



R S L N S W

Respecting, supporting and remembering
our veterans and their families

Standard Operating Procedure 6

Sub-Branch Property Dealings

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1. Purpose

This Standard Operating Procedure (**SOP**) provides sub-Branches with guidelines as to the management of sub-Branch Property.

Underlying this SOP is the requirement that all sub-Branch Property must be used exclusively for the Charitable Purpose.

It is the responsibility of the sub-Branch Executives (and Trustees) to ensure that the procedures in this SOP are followed.

Unless otherwise stated, capitalised terms used in this SOP have the meaning set out in Appendix A of the Constitution. For ease of reference, Sub-Branch Property is defined in the Constitution as all real and personal property, income, assets, money and funds of a sub-Branch.

2. Real Property Dealings

2.1. Approval to Deal with Real Property

Real property includes land and all buildings and structures on any land owned by a sub-Branch (**Real Property**).

Real Property dealings include the sale, purchase, lease, sub-lease, licence, sub-licence or mortgage of Real Property (**Real Property Dealing**).

Before conducting any Real Property Dealing, a sub-Branch must first obtain:

- a) in principle approval from the members of the sub-Branch in accordance with Item 2.2 below;
- b) transaction approval from the members in accordance with Item 2.3 below; and then
- c) subject to clause 15.53 of the Constitution, the prior written consent of the RSL NSW Board (see item 2.4 below).

2.2. In Principle Approval of Members

The sub-Branch Executives and Trustees must obtain in principle approval from the members of the sub-Branch prior to entering negotiations for any Real Property Dealing. Entering negotiations means commencing discussions with third parties in relation to price, the mechanism for sale, purchase, lease or mortgage as the case may be and specific terms and conditions associated with the proposed transaction.

In principle approval may be obtained by a majority resolution passed by members of the sub-Branch present and entitled to vote at a general meeting convened by the giving of fourteen (14) days written notice to all members of that sub-Branch. The notice of meeting must list the proposed Real Property Dealing as a specific item of business and give members of the sub-Branch all necessary information that may be required to enable them to make an informed decision in relation to the transaction.

Once in principle approval has been obtained from Members, the sub-Branch Executives may commence discussions and negotiations with parties as to the specific terms of the proposed Real Property Dealing.

Obtaining in principle approval to investigate or negotiate the terms of a Real Property Dealing **does not mean** that the terms of the final transaction is approved. Once the terms of the Real Property Dealing have

been established, further approval from the members must be obtained prior to finalisation of the Real Property Dealing in accordance with item 2.3 below.

2.3. Member Approval of Transaction Terms

Member approval for the final terms of a Real Property Dealing must be obtained by a majority resolution passed by members of the sub-Branch present and entitled to vote at a general meeting convened by the giving of fourteen (14) days written notice to all members of that sub-Branch.

The notice of meeting sent to sub-Branch members for this purpose must list the Real Property Dealing as a specific item of business and include:

- a) a copy of the proposed transaction documents or details of the terms of the proposed transaction;
- b) a market valuation obtained in accordance with paragraphs 2.5 below;
- c) information as to how the proposed transaction is consistent with the Charitable Purpose and the sub-Branch's obligation to use sub-Branch Property for the Charitable Purpose;
- d) any other relevant information that may assist members to make an informed decision; and
- e) information about any related party element to the transaction and clear declaration by members involved in the transaction that there is no conflict of interest.

The dealing must be at arms' length and the terms must take into account fair market value and the reasons why any deviation from fair market value is contemplated or recommended and how this deviation is compatible with the obligation to pursue the Charitable Purpose.

2.4. Board Approval for Real Property Dealing

If the members approve the proposed Real Property Dealing at the members' meeting held in accordance with item 2.3 above, and the Real Property Transaction proposed has a market value of above \$5,000, the sub-Branch must seek the approval of the Board prior to entering into any obligation (including entering any agreement, making or accepting an offer or paying any money or agreeing on terms and conditions) with a party in relation to the Real Property Dealing. To obtain Board approval, the sub-Branch must submit a written request to RSL NSW. The request must be supported by:

- a) a copy of the notice of meeting and associated minutes of the meeting passing the resolution;
- b) a copy of the proposed transaction documents or details of the terms of the proposed transaction;
- c) any independent advice, report or advices obtained including any market valuations relied upon by the sub-Branch;
- d) information as to how the proposed transaction is consistent with the Charitable Purpose and the sub-Branch's obligation to use sub-Branch Property for the Charitable Purpose; and
- e) any other relevant information that may assist the Board to make an informed decision in relation to the giving or withholding of the consent.

Once written notification of Board approval is obtained, the sub-Branch may proceed with the transaction. If Board Approval is required and not obtained, the transaction may not progress.

If a transaction is protracted, difficult, or its terms deviate from those approved by the members or the Board, further approval may be required from members and the Board. Guidance should be sought from RSL NSW in this circumstance before proceeding with any transaction.

2.5. Valuations

Any Real Property Dealing contemplated by the sub-Branch must be supported by a current market valuation conducted by a registered valuer who:

- a) has practiced as a valuer for a period of not less than five (5) years;
- b) is a certified practising valuer registered with the Australian Property Institute (New South Wales Division); and
- c) where the valuation is in relation to a lease to a registered club, the valuer is qualified to practice as a valuer of Club premises.

2.6. Use of Premises and Facilities by sub-Branch Post Dealing

If it is proposed that a sub-Branch will have ongoing use of a premises and/or facilities within a premises post sale or lease, it is the responsibility of the sub-Branch to ensure that appropriate legal arrangements are made to secure the entitlement to use and occupation.

These arrangements may include specific accommodation provisions in any lease, or, in relation to a sale, a separate Deed of Accommodation could be entered into, supported by a special condition in the terms of the sale contract.

2.7. Engagement of Solicitor or Qualified Professional

Following approval by the Board, it is recommended that the sub-Branch instruct solicitors (or other suitably qualified professional such as a conveyancer) to act on its behalf in relation to the transaction. Any transaction document prepared must include any conditions or requirements prescribed by any Board's resolution relating to the Real Property Dealing.

3. RSL Custodian Pty Limited

Unless the Board by resolution agrees otherwise, the proceeds of any sale of sub-Branch Real Property by Trustees on behalf of an unincorporated sub-Branch must be paid into an account jointly held by the sub-Branch Trustees and RSL Custodian Pty Limited as joint trustees. Prior to the completion of sale, the sub-Branch (by the sub-Branch President as appointor under clause 16.2 of the Constitution) must do all things necessary to appoint RSL Custodian and/or the Trustees as trustees of the sale proceeds.

The proceeds of any sale of sub-Branch Real Property by an incorporated sub-Branch must be dealt with in the manner prescribed in the Constitution of the incorporated sub-Branch. which requires sub-Branches to comply with the requirements of their Constitution and SOP's in the ongoing management of all assets.

4. Sub-Branch Personal Assets

4.1. Approval of Members

Dealings in relation to sub-Branch Property other than Real Property (including sale of chattels, cash, loan transactions, cash investments and deposits and shares) (**sub-Branch Personal Assets**) must be approved by the members at a sub-Branch General Meeting convened in accordance with the procedures set out in 2.2 above. Any dealing with sub-Branch Personal Assets must, if required under the Constitution, be approved by the Board.

4.2. Board Approval for Transactions involving sub-Branch Personal Assets

To obtain Board approval for a dealing with sub-Branch Personal Assets, the sub-Branch must submit a request to RSL NSW. The request must be supported by:

- a) a copy of the notice of meeting and the minutes of the meeting passing the resolution approving the transaction relating to sub-Branch Personal Assets;
- b) a copy of the general terms and details of the proposed transaction relating to sub-Branch Personal Assets;
- c) information setting out the consideration and due diligence undertaken by the sub-Branch in relation to the proposed transaction;
- d) information as to how the proposed transaction is consistent with the charitable purpose and the sub-Branch's obligation to use sub-Branch Property for the Charitable Purpose and details of any deviation therefrom; and
- e) any other relevant information that may assist the Board to make an informed decision in relation to the giving or withholding of the consent.

The Board may impose any conditions on the sub-Branch Personal Assets transaction that it sees fit and its approval will be subject to it being satisfied that the dealing will assist and benefit the sub-Branch in pursuing the Charitable Purpose and complying with the Constitution. If a transaction is protracted, difficult, deviates from the terms of the transaction approved by the members or the Board, further approval may be required from sub-Branch Members and the Board. Guidance should be sought from RSL NSW in this circumstance before proceeding with any transaction.

5. References & Resources

Legislation, standards, etc.

Australian Charities and Not for Profits Commission Act 2012 (Cth)

Trustee Act 1925 (NSW)

Australian Charities and Not-for-profits Commission

Tel: 13 22 62

<https://www.acnc.gov.au/tools/guides/managing-charity-money-guide-board-members-managing-finances-and-meeting-acnc-duties> (webpage provides guidance on the management of charity money)

Australian Securities and Investments Commission

Tel: 1300 300 630

<https://www.moneysmart.gov.au/investing> (webpage provides guidance on a range of investment issues including setting investment goals, determining risk appetite and choosing a financial adviser)