

FRIENDS LIFE SMALL SELF ADMINISTERED SCHEME

Property Disposal Guide

Introduction

This guide has been designed to help you, the Managing Trustees, with your property disposal and to help you meet the relevant requirements. If you require clarification on any of the points contained in this guide, do not hesitate to contact Suntrust Limited (via your financial adviser) and we will be pleased to help you.

This guide is for general guidance only and is based on Suntrust Limited's understanding of relevant legislation. It should not be treated as legal advice or relied upon as a statement of law.

At the end of this guide is a questionnaire and a Managing Trustees' agreement which should be completed and returned to Suntrust Limited as soon as the details of the proposed sale are known.

Suntrust Limited is the Special Trustee of your scheme. In accordance with the scheme rules, it must consent to any proposed investment transaction before it can proceed (see section 2).

Suntrust Limited cannot provide formal advice in connection with the property disposal. You must take appropriate professional advice (e.g. on taxation or legal issues), although Suntrust Limited can help you by providing general guidance and technical support.

A copy of this guide may be provided to your professional advisers if required.

1. HMRC rules

HM Revenue & Customs (HMRC) permits transactions with employers, scheme members and other connected parties (see 1.1). However, HMRC expects that such transactions should take place on 'arm's length bargain' terms. HMRC defines this as a normal commercial transaction between two or more persons. You must therefore obtain a valuation from a suitably qualified valuer. Suntrust Limited will require sight of the valuation before considering a proposed property disposal.

1.1 Connected parties and unauthorised payments

The definition of a connected person is complex but, in general, covers relatives, other persons with whom a scheme member jointly controls a company and any company that a scheme member controls alone or with others.

HMRC will also treat transactions with third parties as being 'connected party transactions' if there is an arising direct or indirect benefit for a scheme member or the sponsoring employer or anyone connected to them. Please ask your financial adviser if you are in any doubt.

Disposals made by the scheme that do not comply with HMRC rules will be deemed to be unauthorised payments. Your scheme may be de-registered by HMRC and lose its tax privileged status if unauthorised payments equal or exceed a de-registration threshold (broadly 25% of the fund value) in any 12-month period.

Unauthorised payments are subject to a tax charge. The tax charge will be 40% of the amount of the unauthorised payment. If unauthorised payments equal or exceed a surchargeable threshold (broadly 25% of the fund value) in any 12-month period, a surcharge of 15% will also apply, i.e. a total tax charge of 55%. The person(s) liable to the charge will normally be the scheme member(s) or, for any unauthorised payment made to the sponsoring company, the company itself.

The scheme administrator (usually you, the Managing Trustees) will also usually be liable to a scheme sanction charge on unauthorised payments. The amount of this charge is 40% of the unauthorised payment. But where the member or sponsoring company has been subject to an unauthorised payment charge and has paid the tax due, the amount of the scheme sanction charge will be reduced to 15%.

Example – a scheme sells a property worth £300,000 to a member for £250,000. A value of £50,000 has been passed to the member and this amount will be taxed as an unauthorised payment.

2. Requirements of Suntrust Limited

Suntrust Limited will not consent to any proposed transaction that does not comply with the requirements set out in this guide. In particular, Suntrust Limited will not consent to proposed transactions that:

- do not comply with the scheme rules or relevant legislation;
- not made on normal commercial terms; or
- may give rise to tax charges as unauthorised payments.

The requirements of Suntrust Limited will largely depend upon whether or not Suntrust Limited is a full joint owner of the property (the solicitor acting for the scheme will be able to determine this). Generally if the property is located in England and Wales, a restriction should be in place on the title of the property with HM Land Registry. The consent of Suntrust Limited will be required at the time of the disposal in order to formally remove the restriction and allow the sale.

Registered land in Northern Ireland may have an inhibition on the title, and Suntrust Limited will need to approve and consent to the disposal. For property in Scotland or unregistered land in Northern Ireland, Suntrust Limited may be a co-owner of the property. If this is the case, Suntrust Limited will need to be a party to any documentation.

3. Managing Trustees' Responsibility

- You are required by the Pensions Act 1995 to seek professional advice in writing from a suitably qualified person regarding the suitability of each investment transaction.
- General trust law requires you to act prudently when making investment decisions in respect of the scheme. You must act in the best interests of all the scheme members and in accordance with the scheme rules.
- When making investment decisions the scheme rules require that you, the Managing Trustees, must consent unanimously in writing. This may be done by completion of the Managing Trustees' agreement included within this guide.
- All proceeds from the disposal must be placed into a scheme bank account of which Suntrust Limited is a co-signatory.

4. Step-by-step Guide

This will help you in the property disposal process.

Initial steps to be taken:

- Complete the attached property disposal questionnaire as fully as possible and return to Suntrust Limited
- Sign the attached Managing Trustees' agreement and return to Suntrust Limited.
- Formally appoint the solicitor dealing with the disposal before any action is taken. The solicitor should be acting on behalf of all the Trustees including Suntrust Limited. If you have not already appointed your solicitor Suntrust Limited a specimen letter of appointment is enclosed. This needs to be signed by the Managing Trustees before returning to Suntrust Limited to countersign.
- If the purchaser is a connected party (see section 1.1), an independent, professional report must be obtained, and the selling price must at least match the figure in the report. Any difference in this price could mean the purchase is treated as unauthorised.
- If the property is subject to VAT, this needs to be added to the selling price and the appropriate invoice prepared. If there is any uncertainty concerning the impact of VAT, we recommend that professional advice be sought.

Please note: Suntrust Limited's consent to the disposal must be obtained before contracts are exchanged.

The following points require action by the solicitor:

- Arrange for any outstanding scheme borrowing in connection with the property to be repaid.
- Confirm that there will be no remaining liabilities on Suntrust Limited as a result of the disposal of the property/repayment of any outstanding borrowings;
- For property in England and Wales or registered land in Northern Ireland, ensure that any restriction or inhibition on the Land Registry title is removed following the disposal of the property; and
- Provide Suntrust Limited with a copy Completion Statement and confirmation that the net proceeds have been paid into the scheme bank account.

Draft letter to be prepared by the scheme trustees:

Solicitor's name and address

Name & address of Trustees

Date

Dear Sirs

Retirement Benefits scheme

We, the Trustees of the *{insert scheme name}* Retirement Benefits Scheme confirm the appointment of *{name of solicitors}* to provide legal advice to the Trustees in accordance with the provisions of the Pensions Act 1995 ('the Act'), with effect from *{insert date}*.

In order to comply with the provisions of the Act, please would you acknowledge the appointment within one month of receipt of this letter and at the same time countersign this letter to confirm your agreement to the terms of your appointment and return it to me.

You will take instructions from, and all reporting by you will be to *{insert name(s) of trustee(s)}*.

As Trustees, we may remove you by serving a notice in writing stating the effective date of your termination of appointment. Likewise, you may resign as legal adviser by serving on the Trustees a notice of your resignation in writing.

You will make an immediate declaration to the Trustees if you become aware of any conflict of interest to which you are subject in relation to the scheme. Any such declaration will be in writing and will be addressed to the Trustees (or one of them). The Trustees reserve their right to take whatever action they deem appropriate, including the immediate termination of your appointment, if you fail to comply with this duty.

The Trustees will, on request, provide (within a reasonable time) such information to you and make such records available to you as may be reasonably required by you to perform your function as a professional adviser. Any information provided to you in accordance with this paragraph shall be treated as confidential and shall not be disclosed to any third party without the consent of the Trustees.

If any money is received by you and held by you on behalf of the Trustees it shall be held in a separately identifiable client account. Any interest accruing on such an account shall be credited to the Trustees, and you shall maintain and retain records in relation to the account for a period of at least six years.

If at any time, you hold or produce any records of a type referred to in Regulation 12 of the Occupational Pension Scheme (Scheme Administration) Regulations 1996, whether at the request of the Trustees or otherwise, you will maintain those records for a period of at least six years from the end of the Plan year to which the records relate.

Yours faithfully

Trustee: (Full Name)

Trustee: (Full Name)

Trustee: (Full Name)

FRIENDS LIFE SMALL SELF ADMINISTERED SCHEME – PROPERTY DISPOSAL GUIDE

Trustee: (Full Name)

Trustee: (Full Name)

Trustee: (Full Name)

Trustee:
(For and on behalf of Suntrust Limited)

We, {*name of solicitor*} solicitors, accept our appointment as legal advisers in accordance with the letter of which this is a copy and we will notify you of any conflict of interest of which we become aware.

Signed:

Dated:

Managing Trustees’ Agreement

We, being the Managing Trustees of the

..... Retirement Benefits Scheme,
agree to the disposal of: (address of property).....
.....
.....

Declaration

and declare that:

- We are acting in accordance with written professional advice obtained in relation to this transaction.
- All relevant information has been provided and is true to the best of our knowledge and belief.
- We understand that we are fully responsible for ALL disbursements, legal fees, valuation fees, tax charges and any other fees or charges incurred by the scheme in this matter, even if the property disposal does not proceed, irrespective of the reason.
- The proposed property disposal has been/will be negotiated on normal commercial terms and in accordance with HMRC rules for authorised investment transactions as detailed in this guide.

All members/Managing Trustees must sign below:

Name	Signature	Date
.....
.....
.....
.....
.....
.....

Please note: Any Managing Trustees who are not members must also sign above. Please return this agreement to STS Department, Friends Life Centre, P.O. Box 64, Bristol, BS5 5FW.

This information is required **PRIOR TO EXCHANGE OF CONTRACTS**

Property Sale Questionnaire

Name of scheme	Retirement Benefits Scheme
----------------	----------------------------

Please complete as fully as possible, and return to Suntrust Limited, STS Department, Friends Life Centre, P.O. Box 64, Bristol, BS5 5FW.

Property address	
Name and address of the solicitor who will act for the pension scheme trustees	
Who is buying the property?	
What is the buyer's connection to the scheme, its members or the employer? (Please delete as appropriate and provide details of the connection)	No connection/employer participating in the scheme/associated company/scheme members/other connected parties
Are there any special agreements e.g. part sale, lease surrenders etc?	
What is the sale price (excluding VAT)?	
Is VAT being charged on the sale of the property? (VAT)?	YES / NO
Title number of the property (available from the land registry title)	

Other items to be returned to Suntrust Limited (tick if attached):

Appointment of solicitor letter (if not previously appointed),	
Managing Trustees' Agreement form	
An independent professional report of the property's open market value (where the purchaser is a connected party).	

Friends Life helps people get the best out of life. To achieve this, we provide different financial solutions for each stage of life. Whether the need is pensions, life insurance, investments, or long-term care, we aim to help.

At Friends Life, this is what we mean by financial protection.

COMPANY PENSIONS

PERSONAL PENSIONS

STAKEHOLDER PENSIONS

PHASED RETIREMENT PLANS

ANNUITIES

INVESTMENT BONDS

LIFE INSURANCE

CRITICAL ILLNESS COVER

LONG-TERM CARE

www.friendslife.co.uk

STS Department, Friends Life, PO Box 64, Bristol, BS5 5FW. Telephone number: 0345 3044502.

Friends Life Services Limited

An incorporated company limited by shares and registered in England and Wales, number 3424940. Registered office: Pixham End, Dorking, Surrey RH4 1QA. Authorised and regulated by the Financial Conduct Authority.

Telephone calls may be recorded.

Friends Life is a registered trade mark of the Friends Life group.

