

Concerns re Sale of Charity Land

Background

The Commissioners of Charitable Donations and Bequests for Ireland ('Commissioners') existed from 1845 until their dissolution in 2014 under the Charities Act 2009. The Commissioners were mandated under the Charities Acts 1961 and 1973 to provide services to trustees of charities and to assist in the carrying out of the intentions of persons making donations and bequests to charity. These functions transferred to the Charities Regulator on its establishment in 2014 pursuant to Section 82 of the Charities Act 2009. Section 34 of the Charities Act 1961, as amended by Section 11 of the Charities Act 1973, relate to the disposition of charity land. A disposition encompasses the sale, mortgage, exchange, transfer or surrender of charity land.

Authorisation of Disposition of Charity Lands

Where a charity's governing documents allow for the disposition of its land (and did so at the time the property in question was acquired by the charity), the approval of the Charities Regulator may not be required if the disposition is considered by the trustees to be of benefit and advantageous to the charity.

Charity trustees may apply for authorisation of the Charities Regulator to dispose of charity land in certain circumstances, such as where the power of sale is not included in the charity's governing documents or a sale below full market value is proposed. There may also be situations in which an authorisation from the Charities Regulator is necessary regardless of any power of sale. The onus is on charity trustees to be satisfied they are fulfilling their duties under the charity's governing documents, the Charities Acts and common law [the body of Irish law based on established practice and decisions of the courts].

Where an application is made to the Charities Regulator to authorise the sale of lands held upon charitable trusts, the Charities Regulator may authorise the sale where it is satisfied that it would be advantageous to the charity.

Registration of Charities

It should be noted that requests for consent to a sale will only be processed where charity trustees have met their obligations with regard to registration of the charity with the Charities Regulator, hold a registered charity number and have complied with their reporting obligations. In cases where an authorisation is sought for a transfer of land for less than full market value, the benefitting charity must also meet the aforementioned obligations.

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Information which may indicate non-compliance with the stated Charities Acts and is brought to the attention of the Charities Regulator will be examined to determine what course of action, if any, should be taken. It is for the Charities Regulator to decide what is in the public interest to pursue; it does not act on behalf of individuals or organisations.

It should be noted that the control and management of a charity is a matter for the charity trustees and the Charities Regulator will not interfere with decisions that are legally valid and within the power of trustees to make. As such, concerns arising from a disagreement with decisions made by charity trustees are outside of the Charities Regulator's remit.

Information on raising concerns, the concerns policy and the form which should be completed to raise a concern with the Charities Regulator, is available at the link below:

http://www.charitiesregulator.ie/en/cra/pages/raise_a_concern_about_a_charity