



PRACTICE DIRECTION NO. 4 OF 2014

ORDERS FOR SALES BY PRIVATE TREATY PURSUANT TO SECTIONS 75 AND 77 OF THE REGISTERED LAND LAW (2004 REVISION). (“THE RLL”).

This Practice Direction supplements Practice Direction No. 5 of 2012.

PREAMBLE

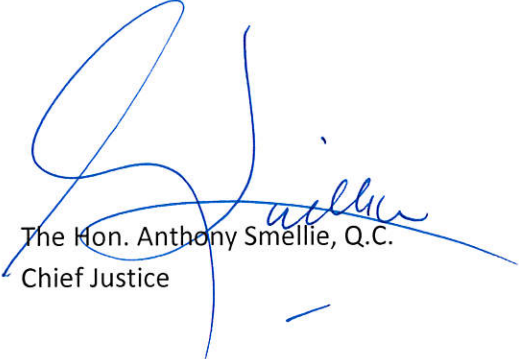
Applications to the court for orders sanctioning sales by private treaty pursuant to Section 77 of the RLL, are sought by way of variation of the operation of Section 75 which allows the chargee to sell by way of public auction acting “in good faith and hav(ing) regard to the interests of the chargor.”

Practice Direction No. 5 of 2012 directs that the objectives of a public auction as contemplated by Section 75 can be achieved by way of listing on the Multiple Listing System by reference to a reserve sale price that reflects the fair market value of the property. This will usually be achieved by using two independent valuations (taking the median of the values where the valuers disagree). Where the reserve price is not met within a reasonable time, the discretion in the chargee to instruct its agent gradually to lower the reserve until the true market price is realized, must also be recognised.

1. This practice direction confirms that an application for leave to sell by private treaty will not be entertained unless there has been a fair attempt to market the property for sale on the open market, including by way of public auction in keeping with Practice Direction No. 5 of 2012.
2. Where that open market process yields an offer which the chargee wishes to accept but is concerned (for reason that the offer price is significantly below the reserve price or for some other good reason) to seek the sanction of the court pursuant to Section 77, such an application may be granted at the discretion of the court. The court will, however, always be mindful of the fact that a chargee is not obliged to seek the sanction of the court in the exercise of its power of sale granted by Section 75 and will reserve its discretion as to the appropriate order for costs that it might make upon any application.

3. Where it is represented to the listing officer that an application must be taken urgently in order to comply with contractual deadlines for closure of sales, the listing officer may provide an urgent listing.

Dated this 6th day of January 2014

A handwritten signature in blue ink, appearing to read 'Smellie', is written over the typed name. The signature is fluid and cursive, with a large loop at the beginning and a long horizontal stroke extending to the right.

The Hon. Anthony Smellie, Q.C.
Chief Justice