

NEW OPTIONAL PROCEDURES FOR SALES, MORTGAGES OR LEASES OF PROPERTY BY RELIGIOUS CORPORATIONS

Effective on December 11, 2015, section 12(1) of the Religious Corporations Law was amended to give religious corporations the option of seeking approval of either the Supreme Court or the Attorney General for authorization to “sell, mortgage or lease for a term exceeding five years” any of their real property. Until now, certain religious corporations have been required to give notice to the Attorney General when they petition the Court for approval of such transactions. Now, those religious corporations will be able to follow the procedures that the Nonprofit Revitalization Act of 2013 made applicable to not-for-profit corporations that are required to get approval of sales or other transfers of all or substantially all of their property.

What this means is that, pursuant to Not-for-Profit Corporation Law section 511 or 511-a, a religious corporation’s attorney may prepare a petition to either the Court or the Attorney General to request approval of a proposed transaction. If a religious corporation seeks court approval, notice of the application to the Court must be given to the Attorney General. However, the procedure preferred by the Charities Bureau and most courts is submission of a petition and proposed order, in draft form with tabs identifying any exhibits, to the Attorney General for review in advance of filing with the Court. This procedure enables the Attorney General to review the papers to ensure that all statutory requirements are met, all necessary documents are included as exhibits, and any concerns of the Attorney General may be resolved *before* submission of the final, certified petition to the Court or the Attorney General. Likewise, if Attorney General approval is sought, the petition and required documents should be submitted to the Attorney General in draft form and, after review by the Attorney General, submitted to the Attorney General in final, verified form. If a religious corporation seeks Attorney General approval, the Attorney General may, upon review, determine that, in some circumstances, court approval will be required and, if so, will advise the petitioning religious corporation’s attorney.

We are currently revising our guidance to reflect the recent change in the law. In the meantime, religious organizations and their attorneys may refer to the guidance posted on our website for not-for-profit corporations – www.charitiesnys.com – and the attached checklist of the documents required to be submitted to either the Court or the Attorney General by religious corporations seeking approval of a real property transaction.