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# District property disposal

*This fact sheet is designed to address the most frequently asked questions about disposal of school district property. This information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.*

## What is the difference between “real property” and “personal property”?

Real property refers to land and things that are permanently attached to the land, such as school buildings or stadiums. Personal property generally refers to items that are movable and not a part of the land, including textbooks, desks and computers.

## Is the board required to offer the district’s real property to other entities prior to disposing of it?

Yes. Ohio Revised Code Section (RC) 3313.413 requires a school district board of education to follow specific procedures when it decides to dispose of real property. The board of education first must offer the property for sale to the governing authorities of all start-up community schools, boards of trustees of any college-preparatory boarding schools and the governing bodies of any science, technology, engineering and mathematics (STEM) or science, technology, engineering, arts and mathematics (STEAM) schools located within the district’s territory, giving priority to high-performing community schools.

RC 3313.411 requires school districts to offer school property to community schools, college-preparatory boarding schools and STEM and STEAM schools when that property ceases to be used for school purposes for a given period. RC 3313.411 provides that when a school district has not used real property for “school operations including, but not limited to academic instruction or administration” for two years, it must offer the property for sale or lease to the governing authorities of all start-up community schools, boards of trustees of any college-preparatory boarding schools and the governing bodies of any STEM or STEAM schools located within the district’s territory, giving priority to high-performing community schools.

## What is a high-performing community school?

A “high-performing” community school is either a newly established community school implementing a community school model that has a track record of high-quality academic performance as determined by the Ohio Department of Education (ODE); or one that meets the following conditions:

- the school has received a grade of A, B or C for the performance index score or has increased its performance index score in each of the three previous years of operation, and the school has received a grade of A or B on the value-added progress dimension on its most recent report card and has received a grade of A or B on the value-added progress dimension on its most recent report card rating;
- the school serves only grades K-three and has received a grade of A or B for making progress in improving literacy measure on its most recent report card;
- the school primarily serves students enrolled in a dropout prevention and recovery program and has received a rating of “exceeds standards” on its most recent report card.

RC 3313.413(D) requires ODE to post a list of high-performing community schools annually by Oct. 1.

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For more information on this subject, please contact OSBA’s Division of Legal Services

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### **What happens if no high-performing community schools are interested in purchasing or leasing the property?**

If no high-performing community school notifies the treasurer of its intention to purchase the property within 60 days, the school district then must look to the governing authorities of any community schools, the boards of trustees of any college-preparatory boarding schools and the governing bodies of any STEM or STEAM schools located within the district who have notified the district treasurer of their intention to purchase or lease the property within 60 days, prior to disposing of the property pursuant to RC 3313.411. The board of education also may, but is not required to, offer the property to the governing authorities of community schools with plans, as stipulated in their contracts, either to relocate to the district or add facilities to be located within the district. If no governing authority, board of trustees or governing body notifies the district treasurer of its intention to purchase the property, the district may offer the property for sale in the manner prescribed by RC 3313.41.

### **What happens if an eligible party is interested in purchasing or leasing the property?**

If one eligible party notifies the district treasurer of its intention to purchase the property within 60 days, the district board must sell the property to that party at a price not greater than the appraised fair market value of the property. If more than one eligible party offers to purchase the property, the board shall conduct a public auction for those interested parties. Only those parties who initially notified the treasurer of their interest in the property are eligible to bid in the auction. The district board is not required to accept any bid for the property that is lower than the appraised fair market value of the property, as determined in an appraisal of the property that is not more than one year old.

If one eligible party notifies the district treasurer of its intention to lease the property within 60 days, the district board must lease the property to that party at a price that is not greater than the fair market value for such a leasehold. If more than one party notifies the treasurer of its intention to lease the property, the district board must conduct a lottery to select the party to which the district board will lease the property. Again, the district board must lease the property to the party at a price that is not greater than the fair market value for such a leasehold, as determined in an appraisal of the property that is not more than one year old.

If no eligible party accepts the offer within 60 days, the board may dispose of the property by auction or private sale, as may be required.

### **Public auction**

#### *When is the board required to hold a public auction?*

In most cases, if the value of the real or personal property exceeds \$10,000, a board of education is required to sell the property at a public auction. At least 30 days before the auction, the board must notice the auction either by publishing a notice in a newspaper of general circulation or by posting notices in five of the most public places in the school district.

Once the board has published or posted the initial notice, it has satisfied the statutory requirement. The Ohio attorney general has held that continuous publication up until the auction date is not required (1974 Ohio Atty.Gen.Ops. No. 74-002).

#### *How does the district determine if the value of the property exceeds \$10,000?*

Prior to the sale, the board may hire an appraiser to appraise the property or may make its own determination as to whether the aggregate value of the property exceeds \$10,000. In the absence of fraud or a gross abuse of discretion, the judgment of the board will not be disturbed by a court of law. The board also may have adopted board policy setting forth procedures for determining the value of the district property.

#### *Must a licensed auctioneer conduct the public auction?*

No. An auctioneer's license is not required to conduct a district's public auction, provided that the individuals involved in the auction are not compensated for their services.

#### *Is the board required to sell the property to the highest bidder at the public auction?*

No, if it finds the highest bid to be insufficient or unacceptable. A board has the discretion to reject any and all bids made on the property. However, the Ohio attorney general has held that if the board does not reject the bids and the property is sold at the public auction, it must be sold to the highest bidder (1961 Ohio Atty.Gen.Ops. No. 61-2395).

#### *Can the board meet the public auction requirement by soliciting written sealed bids from interested buyers?*

The language of the statute expressly requires the board of education to conduct a public auction. Public auctions are less secretive and typically more competitive than when sealed bids are used, which arguably provides a greater benefit to the board trying to sell property.

An argument can be made that due to the RC 4707.01 definition of the term "auction," sealed bids could be used. This provision, however,

refers to auctions generally and not specifically to public auctions. Therefore, there is no definitive, affirmative statutory allowance for using sealed bids in a public auction setting. Districts choosing to do so should work with board counsel.

*What happens if the district fails to comply with the statute requiring a public auction?*

A court could stop a proposed sale or set aside a sale that has already been completed if the sale is or was improperly executed.

*How long is the district required to maintain records relating to the public auction?*

RC 4707.21 requires districts to keep records relative to their sponsored auctions for up to two years after the auction date. These records may include settlement sheets, written contracts and copies of any advertising or notices that list the items for auction.

### **Private sale**

*When can the board sell district property at a private sale?*

A board of education may bypass the public auction requirement and sell its property at a private sale when one or more of the following exceptions are met:

- the value of the property does not exceed \$10,000;
- the property has been offered for sale at public auction at least once and has not been sold;
- the buyer of the property is a municipal corporation, county, township, school district or other public entity enumerated in RC 3313.41;
- the property is being disposed of as part of a trade or exchange.

*What rules govern the private sale of district property?*

Surprisingly, there are few rules that govern how a school board may dispose of its property through a private sale. The sale may be made “upon such terms as are agreed upon” by the parties. The board can sell the property by any method it chooses, but should act to authorize the final sale during a board meeting. No form of public notice is required by statute, but OSBA recommends soliciting bids from more than one source to make sure the board is getting the best price for the property and to avoid claims of favoritism.

*May the board use eBay or Craigslist to host our private sale?*

Yes, provided that the property qualifies as property that can be sold at a private sale.

### **Trading property**

*May a board of education trade its personal property for personal property owned by another person or entity?*

Yes. A board of education may trade its personal property for other items of similar personal property. The items traded may constitute all or part of the purchase price of the new items. The board may trade the item upon such terms as are agreed upon by the parties to the trade. (RC 3313.41(D)) There is no requirement for the letting of bids or public notice.

*May a board of education trade its real property for real property owned by another person or entity?*

Yes. If the board has identified a parcel of real property that it determines is needed for school purposes, the board may acquire that property by exchanging the board’s property for the desired real property. Alternatively, the board may trade a parcel of real property which it owns as part of the price of another specific parcel. A trade of real property requires a majority vote of the full board and must be made by a conveyance executed by the president or treasurer of the board (RC 3313.41(F)).

### **Donations**

*May a board donate its unneeded property?*

In general, boards of education have no authority to donate or give school property to any private person, public corporation or agency. However, there is an exception for the disposal of surplus goods. Boards of education are permitted to donate unneeded property to certain civic and charitable organizations when the board determines that the fair market value of such property does not exceed \$2,500.

*How does a board donate its unneeded property?*

The board must first adopt a resolution that outlines its intent to make unneeded, obsolete or unfit-for-use property available to nonprofit organizations. The resolution should set forth any guidelines or procedures that the board determines are necessary to implement their donation program and must indicate if the board will be responsible for conducting the program or if it will hire a private contractor to run the program.

After adoption of the resolution, the board must publish, in a newspaper of general circulation within the school district, a notice of its intent to donate unneeded, obsolete or unfit-for-use school district property to eligible nonprofit organizations. The notice must include a summary of the information contained in the resolution and must be published twice, with the second notice published not less than 10 and not more than 20 days after the first notice.

A similar notice is required to be posted continually both at the board's office and, if it maintains one, on the district's website.

*Which civic or charitable organizations are eligible to receive donations?*

To be eligible to receive donations, the organization must submit to the board of education written notice of its interest in being considered for such donations. The notice must include all of the following:

- evidence that the organization is a nonprofit organization located in Ohio;
- evidence that the organization is exempt from federal income tax pursuant to sections 501(a) and 501(c)(3) of the Internal Revenue Code;
- a description of the organization's primary purpose;
- a description of the type(s) of property the organization needs;
- the name, address and telephone number of the person designated by the organization to receive the donated property.

The board must maintain a list of all nonprofit organizations that notify the board of their desire to obtain donated property.

*How are donations to eligible civic or charitable organizations made?*

Donations are made to eligible organizations on a "first come, first served" basis unless the board has determined, by resolution, that an organization should be given priority with respect to the item in question. When a board determines an organization should be given priority, the board's reasons for giving priority must be included in the resolution.

*The information in this fact sheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.*