

Faith-Based Real Estate Development Transactions



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Sales transactions

- Religious Corporation Law §12 and New York State Not-for-Profit Corporation Law §511/ §511-a.
- RCL § 12(1) provides that “a religious corporation shall *not sell, mortgage or lease for a term exceeding five years any of its real property* without applying for and obtaining leave of the court therefor pursuant to §511 of the not-for-profit corporation law...”
- Difference between Court review/AG approval

What do we look for?

- Is there “fair and reasonable consideration” for the asset being transferred?
- Will the mission of the nonprofit and its members be promoted?
- How will the nonprofit use the proceeds to advance its mission?
- Was the transaction duly authorized?
 - Trustees/Members

Fair and reasonable consideration: It all starts with an appraisal

- Prepared by independent and NYS certified appraiser
- Fair market value of property (including all air rights); a “full FAR” zoning analysis
- Contemporaneous with contract date

Fair and reasonable consideration

Types: Cash

- Valued at face amount if delivered before or at closing or within short time-frame thereafter.
- Future payments: present value.

Fair and Reasonable Consideration

Types: Payment of Expenses and Liabilities

- Agreement by developer to pay outstanding debt (mortgages, tax liens etc.)
- Payment by developer of petitioner's transaction expenses (issue of "independence"):
 - Advisory fees (legal, accounting, architecture)
 - Cost of Appraisal-not always a good idea
 - Relocation/temporary house of worship expenses (required)

Fair and Reasonable Consideration

Types: In-Kind Facility

- Creating a new house of worship and/or community facility on the ground floor and cellar of the new building.
- Valuation support required:
 - Committed cost construction budget
 - Is the budget credible?
- Contractual protections: title passing upon financing or escrow; delay/default provisions.
 - New facility approval rights.
 - Protection if permanent financing doesn't close/non-delivery of facility
 - E.g., guaranty, escrow, delay payments, performance bond/letter of credit

The Fort Tryon Jewish Center- promise



The Fort Tryon Jewish Center- Eight Years Later



Challenging Building Blocks of Consideration

- Developer Promissory notes:
 - Essentially are loans and not favored when granted by a nonprofit/religious org. to a commercial developer. (Affordable housing may vary)
- Future Payments/Joint Venture pay-outs: development and/or management fees, net cash flow earnings (on equal footing with developer) are sometimes included.
 - Raises issues of certainty and timing; difficult to present value.
 - Other potential legal questions w/such payments (unrelated business tax, private benefit, securities).

Fair and reasonable also means fair process/viable project

- Independent(non-compensated) board of directors and reasonably compensated qualified advisors (e.g., qualified owners rep?)
- Bid process? (has the property been adequately shopped?)
- Developer a viable builder?
 - Any track record with similar deals?
 - Financial due diligence? Now and going forward?

Related-party transactions

- Not-for-Profit Corporation Law:
 - Conflicts policy and annual disclosure (§ 715).
 - Mandated approval of transactions with insiders such as directors, officers, key employees and their relatives (§ 715-a) -- independent board approves after review of alternatives.
 - Independent audit committee/audit firm requirements (§ 712-a).

10 steps you can take now to prepare for a Sale

1. Collect your corporate documents/records.
2. Hire competent assistance.
3. Approvals-board and/or member.
4. Eliminate Conflicts of Interest & keep it “arms-length.”
5. Obtain an Appraisal.
6. Maintain up to date financial statements.
7. Plan for proceeds of the sale.
8. Confirm clear title to property.
9. Internal review and due diligence.
10. Careful consideration of contract protections.

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The Attorney General's Report and Database on Fundraisers in New York.



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Links to Other Charity Websites



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[E-File](#)

Service update: E-File Your CHAR500 and attachments directly to the Charities Bureau or file to the IRS at the same time.



[Nonprofit Revitalization Act](#)

Key details of the Nonprofit Revitalization Act's new annual filing requirements.



[Tips for Charitable Giving](#)

The Attorney General's Tips on Charitable Giving



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- [Charities Bureau Symposium - "Doing Well While Doing Good" - Binghamton, NY - Register Today!](#)
- [A.G. Schneiderman Announces Settlement With Two Sham Cancer Charities That Bilked More Than \\$75 Million From Donors](#)
- [A.G. Schneiderman, State Comptroller DiNapoli & DOI Commissioner Peters Announce The Sentence Of Non-Profit Executive Convicted In Theft Scheme](#)
- [New York Appellate Court Upholds \\$3.1 million Judgment Against Professional Fundraiser Who Solicited For Sham Charities](#)
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Our detailed transaction guide

- Asset Sales

- [https://www.charitiesnys.com/pdfs/sales and other dispositions of assets.pdf](https://www.charitiesnys.com/pdfs/sales_and_other_dispositions_of_assets.pdf)
- [https://charitiesnys.com/pdfs/religious corporations disposition assets.pdf](https://charitiesnys.com/pdfs/religious_corporations_disposition_assets.pdf)

Resources

- New York Charities Bureau guidance
<https://www.charitiesnys.com/guides>
 - Right From the Start - Responsibilities of Directors of Not-for-Profit Corporations
 - Internal Controls and Financial Accountability for Not-for-Profit Boards
 - Whistleblower Policies Under the Nonprofit Revitalization Act of 2013
 - Accounting from the Inside Out – Internal Controls and External Accountability (New York Council of Nonprofits)
 - Influentials email list-monthly updates on nonprofit issues

Questions?

