

**New Jersey
N2K Hour:
Insuring
Conveyances
from
Governmental
Bodies**

Webex Presentation,
October 11, 2022

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What are Surplus Lands?

- Any excess property that is not currently being utilized and is not required for use by the federal, state, or local government is considered surplus property.
- Cities and towns also frequently need to sell or convey real property which is no longer needed for municipal purposes.
- Surplus property may also be leased to local public agencies to assist the homeless, and sales to public agencies may be negotiated at fair market value without restrictions on use.

Conveyance of Surplus Property

- In order for a conveyance of surplus property to be valid, notice of a public sale is required and the conveyance must be done for adequate consideration.
- The conveyance must also be authorized by the adoption of a resolution or ordinance at a public meeting or hearing.
- Government agencies frequently sell property to the public through both live and online auctions.
- An example of surplus property may be real property that was seized or forfeited to the federal government because of non-payment of federal income taxes, or because the former property owner is a convicted felon.

Conveyance of Surplus Property (cont.)

- Real property can be conveyed by federal agencies such as Fannie Mae; the Federal Deposit Insurance Corporation (FDIC); U.S. Department of Agriculture; and the U.S. Department of Housing and Urban Development (HUD).
- In some cases, the federal government can sell real property which was previously acquired for the construction of a military base or office building.
- Another federal agency responsible for conveying real and personal property is the U.S. General Services Administration (GSA).

GSA Auctions

- The GSA also has a website which offers the general public the opportunity to bid electronically on a wide array of assets that are no longer required by the federal government.
- The GSA will auction federal personal property assets located across the country to any interested buyer, which may include items such as heavy machinery, computer equipment, vessels, airplanes, and vehicles.
- The GSA also establishes certain requirements and programs for state and local government agencies and public organizations to acquire federal surplus property.

Local Lands and Buildings Law

- In NJ, N.J.S.A. 40A:12-1, et seq., authorizes the sale by municipalities of any real property, capital improvement, or personal property no longer needed for public use.
- N.J.S.A. 40A:12-13(a) requires open public sale at auction to the highest bidder after advertisement thereof in a newspaper circulating in the municipality or municipalities in which the lands are situated, by two insertions at least once a week during two consecutive weeks, the last publication to be not earlier than seven days prior to such sale.

Adoption of Local Ordinance for Public and Private Sales

- A municipality will adopt an ordinance or resolution authorizing the sale of surplus land to be sold at public auction in accordance with N.J.S.A. 40A:12-13(a).
- A private sale of an undersized lot is also permitted under N.J.S.A. 40A:12-13(b), and the municipality can adopt a local ordinance or resolution authorizing the sale of the surplus land to be sold at private sale in accordance with N.J.S.A. 40A:12-13(b)(5).
- The local ordinance will set forth the terms and conditions of the sale, and the effective date of the ordinance.

Sale of Surplus Lands to Municipalities

N.J.S.A. 30:1-23 sets forth that when any lands of the Department of Institutions and Agencies have been declared by the Commissioner of the Department of Institutions and Agencies (DIA) to be surplus or unsuitable for use for the purposes of the DIA, and the sale of such lands is authorized by the Governor, such lands may be sold to the municipality in which same are situate, at such fair price and upon such terms and conditions as shall be fixed by the State House Commission.

Once the terms and conditions fixed by the State House Commission are accepted by the municipality, the DIA Commissioner, on behalf of the State, shall be authorized to convey to such municipality title to said property.

Abandoned Properties Rehabilitation Act

- N.J.S.A. 55:19-78 permits municipalities to take action in rehabilitating abandoned properties.
- An “abandoned property” is defined as any property that has not been legally occupied for six months, and which also meets any one of the following criteria: (a) the property is in need of rehabilitation, and no rehabilitation has taken place for six months; (b) construction was initiated and then discontinued prior to completion, and no construction has taken place for six months; (c) the property is in property tax arrears by at least one installment; or (d) the property is determined to be a nuisance by the public officer.

Abandoned Properties Rehabilitation Act (cont.)

- Once a local ordinance is enacted, a public officer will create an abandoned property list.
- The municipality may add properties to the abandoned property list at any time. N.J.S.A.55:19-55.b.
- The law also gives municipalities the authority to remove properties on the municipality's abandoned property list from the regular tax sale process, and sell them through special tax sales.
- Property owners must be notified and given the opportunity to appeal inclusion of their property on an abandoned property list.

Abandoned Properties Rehabilitation Act (cont.)

- N.J.S.A. 55:19-86 sets forth the procedural requirements for a municipality to file a complaint and lis pendens for a property that is determined to be abandoned.
- Within 10 days of filing a complaint pursuant to N.J.S.A. 55:19-78 et al., the plaintiff shall file a notice of lis pendens with the county recording officer of the county within which the building is located.
- At least 30 days before filing the complaint, the municipality shall serve a notice of intention to take possession of an abandoned building.

Abandoned Properties Rehabilitation Act (cont.)

- This notice shall inform the owner and interested parties that the property has not been legally occupied for six months and of those criteria that led to a determination of abandonment.
- Any owner or lienholder may challenge the inclusion of a property on the list within 30 days from receipt of the notice, or 40 days from mailing or publication of the notice.
- However, for a successful appeal, the owner must provide sufficient proof that the property is not abandoned or should be excluded from the list.
- The property owner must show that the property is legally occupied or that rehabilitation of the property has commenced.

Abandoned Properties Rehabilitation Act (cont.)

- A property owner can also successfully appeal that the property should be excluded from the list if an entity other than the municipality is the holder of a tax sale certificate.
- Any unpaid sums expended for the purpose of rehabilitating the property may result in a municipal lien against the real property.
- If a lien is created, the municipality can then sell a tax sale certificate at auction to a third party bidder, which can result in a foreclosure of the property by the third party purchaser.

Redevelopment Areas

- A redevelopment is a reinvestment in neighborhoods or commercial areas where previously developed buildings or plots of land that are in substandard condition or are no longer useful can be replaced or repaired.
- Redevelopment sites can be found in urban, suburban and rural locations, and can be initiated both privately and publicly.
- In NJ, a redevelopment project is often associated with the procedures and activities of municipalities as permitted by the Local Redevelopment and Housing Law.
- Typically, municipalities will adopt a municipal redevelopment plan for the redevelopment of a specific area or neighborhood.

Redevelopment Areas (cont.)

- N.J.S.A. 20:3-38 states that the value of any land or other property being acquired in connection with development or redevelopment of a blighted area shall be no less than the value as of the date of the declaration of blight by the governing body upon a report by a planning board.
- Designating a specific area or neighborhood as a blighted area is a controversial issue in NJ.
- New Jersey follows the necessity test for redevelopment projects, in which the government agency must support its claim that the taking of private property is a necessity.

The Necessity Test

- Some property owners have been able to successfully challenge a condemnation proceeding based on the Necessity Test.
- The Necessity Test was established in the case of *The Borough of Glassboro v. Grossman*, and has been further supported in the case of *Casino Reinvestment Development Authority v. Birnbaum*.
- In *Glassboro*, the Appellate Division held that under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 to -149 (“LRHL”), a municipal agency cannot condemn property for redevelopment unless there is a particular redevelopment project identified, tied to the proposed acquisition, and supported by proof.

The Necessity Test (cont.)

- In *Birnbaum*, the Appellate Division upheld the trial court's ruling based on the *Glassboro* decision, and supported the trial court's findings that "approval of the condemnation could well leave the Birnbaum property vacant for an indefinite period of time, as the CRDA waits for the right project to present itself."
- Since the CRDA could not provide evidence-based assurances that the project would proceed in the reasonably foreseeable future," the Appellate Division affirmed the dismissal of the condemnation complaint.

Property Owned by School Boards

- N.J.S.A. 18A:20-1 sets forth that “title to the property, real and personal, of each school district, and the title to all property, real and personal, which shall be acquired for school purposes in the district, is vested and shall vest in the board of education of the district...”
- N.J.S.A. 18A:20-9 also establishes that whenever any board of education shall by resolution determine that any tract of land is no longer desirable or necessary for school purposes it may authorize the conveyance thereof, whether there is a building thereon or not, for a nominal consideration to a nonprofit organization duly licensed under the laws of the State of New Jersey.

Property Owned by School Boards (cont.)

- If the Board of Education does convey out property to a non-profit organization for a public or civic purpose, then the deed must contain a right of reversion if the intended use of the property changes.
- N.J.S.A. 18A:20-6 also authorizes public sale of lands by the Board of Education to the highest bidder, after advertisement of the sale in a newspaper published or circulated in the district...unless: the same are sold to the State, or a political subdivision thereof, in which case they may be sold at private sale without advertisement; or the sale or other disposition thereof in some other manner is provided for in this title.

Sale-Leaseback Transactions and School Use Restrictions

- N.J.S.A. 18A:20-4.2(f) permits the Board of Education of any school district to enter into a lease purchase agreement where the school board conveys the property to the grantee, but also enters into a lease agreement with the grantee with an option to re-purchase the land.
- Also, please be aware that deeds from the Board of Education may contain restrictions that the property needs to be specifically used for school purposes, or may contain a right of reverter in favor of the Board of Education.
- Please consult your underwriter if you find any deeds in your chain of title which contain these restrictions.

Higher Education Facilities Act of 1963

- The Higher Education Facilities Act authorizes the grant or loan of Federal funds to assist public and other nonprofit institutions of higher education in financing the construction, rehabilitation, or improvement of academic and related facilities in undergraduate and graduate schools.
- Pursuant to the Act, the first twenty (20) years following completion of construction of an academic facility (with a grant under the Act) is the period of "Federal interest" in the facility.

Higher Education Facilities Act of 1963 (cont.)

- The Act, grants that the United States has a right to recover from the academic institution, or its successor in title or possession, if there is a cessation of public benefit within the twenty (20) year period following completion of construction.
- If a facility is used as an academic facility for twenty (20) years following completion of construction, the public benefit accruing to the United States is deemed equal in value to the amount of the grant. 20 U.S. Code § 1011k(a).
- The right of recovery may be asserted against a "successor in title or possession" as well as the original educational institution.

Higher Education Facilities Act of 1963 (cont.)

- When the property is improved (i.e., not vacant land) and the examination of title discloses that a college, university or other institution of higher education is now in title, or has been in title since the effective date of the Act (December 16, 1963), a special exception should be included in the title commitment and policy pertaining to the Act.
- The exception is not required if the property to be transferred is vacant land.
- The exception may also be omitted if the institution of higher education is able to provide an affidavit confirming that no applicable funds were used in the construction of the facility and/or that the facility was used as an "academic facility" for the required period of time.

NJ Green Acres Funding

- N.J.S.A. 13:8A-1 et seq. establishes the Green Acres Program in the State of New Jersey.
- Green Acres funds is defined as any funds made available for the acquisition or development of lands by the State for recreation and conservation purposes.
- In 2007, the Green Acres, Farmland, Blue Acres, and Historic Preservation Bond Act authorized \$12 million for acquisition of lands in the floodways of the Delaware River, Passaic River or Raritan River, and their respective tributaries, for recreation and conservation purposes.
- A local government or nonprofit organization can use Green Acres funding to acquire land that will be used for public outdoor recreation or conservation purposes.

NJ Green Acres Funding (cont.)

- Please note that when Green Acres provides funding to a nonprofit for the acquisition of land or the development of recreational facilities, it must provide to the State, at no cost, a conservation restriction on that land.
- Green Acres and the nonprofit will then prepare this restriction which will ensure that the land is held for public recreation and conservation purposes in perpetuity, and record the restriction with the County Clerk's Office.
- In the absence of a release of Green Acres restrictions by the State, the lands remain encumbered by those restrictions, and therefore may not be developed.

Surplus Lands from Public Authorities

- The New Jersey Department of Transportation (NJDOT) sometimes accrues land that may be surplus and may later dispose of it as excess property.
- If surplus land is declared to be excess by the Commissioner of Transportation, then it can be sold by the Commissioner pursuant to N.J.S.A. 27:12-1.
- Pursuant to N.J.S.A. 27:23-5(i), the New Jersey Turnpike Authority may acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties.

Surplus Lands from Public Authorities (cont.)

- Pursuant to N.J.S.A. 5:12-161(e), the Casino Reinvestment Development Authority (CRDA) also may acquire, hold, use, mortgage, or sell real property.
- N.J.S.A. 40:37A-46 authorizes a governing body of a county by ordinance or resolution to create an improvement authority for the purpose of purchasing or selling real property.
- In NJ, the Board of Public Utilities (“Board”) is the state agency with authority to oversee regulated utilities, and is responsible for monitoring utility service, and regulating public utility companies, including for real estate transactions.

The Sunshine Law

- In NJ, the Open Public Meetings Act, also known as the “Sunshine Law,” is implemented to ensure that decision-making government bodies in the state conduct their businesses in public except in specific circumstances where exclusion of the public is needed to protect the privacy of individuals, the safety of the public or the effectiveness of government in such areas as negotiations or investigations.
- The Sunshine Law requires public bodies to provide the public with adequate advance notice of all its meetings; the right to attend its meetings; and reasonably comprehensive minutes of all meetings.

The Sunshine Law (cont.)

- The Sunshine Law generally requires all meetings of public bodies to be open.
- However, a public body may exclude the public from portions of a meeting, which are referred to as “executive” or “closed” sessions.
- For a closed session to take place, a public body must first adopt a resolution at a meeting which is open to the public stating the general nature of what will be discussed in the closed session; and the time when the information discussed in private will be disclosed to the public.

Underwriting Requirements

- From an underwriting standpoint, if a municipality conveys property, we will require proof that the ordinance or resolution authorizing the sale of the property was adopted in accordance with the Open Public Meetings Act.
- When insuring a Deed from a municipality, a requirement must be raised that the deed of conveyance was made in accordance with the Local Lands and Buildings Law.
- Also, if the land is benefitted by a tax exemption since it is owned by a governmental entity, an exception must be added for the restoration of any property taxes or municipal assessments if the conveyance is made to a non-governmental entity.

Underwriting Requirements (cont.)

- If we are asked to insure a mortgage from a governmental entity, a requirement must be raised that the transaction complies with N.J.S.A. 40A:12A-22.
- Since most governmental entities do not have the authority to mortgage property with very few exceptions, please contact your underwriter for further guidance to confirm that the mortgage can be insured.
- In NJ, municipal conveyances are usually exempt from subdivision and other land use regulations, but a copy of the local ordinance or resolution approving the conveyance will still be required to insure the transaction.

Wrap Up and Review

- Any excess property that is not currently being utilized and is not required for use by the federal, state, or local government is considered surplus property.
- In NJ, N.J.S.A. 40A:12-1, et seq., authorizes the sale by municipalities of any real property, capital improvement, or personal property no longer needed for public use.
- In NJ, statutory authority permits conveyances from the Board of Education and other local authorities.
- Proof of compliance with the NJ Open Public Meetings Act and other applicable statutes is required when insuring a conveyance from a municipality or governmental entity.

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