OBLIGATIONS OF CHARITABLE TRUSTEES

It should be noted that most of the legal duties detailed herein are framed in statute as being obligations of ‘charitable trustees’. However, it is not possible for a few trustees to carry out the dozens or hundreds of administrative tasks required to be done each day, so charity trustees delegate authority to other staff, ie - legacy officers.

VALUING PROPERTY

It is important to charities that they can predict any future income from estates with some degree of accuracy. There are no specific statutory valuation requirements particular to charities. The charity will usually be happy to accept one valuation if their residuary share of the estate is small. However, if their share is larger, in order to ensure the property value is accurate, the charity will generally request sight of two valuations. If there is a significant disparity between the two, then a third valuation will may be requested.

SELLING PROPERTY AND MITIGATING TAX

Selling on the open market

- If the property is part of the free estate or if a life interest has come to an end, the charity will usually prefer to dispose of the property on the open market so that the sale price can be maximised and the cash can be used to fund its charitable purposes.

Capital Gains Tax

- Executors and charities must be aware of potential capital gains tax (‘CGT’) liabilities and opportunities when disposing of property.

- Charities are exempt from CGT. Therefore, when disposing of property, rather than paying CGT on any gain in excess of the Executor’s annual allowance, the estate can avoid or mitigate a CGT liability if the property is appropriated to the charity prior to sale.

- The effect of appropriation is to transfer the beneficial interest to the charity. The Executors can then sell the property as bare trustees for the CGT exempt beneficiary.

- Conveniently the appropriation need not be by Deed, but by a brief Memorandum of Appropriation (England and Wales) or a Minute of Appropriation (Scotland), signed by the Executors. The charity does not need to be party to the document. However it is helpful to receive a copy of the document just in case proof of CGT mitigation should ever be needed.
Charities Act 2011 Compliance required to avoid CGT

- Compliance with the Charities Act 2011 is required when selling property where:
  - a charity is the registered proprietor; or
  - a charity is the specific legatee; or
  - the Life Tenant of a Trust has died and the charity’s reversionary interest has vested; or
  - the property has been appropriated to the charity or charities by the Executors (unless the beneficiaries are mixed – ie, exempt and non-exempt)

- Compliance is advisable where:
  - a charity is disposing of the land as Executor, Administrator or Trustee

What does compliance look like?

- Compliance requires the charity’s Trustees to:
  - obtain and consider, preferably before marketing but at least prior to exchange of contracts, a valuation report from a qualified surveyor (a ‘Section 119 report’). The requirements of the s119 report are laid down by Statutory Instrument 1992 No 2980 The Charities (Qualified Surveyors’ Reports) Regulations 1992, and the charity should check the contents of the report to confirm that it meets the requirements of these regulations; and
  - advertise the property for such time and in such manner as advised in the report (i.e. by private treaty or auction); and
  - decide that the terms proposed (i.e. the property offer) are the best that can reasonably be obtained for the charity; and
  - request the inclusion of clauses in the Contract of Sale and TR1 to attest to the charity’s compliance (“the Section 122 certificate”)

Selling at auction

- This is a good option when a property is in a poor state or is attracting little interest on the open market. It is usually best for a charity for the property to be appropriated prior to an auction, in case the property sells for considerably more than the probate value and a CGT liability would otherwise be incurred. The s119 report should be obtained and approved before the fall of the hammer. A s119 report also helps the charity and the Executors to set a reserve price.

Completing the sale

As mentioned above, both the contract for sale and the transfer document should each contain a statement complying with s122(1) and s122(2) of the 2011 Act, reassuring and protecting the buyer by confirming that the Charities Act obligations have been complied with. Failure to comply will mean that the contract is not enforceable and can only be completed with the sanction of an order under s117(1).
Points to note on Charities Act 2011 & selling property

- Compliance is *not* required for land outside England & Wales
- Compliance is *not* required where beneficiaries are mixed (i.e. charitable and non-charitable), but be careful with land held as tenants-in-common: consider whether one divided share of the land is left exclusively to a charity (compliance required)
- Appropriation *prior* to an auction date is always advisable: risk of a large capital gain
- If Executors are reluctant to obtain the report, the charity can commission it instead (generally in the region of £400-£500 plus VAT)
- Distinguish in the Will a specific gift of a property (compliance required) from a specific gift of the net proceeds of sale (no compliance)
- Language can be confusing: registered charities are ‘non-exempt’ for purposes of Sections 117-122 but ‘exempt’ for purposes of Inheritance Tax

Overage and Development

There is an obligation on charities to maximise the value of the assets left to them. The charity will be guided by external surveyors about whether an overage provision should be included in a sale. It may be mentioned in a s119 report, or a charity might ask the Executors to investigate the possibility of overage if the land looks like it may have future potential, although planning permission may not be possible at the time of sale. Alternatively, a s119 report may advise that the option should be explored of selling the property with the benefit of planning permission, in order to maximise income for the charity. A charity will work with a surveyor in order to achieve this.

Continuing Life Interest Properties

- A charity can often benefit from a remainder interest in a life interest trust of property. In such cases the charity must be careful to ensure that its future interest is protected and the property is insured. It is also important to establish who is paying for upkeep and utilities. This information is often contained within the trust document, or otherwise agreement can be reached with the life tenant.

- It should also be noted that the charity is obliged to occasionally make carefully worded enquiries about whether the life tenant is still enjoying the benefit of the property, as well as keeping up to date on Trusteeship, and making best guess valuations of the property every couple of years. If appropriate the charity may ask if the Trustees can assist in providing a valuation of the property.
Together we will beat cancer

Cancer Research UK is a registered charity in England and Wales (1089464), Scotland (SC041666) and the Isle of Man (1103)
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