FREQUENTLY ASKED QUESTIONS IN RESPECT OF REQUIREMENT TO OBTAIN LESSOR’S CONSENT

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| No. | QUESTION | ANSWER |
|  | When is a Lessor’s consent required? | In general, any act of disposition intended by the Lessee requires the Lessor’s consent. The law defines what constitutes a disposition. Generally, where there is a covenant in the lease that requires that an action by the Lessee affecting the property must first be preceded by an application for consent/ approval by the Lessor, the Lessee must make such application in good and reasonable time to the Lessor for the Lessor’s consent.  Actions that require consent could include: transfer or assignment of the lease to a Lessee or even where the Lessee intends to charge the property with a financier.  Where the reversionary interest has passed to a management company, the consent will be required in that instance shall be from the management company. |
|  | Is obtaining a Lessor’s consent a mandatory requirement? | Where the lease contains a covenant by the lessee not to take an action without the Lessor’s consent, the lessee shall make an application for the lessor’s consent which shall not be unreasonably withheld. |
|  | When is the lessor’s consent considered to be unreasonably withheld? | Consent is unreasonably withheld if:   1. the lessor imposes unreasonable conditions to the giving of consent; 2. the lessor requires the lessee to pay money in form of rent or more premium save for the lessor’s costs towards obtaining the consent; and 3. lessor refuses to grant consent on the basis of the gender, race, nationality or other discriminatory basis; 4. other grounds that can reasonably be deemed to be unfair or irrelevant to the granting of consent. |
|  | What is the effect of not obtaining the Lessor’s consent? | The Registrar may refuse any other dealing with the Lease where the registered lease contains a covenant or agreement requiring certain actions by the lessee to be preceded by obtaining the lessor’s consent.  Where the lessee is seeking to transfer the lease or charge the property, the Lessor’s consent must be obtained. Where the Lessor’s consent is not obtained, it can adversely affect the validity of the Chargee’s security. |

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