



EDUCATION

ALERT

SALE OF UNUSED AND UNNECESSARY LANDS AND BUILDINGS BY SCHOOL DISTRICTS IN PA

As school districts search for ways to supplement their revenues to address potential budget issues, they should not forget that under the Pennsylvania Public School Code (School Code) they are authorized to sell “unused and unnecessary lands and buildings.” While the School Code permits school districts to sell unused and unnecessary lands and buildings in a variety of methods, including by public auction and upon sealed bids requested by a school board, our focus here is on the sale of unused and unnecessary lands and buildings at private sale.

By way of background, Section 7-707 of the School Code, 24 P.S. § 7-707, addresses the sale of unused and unnecessary lands and buildings. It is imperative to note that the School Code provides a definitive process to sell unused and unnecessary lands and buildings at private sale and that the property that is being sold must be found to be unused and unnecessary by the school board.

Additionally, the Pennsylvania Municipalities Planning Code (MPC) includes language that appears to address the sale of property by a public school district and also appears to contain requirements in connection thereto. Pursuant to Section 305 of the MPC, 53 P.S. § 10305, the MPC appears to require notice to be provided to the municipal and county planning commissions regarding a proposed sale. It is not necessary to obtain their approval. However, it is

suggested that a school district seek their input. Typically, a letter is sent to the municipal and county planning commissions that (1) identifies the property at issue, (2) informs them of a possible sale and (3) requests recommendations in connection with the possible sale of the property pursuant to 53 P.S. § 10305.

As stated above, the School Code expressly provides that a school board is vested with the necessary power and authority to sell unused and unnecessary lands and buildings pursuant to the methods outlined in the School Code. Typically, when a school district sells property to a private party, it does so at private sale without the use of public auction or sealed bids. The following summary outlines the process to sell the property at private sale based on our experiences in connection with the sale of property by school districts:

1. Send letters to municipal and county planning commissions as per the requirements of the MPC.
2. Negotiate an agreement of sale with the purchaser with or without representation by a real estate broker. It is imperative that language be included in the agreement of sale addressing, among other things, the requirements under the School Code. The school board must approve the agreement of sale.

3. Obtain fee quotes from two appraisers for the preparation of appraisal reports for the property and have the appraisers begin work on the appraisal reports.
4. Prepare the “Petition for Sale of Real Property” (Petition), attaching the relevant exhibits, including, but not limited to, the legal description of the property, a brief description of the character of the building or buildings erected thereon (if any), affidavits of the appraisers and any relevant resolutions or motions of the school board. The Petition must be approved by the school board.
5. After the Petition is filed with the court of common pleas (Court), a hearing date is set. From past experience, the hearing on the Petition is typically scheduled approximately two months after the Petition is filed.
6. There are various advertising and posting requirements imposed by the School Code. Notice of the hearing must be published once a week for three successive weeks in a newspaper of general circulation and in the legal newspaper in said county. Additionally, posting of the property (and its vicinity) by hand bills is required.
7. The appraisers, business manager of the School District and possibly a broker – along with counsel – prepare for the hearing.
8. An affidavit of posting and an affidavit of publication are filed with the Court, evidencing that the posting and advertising were completed as required.
9. A hearing is held on the Petition and testimony is presented on behalf of the School District. The testimony usually includes that of someone from the School District familiar with the situation as well as the appraisers and possibly a broker.
10. If the Court approves the Petition, the judge will sign an Order allowing the sale of the property as per the terms of the Petition.
11. Once the sale has been consummated and the deed executed and delivered, the School Code requires that a return of sale is made to the Court.

Please note that the School Code does not specifically require the hiring of appraisers or preparation of appraisal reports. We almost always suggest engaging appraisers and having appraisal reports prepared, but it is not statutorily required. The School Code requires affidavits of “at least two persons who are familiar with the values of real estate in the locality in which the land and buildings proposed to be sold are located,” not necessarily appraisers.

The School Code also requires that the individuals executing the affidavits must depose and say, at least, that (1) they are familiar with the values of real estate in the locality in which the land and buildings proposed to be sold are located; (2) they have examined the property; (3) the price offered is fair and reasonable and in their opinion a better price than could be obtained at public sale; and (4) they are not interested, either directly or indirectly, in the purchase or sale of the property.

Please note that, generally, the School Code also allows the sale of unused and unnecessary lands and buildings to a municipality, a process that is much less involved than the process outlined above. The School Code indicates that court approval is not required if the School District were to sell the property to a municipality, although there are other provisions of note in connection with such a sale. In order to convey the property to a municipality, a school district must (1) obtain two-thirds approval from the school board and (2) include in the deed conveying the property a clause whereby the lands and buildings will revert to the school district if they are no longer being used for municipal or authority purposes.

The School Code also appears to indicate that court approval is not required if a school district were to sell the property to a 501(c)(3) entity, although there are other provisions of note in connection with such a sale. A sale to a 501(c)(3) entity – similar to the sale to a municipality – requires that a school district must obtain two-thirds approval from the school board. However, the School Code does not require that the deed from a school district to a 501(c)(3) entity include a reverter clause.

The School Code also includes provisions regarding the engagement of real estate brokers and the

use of monies derived from the sale of real property. For example, 24 P.S. § 7-707(6) addresses the engagement of the services of licensed real estate brokers. It provides, in part, that the school board, “when selling property at private sale, may engage the services of licensed real estate brokers to secure prospective purchasers and pay them the customary real estate agents’ commission charged within the school district, but only in the event the sale is actually consummated by the brokers.”

Additionally, 24 P.S. § 7-707(7) addresses the manner by which money derived from the sale of real property can be used. The most pertinent language found in the School Code (for a school district that is not of the first class) is the following: “The monies derived from sales of other real estate shall be used for debt service or for capital expenditures.”

Additionally, according to a Pennsylvania Department of Education Basic Education Circular, when a building is sold by a school district,

reimbursement ceases. As such, if relevant, it must be determined whether a school district receives any reimbursement in connection with the sale of unused and unnecessary lands and buildings.

In conclusion, if a school district has unused and unnecessary lands and buildings, it may want to consider selling them. However, school districts moving forward with selling unused and unnecessary lands and buildings must make sure that they adhere to the requirements under applicable law in connection with such a sale.

If you should have any questions about the information in this Alert, please contact David H. Comer at 610.397.7963 or dcomer@foxrothschild.com or any member of Fox Rothschild’s Education Law Practice.



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