

Top 10 considerations when disposing of freehold charitable land and buildings

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Are you acting in the best interests of your Charity? This article identifies the top 10 considerations when disposing of freehold charitable land and buildings.

Any disposal of charitable land is potentially a complicated transaction – almost inevitably there are features that call for bespoke professional advice. There are many legal and practical considerations that a trustee needs to consider before disposing of freehold charitable land to ensure that these transactions are properly conducted and that he obtains the best price achievable.

I set out below my top ten legal and practical considerations that trustees of a non-exempt Charity should consider before disposing of freehold charitable land (with or without buildings):

1. Section 36 of the Charities Act 1993

This is the principal point of reference when disposing of charitable land. The intention of this legislation is to prevent trustees from disposing of valuable assets without having taken proper professional advice. All non-exempt Charities must follow the procedures laid down in s36 to ensure trustees act in the best interests of the Charity. Failure to comply with the requirements of s36 can be fatal.

2. Surveyor's Report

When trustees are disposing of land they must obtain a qualified surveyor's written report as to value or obtain an Order from the Charity Commission approving the disposal. If a surveyor is appointed, the trustees must be satisfied that he has the appropriate ability and experience to deal with the type of land and buildings involved and the geographical area in which it is situated. The surveyor's report must comply with the Charities (Qualified Surveyors' Reports) Regulations 1992.

3. Open Market

It is usual for a surveyor's report to recommend that the land should be placed on the open market to obtain the best price and if not to state why not. In most cases this will involve advertising over a minimum period of time and in several formats as trustees are under a duty to obtain the best terms reasonably obtainable.

4. Connected Persons

If the disposal is to a person connected to the Charity, then trustees will need the approval of the Charity Commission and are once again required to take advice from a qualified surveyor. For these purposes s36(2) of the Charities Act stipulates what constitutes being a connected person and the rules are so complex that professional advice is a necessity.

5. Overage and clawback provisions

Where the sale price does not reflect the potential increase in value of the land in the future, the inclusion of overage or clawback provisions in the sale documentation should be considered. This might arise for instance where planning permission was granted at a later date which increased the value of the land. The Charity could then share in the windfall.

6. Joint venture with neighbour

Think out of the box! Why not consider combining the asset of the Charity with land of an adjoining owner if a greater sale price from the disposal can be realised.

7. Ransom strips

On a sale of land a Charity might retain a small strip of land in its ownership where adjoining land has future development potential, and access may be an issue. The Charity can then benefit from a payment to unlock the development potential but the ransom strip must be easily identifiable and properly documented.

8. Environmental considerations

Whenever a Charity disposes of land, it is essential that the trustees address the issue of possible contamination. It may be necessary to seek professional advice on the best approach to comply with the Environmental Protection Act 1990.

9. Statutory requirements

There are many statutory considerations that trustees need to consider when disposing of land. Failure to comply with the relevant legislation could lead to criminal sanctions against the trustees of the Charity. These considerations can often be complex and professional advice is recommended.

10. Board Minutes

Last but by no means least, remember to keep thorough and accurate board minutes. When a sale is proposed, it is important that complete records are kept to demonstrate the decision making process. Accurate records and board minutes will help safeguard trustees from allegations of acting in breach of trust or against the best interests of the Charity.

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If you would like further information or if you require advice on any of the above, please contact us on: enquiries@hempsons.co.uk

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