

## Sale of Municipal Property

The disposition of municipal real property is an individual councilmanic act, rather than a matter of state legislative action. The authority of, and restrictions upon, a municipality to dispose of its real property is determined via the respective municipal codes, or, in the case of home rule municipalities, within their home rule charters or administrative codes. Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes also generally authorizes home rule municipalities to purchase and sell real property.<sup>1</sup>

Boroughs,<sup>2</sup> townships of the second class,<sup>3</sup> incorporated towns<sup>4</sup> and cities of the third class<sup>5</sup> are required to advertise for bids or a public auction for any real property that is being sold in excess of \$6,000. Townships of the first class<sup>6</sup> currently have a bidding threshold limit of \$1,500.<sup>7</sup> For sale of real property for consideration of \$6,000 or less, the respective governing bodies must first receive an appraisal of the property conducted by a qualified real estate appraiser.<sup>8</sup>

If the municipality receives no bids after proper advertisement, the municipality shall advertise again. If, after the second advertisement, still no bids are received, then the municipality is permitted to enter into a sales contract outside of the bidding process, as provided for in the act of October 27, 1979 (P.L.241, No.78), entitled "An act authorizing political subdivisions, municipality authorities and transportation authorities to enter into contracts for the purchase of goods and the sale of real and personal property where no bids are received," The municipal codes generally provide a cross reference to the provisions of this act.

Alternatively, the County Code provides the authority for counties of the 2A through eighth classes to sell real property for no less than its fair market value. If the real property contains resources such as oil, gas, coal, or timber, the county must advertise the description of the property, including the resources within. Further, if the fair market value of the real property is estimated to be more than \$10,000, county commissioners must first consult with two of the following before the sale:

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1 53 Pa.C.S. §2964(4).

2 8 Pa.C.S. §1201.1(a).

3 1933, P.L. 103, No. 69, §1503(a).

4 1953, P.L. 244, No. 34 §1.1(a).

5 11 Pa.C.S. §12402.1(b)(1).

6 1931, P.L. 1206, No. 331, §1501(II).

7 However, House Bill 2073, PN 3052, amends the First Class Township Code to increase the bidding threshold to \$6,000 and to require an appraisal of the property prior to sale. The bill passed the House on January 14, 2020 and is, as of October 16, 2020, near passage in the Senate.

8 Boroughs: 8 Pa.C.S. §1201.1(c). Townships of the second class: 1933, P.L. 103, No. 69, §1503(a). Incorporated towns: 1953, P.L. 244, No. 34 §1.1(a). Cities of the third class: 11 Pa.C.S. §12402.1(b)(8). See n. 7 for townships of the first class.

county assessor, certified broker-appraisers or certified real estate appraisers doing business within the county.<sup>9</sup>

The municipal codes also provide for exceptions to the bidding threshold limits. For example, the Third Class City Code allows for the sale of real property without bidding requirements, regardless of value, to the following entities: (1) the Federal Government, the Commonwealth, a municipality, home rule municipality, institution district or school district; (2) a volunteer fire company, volunteer ambulance service or volunteer rescue squad; (3) a municipal authority, a housing authority, an urban redevelopment authority, a parking authority, or a port authority; (4) a nonprofit corporation engaged in community industrial development; (5) a nonprofit corporation organized as a public library; (6) a nonprofit medical service corporation; (7) a nonprofit housing corporation; and (8) a nonprofit museum or historical organization. However, if the real property is no longer being used for the original purpose of the sale, the property then reverts back to city ownership.<sup>10</sup> The other municipal codes have similar or additional exceptions to the bidding threshold limits<sup>11</sup> and reversionary requirements.<sup>12</sup>

Generally, surplus municipal real property may be disposed of to any grantee, for any purpose, unless it is subject to the reversionary mechanisms discussed above, or other statutory restrictions. For example, the Eminent Domain Code<sup>13</sup> provides for disposition of real property for an abandoned public project. Specified real property that was condemned, but for which the project never moved forward, may not be sold and used for a nonpublic use or purpose within 21 years after the condemnation without court approval. Additionally, the Donated or Dedicated Property Act<sup>14</sup> provides a method through the Orphans' Court to dispose of donated or gifted real estate that was deemed impracticable or impossible to maintain or had ceased to serve the public interest. The court may permit the municipality, among other things, to substitute other real estate in exchange for the original property, or sell the real estate and apply the proceeds to either carry out the trust purposes or to a different public purpose.

In addition to the sale of municipal real property, municipalities are also authorized via their respective codes to exchange, or “swap”, property of equal or greater value to be used for public purposes.<sup>15</sup> These exchanges may also be subject to similar reversionary requirements as real property sales.

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9 1955, P.L. 323, No. 130 §2306(a).

10 11 Pa.C.S. §12402.1(e).

11 For example, see 1933, P.L. 103, No. 69, §1503(c) for Second Class Townships and 1955, P.L. 323, No. 130 §2306(b) for counties.

12 For example, see 1933, P.L. 103, No. 69, §1503(d).

13 26 Pa.C.S. §310.

14 1959, P.L. 1772, No. 670, §4.

15 For example, see 8 Pa.C.S. §1201.1(d).