Residential Property

For Solicitors

CANCER RESEARCH UK

Together we are beating cancer

Introduction

This note is intended to give a short overview of the common property queries which arise in charity legacy administration and provide practical tips to executors and their professional advisors.

Obligations of charitable Trustees

It should be noted that most of the legal duties detailed in this note 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, i.e. - legacy officers.

Valuing property

It's 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 and they will usually be happy to accept one valuation if their residuary share of the estate is small. However, if their share is larger and to, ensure the property value is accurate, the charity will request sight of two valuations. If there is a significant disparity between the two, then a third valuation 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. This is so 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.

Compliance with the Charities Act 2011 to avoid CGT

Section 117-129 Charities Act 2011 deals with specific restrictions on sale or other disposals of land. Section 117 Charities Act 2011 was amended by the Charities Act 2022 which was implemented on 14 June 2023 and has brought about significant changes.

- Compliance with the Charities Act 2011 is now only required when disposing of land where:
    - the land has been appropriated to a single non-exempt charity
    - the land has been assented to a single non-exempt charity
    - a part of share of land is assented or appropriated to a single non-exempt charity
    - there is a death of a co-owner leaving land to a single charity
    - the Life Tenant of a Trust has died leaving the land to a single charity

- 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 written report (commonly known as a Section 119 Report) and including the sum to expect for the property, how the value can be enhanced and how it should be marketed.
    - the report should be prepared by a designated advisor who can be:
        - a member of the Royal Institute of Chartered Surveyors
        - a member of the National Association of Estate Agents

        - a member of the Central Association of Agricultural Valuers; or
        - an employee, officer of trustee of your charity if they have appropriate expertise.
    - 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 s.119 report should be obtained and approved before the fall of the hammer. A s.119 report also helps the charity and the Executors to set a reserve price and guide price.

Completing the sale

As mentioned above and where applicable, both the contract for sale and the transfer document should each contain a statement complying with s.122(1) and s.122(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 s.117(1).

Please note that changes in relation to statements and certificates are due to come into effect in 2024. Please refer to Land Registry Practice Guide for further information.

Points to note on Charities Act 2011 & selling property

- Compliance is *not* required for land outside England & Wales
- The Charity Commission will not criticise a charity for wrongly obtaining a report and complying with section 117 Charities Act 2011. There might be other reasons why it would be advisable for charities to obtain a Surveyors Report to ensure that the value of the property can be maximised. For example, if a Property or Land has development potential or it is a property in disrepair which might need improvements before sale.
- 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-£600 plus VAT)
- 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 s.119 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 s.119 report may recommend exploring the option of selling the property with the benefit of planning permission to maximise income for the charity. A charity will work with a surveyor to achieve this.

Continuing Life Interest Properties

- A charity can often benefit from a remainder interest in a life interest 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 enquiries about whether the life tenant is still enjoying the benefit of the property, as well as keeping up to date on the Trusteeship..

Please note that the advice contained in this document is of a general nature and is not a substitute for legal advice of specific advice relating to particular cases. If you have any queries, please contact your legacy officer.

About Cancer Research UK

We're the world's leading cancer charity dedicated to saving and improving lives through research. We fund research into the prevention, detection and treatment of more than 200 types of cancer through the work of over 6,000 scientists, doctors and nurses. In the last 50 years, we've helped double cancer survival in the UK and our research has played a role in around half of the world's essential cancer drugs. Our vision is a world where everybody lives longer, better lives, free from the fear of cancer.



Cancer Research UK is a registered charity England and Wales (1089464), Scotland (SC041666), the Isle of Man (1103) and Jersey (247).