

Charities

Rules & regulations

There are various rules and regulations which govern property transactions involving charities. The purpose behind these rules is to ensure the interests of the charity are protected. The successful sale of charity property can often fall at the final hurdle if the statutory regulations are not strictly complied with. The Courts have not been afraid to render such transactions void.

Charitable purposes

The starting point for consideration is whether the seller is classed as a charity. A charity is defined by the Charities Act 1993 as an institution, corporate or otherwise, which is established for charitable purposes. Charitable purposes can be relieving poverty, advancing education or religion and any other beneficial cause providing a public benefit. This list is due to be extended when the Charities Act 2006 comes into force next year.

Non exempt charities, such as universities, museums and galleries have to comply with the most stringent rules when dealing with property, whilst exempt charities are subject to more relaxed procedures.

A charity can be structured as a company limited by guarantee, incorporated and registered at Companies House; alternatively it can be as a trust. With regards the latter method the charity will be owned by the trustees who are governed by a trust deed and property will be held on trust for the charity by the trustees. The drawback to this is that the trustees can be held individually liable as well as the charity; therefore a company structure is often the preferred option.

Responsibilities of a trustee

Where trustees own the charity and the charity owns property, the trustees have various duties and responsibilities in respect of that property. They must protect, manage, supervise and have overall control of the property, both individually and as a group. They have duties of fidelity towards the charity and must only ever act in the charity's best interests, acting honestly with a duty of care as trustees. Legal advice must be sought where necessary and when making decisions to sell or mortgage charity property the trustees must make a joint decision.

Selling charity owned land

As mentioned earlier, non-exempt charities are subject to stricter rules and essentially there are three elements trustees must consider before disposing of charity owned land. Firstly, do the trustees actually have the power to sell the property, i.e. does the trust deed give the trustees the power to sell? The Charity Commission must also provide their consent to the sale. Obtaining this consent will be even more significant if the sale is to another trustee, agent or officer of the charity, in other words, a person connected to the charity.

Secondly, the trustees must be able to show that the sale is in the interests of the charity and the beneficiaries. If a property is being replaced then the charity must show that the replacement is of equivalent value to the charity; often a surveyor's report is needed in these circumstances.

The third factor that the charity must consider is whether they have sold the property on the most favourable terms. A charity can achieve this by ensuring the property is favourably marketed, taking advice from professionals and accepting the best financial offer available. However an offer that is not necessarily on the best terms can be accepted by a charity in the following circumstances: if the disposal is to a charity with similar purposes; if the charity reasonably believes that a buyer would not be able to complete; or if the buyer's intended use of the property conflicts with the principles of the charity.

Procedures to dispose

When trustees are disposing of land on behalf of a charity they must obtain a qualified surveyor's written report which complies with the Charities (Qualified Surveyors' Reports) Regulations 1992. The trustees are under a duty to make sure that the surveyor refers to and addresses these regulations within their report. This includes the condition the property is in prior to sale, the restrictions and easements the property is subject to and whether the property has any development potential. As the trustees are under a duty to reasonably obtain the best terms and the best price possible, in most cases they must also advertise the sale.

Exceptions to the rule

Whilst a non-exempt charity is subject to stricter procedures governing disposals there are some circumstances when the rules will be relaxed slightly and the consent of the Charity Commission will not be required if:

- statute or a legally established scheme authorises the sale.
- the charity's deed or governing instrument authorises a sale that is not on the best possible terms as the sale is to a connected charity.
- a lease is granted to a beneficiary further to the purposes of the charity.

However specific statements must still be included within transfer documentation and certifications to the buyer that the 1993 Act procedures have been met.

Leases

Leases of over seven years must be dealt with in the same way as a disposal and the above rules will apply. However, the Commission's consent will not be required for leases of seven years or less if no premium or fine is charged and the property is not let to a connected person. The charity must also have obtained and considered advice from a professional and have accepted terms that are considered reasonably the best the charity could have obtained.

The importance of compliance

Essentially when dealing with the disposal of property if a charity fails to have regard to the requirements of the 1993 Act the transaction could be rendered void. This could have repercussions for trustees as they could be held individually liable along with the charity if their liability has not been specifically excluded.

The provisions are substantial and varied and as noted above exemptions may often apply. What is clear from the legislation is that trustees must always act in the interests of the charity. In order to comply with their responsibilities trustees must make informed decisions, seeking independent advice and guidance from specialists such as lawyers and surveyors.

Contact us

Please feel free to contact us if you would like further information on any aspect of our work.

Our friendly team is always on hand to help and advise you. We can be contacted directly on:

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