

Property: Mergers: When it goes wrong

The case of Southampton City Council -v- Southampton Medina Mosque Trust Limited and others was a particular example of a very common situation where an organisation intends to merge, incorporate or change its constitution and the appropriate procedures to transfer the property of the original organisation to the organisation that is intended to hold it have not been properly carried out. The local authority brought the Southampton case on the basis of a query as to which party should actually own the property, although the intention of the parties appeared to have been clearly to ensure that the Mosque company held the property.

The case illustrates the extent of the problems that can arise, in this instance resulting in the inconvenience and expense of a court case.

Strictly speaking, in most instances property can only be transferred using a form of Land Registry transfer. There are other methods in particular instances. For example, there is a method of appointing new trustees involving an executed memorandum, and there are mechanisms whereby community benefit societies (formerly industrial and providence societies) can merge by means of a procedure involving a resolution of the transferring organisation. In both cases the ownership of the property will pass automatically and the Land Registry will register the property in the name of the receiving organisation.

The real problems arise where the transferring party is a company that has been struck off the register, or individual trustees who are deceased, or who cannot be found.

It is in most cases possible to resolve the situation without going to court. Some of the alternatives are:

- An application to the Charity Commission to vest the property where the intention of all the participants is clear and it is manifestly the case that the property has at all times

been held for charitable purposes, either on charitable trusts or by a corporate body with charitable status

- Relying on the law of adverse possession, whereby “possession” (a legal term referring to acts of ownership over a property) for a period of 10 or 12 years (depending on when possession commenced) can result in registration of the property in the name of the receiving party
- As in the Southampton case, a document or procedure that passes the “beneficial” ownership of the property to another party, where the appropriate Land Registry forms have not been completed. When presented with evidence of this (for example, a written agreement that intends to pass ownership of the property from the transferring party to the receiving party) the Land Registrar may exercise their discretion in the circumstances to register the property in the receiving party’s name
- Where property is held by trustees for an unincorporated association or under a charitable trust, the executors of the last of a number of deceased trustees may be prepared to appoint new trustees to transfer the property

Southampton City Council -v- Southampton Medina Mosque Trust Limited and others [2010] EWHC 2376 (Ch)

For further information please contact:

James McCallum

Partner

020 8394 6481

James.McCallum@russell-cooke.co.uk

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