agreement on their behalf. The exception is where the trust deed provides for the sale agreement to be signed in another manner by the trustees in which event the sale agreement must be signed exactly as per the provisions of the trust deed. Unfortunately one cannot later rectify the matter by getting the trustees who have not signed the agreement to later agree to the sale, as the Supreme Court of Appeal has stated that one cannot revive a nullity. In other words if the agreement is not valid at the time of signing, it cannot later be made valid.

It is therefore very important to ensure that the trustees all sign the agreement or that a resolution is obtained prior to the signing of the agreement authorizing a specific trustee/s to sign the agreement and which resolution is then signed by all the trustees.

The above should be seen as a brief comment and our interpretation thereof and should not be seen as an extensive guideline. Please obtain a full legal opinion if you wish to act on any aspect hereof as the guideline is not fully comprehensive.

 <p><i>Going Beyond</i></p> <p>The DVH group is a national group of attorney practices with offices situated in the Western Cape, Gauteng, and Kwa Zulu Natal.</p> <p>www.dvh.law.za or scan the QR to contact us.</p>	
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