



OFFICE OF THE NEW YORK STATE ATTORNEY GENERAL
CHARITIES BUREAU

Issue Date: October 2020

**Guidance on Appraisals of Property for Not-for-Profit and Religious
Corporations Seeking Approval of Property Transactions
by the Attorney General or the Court**

The Attorney General has the responsibility under the Not-for-Profit Corporation Law for reviewing, prior to closing, certain transactions involving transfers of assets owned by not-for-profit corporations and certain religious corporations (such assets may be real and/or personal property, including intangible property). This review is required to ensure that the proposed transaction complies with statutory requirements that the transaction's price and terms are fair and reasonable, and that the transaction serves the best interest of the entity and its members. A significant portion of the Charities Bureau's review addresses whether the price and terms of the transaction reflect the value of the asset and rights being transferred. Both the Charities Bureau and the Court rely on the seller's submission of an appraisal to evaluate whether the transaction's price properly reflects market values.

This guidance has been prepared by the Attorney General's Charities Bureau to explain the requirements for appraisals of property that is the subject of petitions seeking approval of property transactions by Religious Corporations and Not-for-Profit Corporations. This guidance should be read in conjunction with the Bureau's previous two guidance documents concerning procedures for the review of property transfers: *[A Guide to Sales and Other Disposition of Assets by Not-for-Profit Corporations](https://www.charitiesnys.com/guides_advice_new.html)*; *[A Guide to Sales and Other Disposition of Assets by Religious Corporations](https://www.charitiesnys.com/guides_advice_new.html)* – posted at https://www.charitiesnys.com/guides_advice_new.html.

The Charities Bureau’s guidance should not, however, be viewed as a substitute for advice about the particular proposed transaction from an organization’s attorney.¹

In support of a petition for approval of a sale or other transfer of property pursuant to section 12 of the Religious Corporations Law and/or sections 510 and 511 or 511-a of the Not-for-Profit Corporation Law, the Charities Bureau requires submission of an appraisal of the property as an exhibit to the petition. The following issues are among those considered by the Charities Bureau when reviewing an appraisal submitted in support of a petition:

1. **When to Obtain an Appraisal:** if an organization is considering transferring its property, an independent appraisal should be obtained to inform the Board of Directors of the fair market value of such property, and for submission to the Attorney General and the Court. This information should be obtained and reviewed before the property is marketed and before a transaction is negotiated with a buyer.² Appraisals must be done for the seller not the buyer, i.e., the seller or the seller’s attorney should be the party who engages the appraiser, and the appraised value should not be adjusted to reflect the needs of a particular buyer.³
2. **Choosing an Appraiser:** In New York State, there are three categories of real estate appraisers authorized by the State to conduct appraisals. The type of appraiser that an organization should retain will depend on the nature of the property being transferred. A person certified by the State as a “certified general real estate appraiser” may appraise all types of real property, e.g., residential, commercial, vacant or unimproved land. A person certified as a “certified residential real estate appraiser” may only appraise property comprised of 1-4 family residential units (without regard to value or complexity), or vacant or unimproved land that is to be utilized for a 1-4 family residential unit or for which the highest and best use is a 1-4 family residential unit (without regard to value or complexity). A person licensed as a “licensed residential real estate appraiser” may only conduct appraisals of (i) noncomplex 1-4 family residential units having a transaction value of less than \$1,000,000; (ii) complex 1-4 family residential units having a transaction value of less than \$250,000; or (iii) vacant or unimproved land that is to be utilized for a 1-4 family residential unit, or for which the highest and best use is a 1-4 family residential unit, having a transaction value of less than \$1,000,000.⁴ NYS real estate appraisers are required to renew their certificates or licenses every two years and

¹ A searchable database of currently licensed/certified real estate appraisers is available at <https://data.ny.gov/widgets/3nr4-s9yt>. The Charities Bureau does not maintain a list of licensed/certified appraisers and does not recommend appraisers.

² The consideration and terms of the proposed transfer must be fair and reasonable to the organization. See N-PCL §511(a)(6). To ensure that this requirement is satisfied, it is in the organization’s best interest to know the market value of the property when it commences its marketing of the property.

³ Requests may be made to the Charities Bureau for use of a lender’s appraisal in a mortgage context.

⁴ See NYS Executive Law § 160-h and Title 19 NYCRR, §§ 1101.1 through 1101.3.

must complete certain continuing education requirements in order to qualify for renewal.⁵ The appraiser should provide a resume and identify the certifications and/or licenses the appraiser holds from the New York State Board of Real Estate Appraisal (which operates under the Division of Licensing Services of the New York State Department of State).

3. **Standards for Appraisals:** The appraisal must be done by a licensed or certified, independent appraiser who has no relation to the buyer or seller, including their respective board members, officers, key employees or relatives, or buyer's or seller's attorney. Appraisals conducted by NYS licensed or certified appraisers must comply with the Uniform Standards of Professional Appraisal Practice (the "USPAP"), which is published by the Appraisal Foundation.⁶ The USPAP sets forth rules and standards addressing the ethical and performance obligations of appraisers. The standards set forth in the USPAP include, among others, standards for the development and reporting of real property, personal property and business appraisals.
4. **Age of Comparable Sales:** The Charities Bureau expects appraisals to be dated no more than 12 months prior to the date of execution of the Purchase and Sale Agreement. The comparable sales described in the appraisal should have closed no more than 12 months before the date of the appraisal. If comparable sales prior to that date are utilized, the appraiser should include a statement explaining why those comparable sales were chosen, whether or not more recent sales are available and, if so, why the appraiser did not utilize those sales. Additionally, if an appraisal was not done prior to execution of the Purchase and Sale Agreement, the appraisal should be as of the execution date of the Purchase and Sale Agreement and include comparable sales that closed within 12 months prior to such date.
5. **Adjustment Grid:** An "adjustment grid" is a listing of adjustments made to the comparable sales, including, among others, adjustments for the bundle of property rights conveyed, financing terms, physical characteristics of the land and improvements, use restrictions such as zoning, market conditions, or any required or discretionary approvals. An adjustment grid or similar type of analysis of comparable sales should be included in the appraisal. If adjustment percentages are added to or deducted from the comparable sales, such adjustments should represent reasonable variations. If an adjustment percentage is significant, a statement should be included explaining how the comparable sale differs from the subject property, why the

⁵ See NYS Executive Law §§ 160-l, 160-o and 160-t.

⁶ See Title 19 NYCRR, § 1106.1. Consult the Appraisal Foundation website for options for accessing a copy of the USPAP, at www.appraisalfoundation.org or <https://uspap.org>.

appraiser chose to include that particular sale in the appraisal and the weight the appraiser placed on the comparable sale in reaching the value conclusion. In order to demonstrate the reliability and credibility of the final determination of value, the appraiser must adequately explain and support the appraiser's rationale for using the comparable sales selected.

6. **Property and Development Rights:** All appraisals using the sales comparison approach should evaluate the development rights zoned for the property under review (a full floor area ratio (FAR) analysis) and should consider the value of such development rights in reaching the value conclusion, whether the property is vacant or contains a building.
7. **Value Per Square Foot:** The value conclusion should be analyzed on a per square foot basis. In all appraisals, including those for single home residential properties, the basis for the concluded value must be explained in a clear straightforward manner showing the value of the property broken down on a per square foot basis which is then multiplied by the total number of square feet allocated to the property. The appraiser should summarize the reconciliation of the data obtained from the analysis of comparable sales (and the reconciliation of the value approaches used, if more than one approach is utilized) and provide sufficient information to understand the rationale for the appraiser's final determination of value.⁷
8. **Approaches to Value:** The appraiser should utilize the approaches to value, i.e., sales comparison, cost or income, determined to be necessary to produce a credible appraisal evidencing highest and best use.⁸ The appraiser should explain the reasons for excluding any approach that is not developed.⁹
9. **Sales for Less Than Appraised Value:** If the organization would like to transfer the asset for less than the appraised value, a complete explanation of the organization's rationale for doing so must be included in the petition and should be reflected in the board and, if applicable, member resolutions approving the transfer. If an organization disagrees with the appraised value of the asset based on its marketing of the asset, and wishes to transfer it for a lesser amount, a complete explanation must be included in the petition. Such details should include a detailed description of the marketing done, a list of all offers received, and a chronological list of all actions taken by the broker/representative responsible for marketing the asset. The Charities Bureau may take such information into consideration when determining

⁷ See USPAP Standards Rule 1-6 and Standards Rule 2-2(a)(x).

⁸ See USPAP Standards Rule 1-3(b) and Standards Rule 1-4.

⁹ See USPAP Standards Rule 1-4 and Rule 2-2(a)(x)(2).

whether the price and terms of the transaction are fair and reasonable to the organization.

10. **Sales for Nominal Consideration:** An appraisal is generally not necessary where a solvent religious corporation seeks to convey real property to another religious corporation or to a membership, educational, municipal or other not-for-profit corporation for nominal consideration.¹⁰ Nominal consideration is understood to mean consideration that has insignificant or no value. If consideration is provided in the transaction, then an appraisal is required. The Charities Bureau encourages organizations to obtain an appraisal in nominal consideration transfers, when possible, to fully inform the organization as to the value of the asset it is conveying.
11. **Certification Statements:** Appraisals must include certain certifications including, among others, statements as to the appraiser's independence and lack of bias. Such certifications should be in accordance with the requirements of the USPAP and the appraiser must certify that the appraisal report has been prepared in conformity with the USPAP.¹¹

The Charities Bureau encourages organizations and their counsel to reach out to the Bureau with any questions they may have regarding the Bureau's appraisal requirements. Inquiries may be sent to charities.transactions@ag.ny.gov.

¹⁰ See NYS Religious Corporations Law § 12(8).

¹¹ See USPAP Standards Rule 2-3.