



Club Manual

Property Ownership - Vesting of Property and the Appointment of Trustees

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Property Ownership - Vesting of Property and the Appointment of Trustees

This part of the Club Manual deals with the arrangements to be made on the acquisition of real property by a G.A.A. Club for use as a playing field, social centre, Club rooms, handball courts etc. The first stage of Acquisition is followed by two further separate stages of Appointment of Trustees and Vesting.

1: Acquisition

“Where real property is acquired by a Club, it must be transferred in writing to trustees on behalf of the Club by the kind of transfer appropriate to the type of property.”

Before entering into a purchase contract consult a Solicitor to ensure that your Club's rights are safeguarded and that the intended use of the property is permissible under the Planning Act and/or municipal Bye-Laws. Where real property is acquired by a Club, it must be transferred in writing to trustees on behalf of the Club by the kind of transfer appropriate to the type of property which is as follows:

- (a) Freehold land, where title is not registered by Land Registry
Required Action - Conveyance and registration in Registry of Deeds.
- (b) Leasehold land where title is not registered by Land Registry
Required Action - Assignment and registration in Registry of Deeds.

- (c) Freehold or Leasehold land where title is registered by Land Registry
Required Action - Transfer and registration of transfer at Land Registry.

Where the property is acquired by allotment from the Land Commission under the Land Acts, the Commission looks after the legal formalities and ultimately the ownership is registered on a Land Registry folio. It is important to note that under the Land Act 2005 the Minister for Agriculture and Food proposed that the Department of Agriculture, Fisheries and Food abolish such trusts in favour of the Department of Agriculture, Fisheries and Food (formally the Land Commission) in respect of the various G.A.A. grounds. A considerable number of Association grounds were purchased under the scheme by trustees on behalf of various clubs on trust to use the lands for the playing of G.A.A. games and for other



purposes affiliated with the rules of the Association. It is intended that the Minister vests absolute title in G.A.A. grounds to each Club's five trustees, which should be comprised of three locally appointed trustees, one trustee appointed for and on behalf of the County Board, and one trustee appointed for and on behalf of the Provincial Council.

In the event that clubs trustees are not properly constituted at present, the Department of Agriculture, Fisheries and Food intend to regularise this prior to proceeding with any disposal. Once trustees are regularised they will be registered as joint registered owners on the Land Registry. Please contact G.A.A. Headquarters for further information and the relevant forms.

“Before entering into a purchase contract consult a Solicitor to ensure that your Club's rights are safeguarded.”



2: Appointment of Trustees and Vesting

What is a Trustee?

Definition: A Trustee is someone who is given legal authority to manage assets, including property on behalf of someone else. He/she holds no beneficial interest in the property.

Real property of a Club is vested, in accordance with Rule 5.3 of the Official Guide, in five Trustees, three of whom shall be appointed for and on behalf of the Club, one on behalf of the County Committee and one on behalf of the Provincial Committee.

Regarding the three trustees to be appointed for and on behalf of the Club, the Club Executive Committee selects three persons who are then appointed by the Chairman as Trustees. The Chairman of the Provincial Council and the Chairman of the County Committee shall each appoint one other Trustee. Each Trustee is responsible to the Executive Committee of the respective body that appointed them.

The Trustees shall by way of acceptance of their appointment sign a 'Declaration of Trust' as approved by the Central Council of the G.A.A., which shall contain the provisions for appointment, removal and replacement of Trustees, as well as regulating the conduct of the Trustees in performing their duties and exercising their powers under the Trust. It is their function to ensure that the property is used in accordance with the terms of the Declaration of Trust.

What are the duties of a Trustee?

Duty on Appointment:

- Ascertain the nature and extent of the property comprised in the Trust and understand the terms of the Trust instrument; The Declaration of Trust.
- Required to act in good faith and in a responsible and reasonable manner in their role as Trustee.

- Ensure that the property which is subject to the Trust is under their control and where necessary must arrange for the property to be conveyed or transferred into the joint names of themselves and their co-Trustees.
- Satisfy themselves that there is no evidence of a breach of trust committed by a previous Trustee which ought to be investigated or rectified.

Duty to Safeguard the Trust Assets:

- It is generally accepted that in relation to the management and administration of a trust that Trustees are expected to use such due diligence and care as an ordinary prudent person would use in the management of his/her own affairs. Trustees are duty bound to act in the best interests of the Club and the Association in dealing with property, which they have control of, under the Trust instrument.

Duty Not to Profit from the Trust:

- It is a well-established rule that a person who occupies a *fiduciary position is not entitled to make a profit from that position unless expressly authorised to do so, or to place himself in a situation where his interest and duty may conflict. *Fiduciary position refers to the position of the Trustee as they have a legal and ethical duty to act in the best interest of the Club and the Association.
- Subject to strictly limited exceptions, it is an established principle that a Trustee may not purchase trust property from themselves and their co-Trustees because if this was permitted the Trustee would effectively be both vendor and purchaser.



Duties Conferred Upon Trustees by the Trust

Instrument, Declaration of Trust:

- To hold upon trust the property to be used exclusively for the purpose of a Gaelic Football, Hurling, Sports and Athletic Ground and Handball Court/s for the playing of Gaelic Football, Hurling, Handball and other games and pastimes under the control and sanctioned by the Rules for the time being of the G.A.A.
- To allow the property to be used for the purpose of a social centre and/or meeting place for members of the G.A.A. and/or for the purpose of holding any activity which does not contravene the Rules of the G.A.A..

What are the powers of a Trustee?

Trustees have the power, subject to obtaining consent from the Club's respective County and Provincial Committees and the Central Council of the G.A.A., to:

- mortgage, exchange, transfer, lease, sell or otherwise dispose of real property as defined by the Club.
- acquire by purchase, lease, exchange, hire or otherwise lands or any interest in the same.

What is the Club's real property?

The Club's real property generally refers to land and whatever is erected upon or affixed thereto. When the title or ownership of the property is registered in the Land Registry all relevant details concerning the property and its ownership are entered on documents known as Folios. Trustees must be registered as the joint owners on the relevant Land Registry folio. The folio is guaranteed by the State to be a confirmed record of the title of the property to which it refers.

The folio describes the following:

- (a) the property registered and refers to a plan on the Registry maps
- (b) the name and address of the registered owner/s
- (c) any burdens, for example, rights of way or charges (mortgages) affecting the property.

The fact that one Trustee represents the County Committee and one represents the Provincial/Central Council does not affect the ownership of the property by the Club, it in fact safeguards the Club's ownership. The Club should adopt a resolution to indemnify and save harmless its Trustees in their capacities as such by the Club in accordance with rule 10.12 of the Club Constitution. In accordance with Rule 5.3 (g) of the Official Guide each unit of the Association shall indemnify and save harmless a Trustee in respect of any loss or out of pocket expenses bona fide incurred by him in or about the execution of their powers or duties.



3: Vesting

It is necessary to vest real property for the Clubs protection to ensure that:

- It remains under the permanent control of the Club
- It will be used for G.A.A. purposes
- Continuity of G.A.A. Club ownership is maintained
- Certainty of legal ownership by the Club
- It will be eligible for G.A.A. loans and grants

Vesting can be accomplished by the Trustees completing a suitable Declaration of Trust. The Association has a standard form of declaration which can be used as a draft. The Club or the Solicitor who acts for the Club can obtain a copy of this standard form of Declaration of Trust from G.A.A. Headquarters Croke Park.

The Declaration of Trust is signed in triplicate by the Trustees to vest the property and one copy is kept by Central Council at G.A.A. Headquarters Croke Park, one copy by the County Committee and one copy by the Club.

There maybe a situation where some Trustees are deceased and where some of the surviving Trustees consider themselves as being too old to continue as Trustees and may request that new Trustees be appointed. If this situation arises, new Trustees are appointed to replace the surviving Trustees or retiring Trustees, and the property is transferred by Deed of Transfer by the surviving or deceased Trustees to the Trustees replacing them and the Trustees appointed to replace the deceased Trustees.

The copy precedent Deed of Transfer referred to may be obtained from G.A.A. Headquarters Croke Park for guidance.

Procedure on Death, Retirement etc. of Trustee

The Trustees are registered on the trust property as joint tenants. Therefore, on the death of one Trustee, the property automatically vests in the remaining Trustees. If one or more of the Trustees are deceased, an application can be made to the Land Registry by the surviving

Trustees, exhibiting the death certificates of the deceased Trustees and requesting the land registry to remove the deceased Trustee from the land registry folio.

This application to the Land Registry need not be made until an application is being made to the Land Registry appointing new Trustees. New Trustees need to be appointed to replace the deceased Trustee. The new Trustees are appointed by the relevant bodies i.e. Club, County Committee and provincial committee, and a Deed of Transfer is executed by the surviving Trustees transferring the property to the surviving Trustees and the new Trustee. Once there is any change to the Trusteeship a new Declaration of Trust must be completed to reflect same. The Trustees registered as joint owners on the Land Registry folio must correspond to the current acting Trustees as per the Club's Declaration of Trust.

A precedent Deed of Transfer for the above transfer may

be obtained from G.A.A. Headquarters Croke Park. There is no Stamp Duty payable on a transfer to a Sports Body under Section 105 of the Finance Act 2007, only if a Club is registered for tax exemption. It is important to note that if a Club is not registered they will be liable for Income Tax, Corporation Tax, Capital Gains Tax as well as Stamp Duty. The tax code provides exemption for G.A.A. units from such taxes. To register for exemption the Club must complete and send a GS1 Form and Declaration to the Revenue Commissioners.

A copy of the GS1 Form referred to may be obtained from G.A.A. Headquarters Croke Park.

Position when all Trustees are deceased

The personal representative of the last surviving Trustee may take out a Trustee Grant of Administration and transfer the property to the five new nominated Trustees. This would be the preferred choice.

“There is no Stamp Duty payable on a transfer to a Sports Body under Section 105 of the Finance Act 2007, only if a Club is registered for tax exemption.”



Alternatively, a person or persons can be nominated by the Club, the County Committee and the Provincial Committee to apply for a Trustee Grant of Administration to the estate of the last surviving Trustee.

When a person or persons are nominated by the above bodies to apply for a Trustee Grant, an application is made to the Probate Judge of the High Court through the Probate Office setting out the circumstances and that the last surviving Trustee had no beneficial interest in the property. The court will grant an order under section 27(4) of the Succession Act 1963 giving permission to the nominated person or persons to apply for a Trustee Grant of Administration to the estate of the last surviving Trustee and when the Trustee grant issues, a Deed of Transfer of the property can be made to the new nominated Trustees.

The Grant of Administration to a last surviving Trustee only relates to the Trust Property in which he has no

beneficial interest and the grant on the face of it will show that the deceased Trustee was possessed of the property as a Trustee and not Beneficially.

Procedures to be followed in applying for a Trustee Grant by the last Personal Representative of the last Surviving Trustee

A form 'A4' is obtained from the Revenue and completed. It is then sent to the Revenue to obtain a certificate that no duty is payable and as it is Trust Property, none is payable. Upon receipt of form A4 with certifying Nil Duty, an application is made to the Probate Office or District Probate Registry for Trustee Grant of Administration. There is no necessity to have Sureties sign the Administration Bond which is lodged with the application. The Trustee Grant when it issues is a limited grant to deal only with the Trust Estate and the person to whom the grant issues can then transfer the property to the five new Trustees.

Removal of a Trustee

A Trustee may be removed from their position where the High Court exercises the power conferred on it by Section 25 of the Trustee Act 1893 to appoint a new Trustee where an existing Trustee refuses or is unfit to act. The court also has an inherent jurisdiction to remove Trustees where they act dishonestly or incompetently or even where their conduct is deliberately obstructive. In this situation the Club should seek legal advice from their Solicitor.

Safekeeping of Title Deeds & Declaration of Trust

These valuable documents should be kept in a secure place such as in the Club's Bank and a record of their place of custody put in the Club minute book. A copy should be lodged with Páirc an Chrócaigh and it might also be useful to retain a copy. If the Title Deeds are thought to be lost or mislaid, the explanation may lie in one of the following :

- In the case of lands allotted to a G.A.A. Club by the

Land Commission, the vesting deed is retained by the Commission, and is ultimately lodged by the Commission in the Land Registry, where it is retained and the ownership is registered on a folio.

- In most other cases, particularly in rural areas, the title is registered in the Land Registry with the result that the transfer to the Club has to be registered there on the appropriate folio. The deed of transfer is then retained by the Land Registry.
- Where lands are registered in the Land Registry, the owners are entitled in person to search the Registry records on payment of a small fee. These records are held in the County Registrar's office in each county.
- Where the lands are unregistered (which is frequently the case in cities and towns) there is usually a bundle of deeds relating to the title including the deed under which the Club acquired the property. It is possible for these deeds to be lost or mislaid. If they are not available,





enquiries should be made by the Club officials to the officers of the Club at the time of acquisition; the office of the Solicitor who acted for the Club at the time of the purchase; the Club's bank, where the deeds may have been lodged for safeguarding or as security for a loan; Central or Provincial Council or the appropriate Grounds Committee. In the past deeds were handed over to some of these units.

If enquiries prove fruitless the Club should then consult a Solicitor.

Existing Property

Clubs should ensure that there is at all times a full complement of Trustees for each vested property. Declarations of Trust should now be examined and, in the light of the foregoing directions, any action found to be necessary should be taken immediately to rectify the Trusteeship.

It is advisable to review the situation from time to time, possibly at the Annual General Meeting.

Procedures for the Disposal of Association Property

In attempting to ensure that the Associations interests are safeguarded and the best deal is obtained for our units when disposing of Association property, the following procedures were agreed by An Coiste Bainistí after consultation with the Provincial Councils.

1. Re-investment proposals to be detailed at the outset.
2. Presentation to be made to the County and/or Finance Committee detailing re-investment proposals.
3. Two Independent Valuers Reports to be submitted to the Provincial Council.
4. Agreement of members to the disposal (i.e. Club, County Committee or Provincial)
5. Transparent procedures to be put in place i.e. 3 tenders to be obtained; to be opened in the presence of the Provincial Secretary/Chairman or a member of the Finance Committee.

6. The deal to be scrutinized by independent professional. The Provincial Council may obtain independent valuation prior to giving consent to the sale of the property.
7. Funds arising from the disposal to be lodged to a trust fund and drawn down only upon the signature of all Trustees. This is to ensure re-investment plans are adhered to.

In addition to the above guidelines we would ask G.A.A. units to consider local issues and all implications the disposal of the property may have on the Club and community. It's recommended clubs should follow the following steps to ensure they're making the right decision and one that will be for the overall betterment of the Club and its members. This is a major decision for any Club and not one to be rushed into.

When the idea to sell or move grounds is first mooted the Club Executive should call a meeting to discuss their various options. At this stage the members can decide to

investigate the matter further or else abandon the idea.

If the decision is made to investigate the matter further, the Club is advised to carry out a feasibility study to look at what impact the proposed move will have on the Club.

The feasibility study should be carried out if at all possible by an independent professional and should:

- Identify a suitable alternative site
- Identify suitability of land in terms of drainage if it's being offered as part of exchange
- Provide evidence of consultation with Local Planning Authority
- Detail plans for alternative site and costs
- Examine the option of purchasing land surrounding existing property
- Look at cost of redeveloping existing property
- Proximity of proposed alternative site to local schools

and population base

- Location of alternative site in relation to other clubs. Will Competition for players increase?
- Transport issues. Are footpaths, street-lighting available?
- Identify current Membership and Participation levels
- Identify Members and Community needs
- Population trends and projections

Details and information on the above should form part of any proposal submitted to the County Committee, Provincial Council and/or Finance Committee.

When the feasibility study has been completed it should be presented to the members at a Special General Meeting at which point they can make an informed decision. At this stage too the Club Executive should have an agreement with the owner of the alternative property, subject to the sale of the G.A.A. Grounds.

“There is no Stamp Duty payable on a transfer to a Sports Body under Section 105 of the Finance Act 2007, only if a Club is registered for tax exemption.”

Should the members vote to move to a new ground the Club Executive must now follow the procedures set out by An Coiste Bainisti in 2004.

Remember:

- (a) A Club shall not sell, exchange, lease, let, mortgage or otherwise dispose of lands houses or buildings hereditament and other property of the Association without the approval of Central Council of the G.A.A. as per the Official Guide.
- (b) A Club shall not acquire by purchase, lease, exchange, hire or otherwise, lands and hereditaments of any tenure, or any interest in the same without the approval of Central Council of the G.A.A. as per Official Guide.

A copy of the guidelines and approval procedures governing such property transactions along with the relevant forms can be obtained from G.A.A. Headquarters Croke Park.

Consult rules 10.1 to 10.12 of the Club Constitution governing Assets and Trustees.