

### **5.3.i. Policy & Procedure**

## **HOLDING COVENANTS AND RIGHTS OF WAY**

Trust Council: December 5, 1992

### **A: PURPOSE:**

1. This policy summarizes legislation relating to rights of way and covenants under sections 218 and 219 of the *Land Title Act*. Each case presents unique circumstances affecting the decision to accept or require such instruments and affecting their terms and form. Trust Committees shall consult Trust staff and legal counsel early in each case in order to determine whether a covenant or right of way is desirable or feasible.

### **B: REFERENCES:**

1. *Land Title Act*: Sections 218 and 219
2. *Property Law Act*: Section 35

### **C: BACKGROUND:**

1. Covenants under section 219 of the *Land Title Act* impose positive or negative obligations regarding the use of land. Such covenants bind successor owners of the land in question.
2. The possible applications of such covenants are limited only by the terms of section 219 itself, which are summarized in this policy. The limits of section 219 must always be borne in mind when determining whether a covenant is to be entered into.

### **D: POLICY:**

1. Statutory rights of way under section 218 of the *Land Title Act* give the Trust Committee the right to enter and use a specified area of land, e.g. for utility purposes, so long as the right of way is necessary for the operation and maintenance of the Trust Committee's undertaking.

**E: PROCEDURE:****1. REQUIREMENTS**

- 1.1. Local Trust Committee must determine that a covenant needs to be created, registered, held and enforced under Section 219 of the Land Title Act.
- 1.2. Local Trust Committee requests planning staff to complete the standard covenant format for review by legal counsel or provide instructions to legal counsel to draft a covenant to ensure its enforceability and to ensure that it protects the Local Trust Committee's interest in the matter.
- 1.3. Local Trust Committee must pass a resolution to accept a covenant (either at an actual meeting or by resolution without meeting). The resolution should be in the following form:
  - i. Be it resolved that:
    - 1) The \_\_\_\_\_ Trust Committee accept from the registered owner of the land on \_\_\_\_\_ Island legally described as \_\_\_\_\_ a covenant under section 219 of the Land Title Act.
    - 2) The \_\_\_\_\_ Trust Committee be bound by that instrument as a party to it, even though it has not been executed by the \_\_\_\_\_ - Trust Committee.
    - 3) All necessary steps be taken to register the instrument in the Land Title Office against title to the land, at the expense of the registered owner of the land.
- 1.4. Execution

A covenant under Section 219 binds the party granting the covenant to the Trust Committee even if the committee has not signed such an instrument. Therefore, the covenant does not need to be signed by the Trust Committee.

## 1.5. Registration

Once a covenant has been executed by the grantor, it must be registered at the Land Title Office. This can be done in the following ways:

- i. the lawyer acting on behalf of the Trust Committee can register the covenant; or
- ii. the grantor's lawyer could register the covenant, then send the confirmation of registration to the Trust Committee's lawyer; or
- iii. the grantor's lawyer could register the covenant, and confirm the registration directly to the Trust Committee by providing the following:
  - 1) a copy of fax of the cover sheet, showing registration particulars.
  - 2) confirmation of the registration particulars in a letter to the Trust Committee.

## 2. OFFICE PROCEDURES

2.1. The first draft of the covenant shall be forwarded to the Bookkeeper/Receptionist to be:

- i. allocated a file number.
- ii. logged into the applications book.
- iii. logged into the tracking system.

2.2. The covenant file is passed to the appropriate planning staff.

2.3. For the covenant to be valid, the Planner must obtain a Trust Committee resolution accepting the covenant.

2.4. Once the covenant is accepted by Trust Committee resolution, the planning staff shall pass the file to the Planning Clerk, who will ensure that the covenant is registered via one of the methods under section 1.5. of these Procedures.