

CHARITIES AND THEIR LAND AND BUILDINGS – WHAT ARE THE RULES?

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CHARITY LAW AND PROPERTY

CHARITY TRUSTEES: THE PERSONS WITH CONTROL AND MANAGEMENT OF THE CHARITY

- Charitable trusts: trustees
- Unincorporated associations: members of the executive committee
- Charitable companies: directors
- Charitable community benefit society: members of the management committee
- Charitable incorporated organisation: trustees

CHARITY TRUSTEE DUTIES

Act:

- With reasonable care and skill, exercising any special skills that they have
- As a business person
- With integrity, avoiding conflicts of interest
- In the interests of the charity
- Following the law and provisions of the charity's constitution

DUTIES WHEN DISPOSING OF “LAND”

- Specific statutory duties under sections 117 to 121 of the Charities Act 2011
- Derive from and are additional to these original duties when “disposing” of land

“DISPOSITION” MEANS

- Transferring land
- Letting of land
- Surrendering of leases
- Granting of easements (e.g. rights of light, way and access)
- Transferring of mortgages of which the charity has the benefit
- Dispositions of “equitable” interests in land (such as a share of jointly owned property)

THESE DISPOSITIONS ARE NOT INCLUDED:

- Dispositions by exempt charities, (Section 117(4)(a))
- Mortgages, which are subject to separate provisions under section and 125 of the 2011 Act (Section 117(4)(b))
- Dispositions of land outside England and Wales (Section 129(1), definition of “land”)

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NOT DISPOSITIONS:

- A contractual licence to occupy or use property
- A fire escape licence
- The exercise of a tenant's break right under a lease
- The variation of a lease (not being an extension of the term)
- An agreement relating to the position of a boundary not involving a formal transfer of land

MORE NON-DISPOSITIONS

- A deed of rectification
- The vesting of land in a new trustee
- A rent review under a lease
- A tenancy at will

ALWAYS REQUIRING CONSENT

Transactions always requiring Charity Commission if not within the exceptions:

- Dispositions where trustees are not satisfied that the transaction is on the best terms
- Dispositions to certain 'connected persons'

CONNECTED PERSONS SECTION 118 CHARITIES ACT 2011

- A charity trustee or holding trustee of the charity
- A donor of any land to the charity
- A child, parent, grandchild, grandparent, brother or sister of any such trustee or donor
- An officer, agent or employee of the charity

CONNECTED PERSONS

With respect to any such person:

- The spouse or civil partner
- A person carrying on business in partnership
- An institution controlled by them
- Any substantial interest held by them in a body corporate.

CONNECTED PERSONS CAN INCLUDE

- Trading subsidiaries
- Local authority?

LEASES FOR A TERM OF SEVEN YEARS OR LESS

- For a term of seven years only
- Does not apply to surrenders or transfers

LIGHT TOUCH PROCEDURE SHORT TERM LEASE: ADVICE

- A person reasonably believed by the trustees to have the requisite ability and practical experience to provide them with competent advice on the proposed disposition
- Need not be a qualified surveyor
- Trustees to decide that they are satisfied that the terms of the disposition are the best that can be obtained for the charity
- Need not be in writing

QUALIFIED SURVEYOR

- A Fellow or Professional Associate of the Royal Institution of Chartered Surveyors
- Instructed by the charity trustees and
- Acting exclusively for the charity
- Reasonably believed by the charity trustees to have ability in and experience of the valuation of land of the type and in the area concerned

THE ADVICE

- In writing
- But perhaps in more than one document
- Advising on whether to advertise
- Providing the information and dealing with the matters required by the QSR

THE QUALIFIED SURVEYORS' REGULATIONS

- Repair of buildings;
- Alteration of buildings;
- Whether the land should be divided up for sale;
- Planning application?

LAND HELD FOR “STIPULATED PURPOSES”

- Charity holds property that is held for a specific purpose or
- To be used for the purposes of the charity
- Unless a lease for two years or less without a premium
- Or if replacement property will be acquired

PURCHASES

- No statutory obligations
- Common law rules apply
- Fair price?
- Or just fits with strategic objectives?

LEASES: THE MAJOR ISSUES

WORDS

- “assignment”
- “licence”
- “rent review”
- “lease” and “tenancy”
- “keep in repair”

OCCUPATION AGREEMENTS

- Occupation licence
- Tenancy at will
- Periodic tenancy
- Term of three years or less

LANDLORD AND TENANT ACT 1954

- Continuation of the term until expiry of statutory notice
- Further continuation during court proceedings
- Compensation if the landlord successfully objects
- Protected tenancies
- Exclusion of protection

DISADVANTAGES TO LANDLORD OF 1954 ACT

- An unwanted tenant of part of the property
- Limited scope for removing tenant
- Possible liability for compensation
- Complicated situation which may affect sale value or marketability

WRITTEN LEASES

- Signature rule
- Terms usually enforceable even if wholly unfair
- Previous negotiations usually irrelevant
- Outside chance of a right of rectification or rescission

NEGOTIATED LIMITATIONS ON REPAIR OBLIGATIONS

- To keep in no worse condition (with or without schedule of condition)
- Exception for fair wear and tear
- Exclusion for existing defects
- No repairing obligations at all
- Landlord repairing
- Rent free period or lower rent

REPAIR: DILAPIDATIONS AND OTHER REPAIR CLAIMS

- Upper limit on compensation
- Limit on forfeiture
- Landlord's right to enforce clauses permitting entry to repair
- 1954 Act objection is discretionary

SERVICE CHARGE

- Sharing repair costs in shared buildings
- Major works
- Unfair short leases
- Can be unfair in new buildings
- Or for a building already in disrepair

SERVICE CHARGE: MODIFICATIONS

- Service charge cap
- All-in charge to cover service costs
- Excluding certain items
- Contractors' warranties for new works

CHECKING YOUR RESTRICTIONS

- Authorised planning use
- Section 106 agreements and other planning agreements
- Grant funding agreements
- Mortgages
- Obligations in your lease
- Restrictive covenants
- Health and safety law (building regulations, asbestos, CDM regulations, fire regulations)

DIRECT TAXES: GENERAL EXEMPTIONS

- Chargeable gains from land
- Income receipts from land

DIRECT TAXES: WHERE LIABILITY CAN ARISE

- “Trading” from charity property
- Land purchased for development or sale
- Development of land before sale
- Overage

STAMP DUTY LAND TAX RELIEF

- Must not be for the purpose of avoiding tax
- Furtherance of the charitable purposes of the purchaser or another charity, or
- Investment from which the profits are applied to charitable purposes of the purchaser
- Must be claimed

STAMP DUTY LAND TAX LIMITATIONS ON RELIEF

- Change of of charitable status within three years
- Change of use by the charity purchaser within three years

VALUE ADDED TAX: GENERAL POSITION

- Charities don't usually recover VAT
- VAT an additional expense

VALUE ADDED TAX: DISAPPLICATION

- Relevant charitable purpose
- As a village hall or similar

VALUE ADDED TAX: RELEVANT CHARITABLE PURPOSE

- Not for a business use
- Not as an office

WHAT A VILLAGE HALL MIGHT NOT BE

- Community swimming pools
- Community theatres
- Membership clubs unless only a notional membership fee paid

WHAT A VILLAGE HALL MIGHT BE

- Sports pavilions
- Church halls
- Community centres
- Community sports centres

ZERO RATING

- Change in use of zero rated property

BUSINESS RATES

- General 80% business rate relief
- Can apply for relief of up to 100%
- Recent cases led to increased scrutiny of letting arrangements
- Charities must be occupying property to claim relief

PERSONAL LIABILITY

ORGANISATIONS WITH NO LIMITED LIABILITY

- Trusts
- Unincorporated associations
- Companies created by Royal Charter?
- Friendly Societies?

WHO CAN BE PERSONALLY LIABLE?

- Charity trustees
- Members of the organisation
- Persons signing documents

LIABILITY FOR WHAT?

- Contracts
- Torts or
- Civil consequences of breaching statutory requirements.

PROTECTION AGAINST PERSONAL LIABILITY

- Indemnity from charity with respect to any personal liability
- Agreed limitations on liability
- Insurance

GUARANTEES

- Pressure in relation to leases and loans
- Appeal to goodwill
- Cap on liability
- Don't do it

CHARITY TRUSTEES

- Reimbursement of losses to charity
- Charities Act and validity of transactions
- Disqualification from trusteeship

LIABILITY FOR FAILURE TO INDICATE STATUS

- Companies
- CIO's
- CBS's

CRIMINAL LIABILITY FOR BREACH OF STATUTORY OBLIGATIONS

- Fire regulations
- Asbestos
- Other health and safety

WHO CAN BE LIABLE

- Responsible person etc
- Employees
- Trustees

INSOLVENCY

- Wrongful trading etc
- Breach of trustee duty?

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