PART 18
DISPOSAL OF REAL OR PERSONAL PROPERTY

SALE OR TRANSFER OF REAL PROPERTY

All political subdivisions must follow IC 36-1-11 in disposing of property. However, certain transactions are exempted from the requirements of IC 36-1-11. These exemptions are listed in IC 36-1-11-1(b). [IC 36-1-11-1]

For purposes of IC 36-1-11, **"Property"** is defined as all fixtures and real property to be included in a disposal. [IC 36-1-11-2]

Assessed Value of Property is Less Than $5,000

If the assessed value of a parcel of real property to be sold is less than $5,000, based on the most recent assessment of the parcel or of the tract of which it was a part before it was acquired, the disposing agent may proceed as follows:

Board Determination. The disposing agent may determine that:

1. The highest and best use of the parcel is sale to an abutting landowner;

2. The cost to the public of maintaining the parcel equals or exceeds the estimated fair market value of the parcel; or

3. It is economically unjustifiable to sell the parcel under IC 36-1-11-4. [IC 36-1-11-5(c,d)]

Notice. Within ten (10) days after the disposing agent makes a determination under IC 36-1-11-5 (d), the disposing agent shall publish a notice in accordance with IC 5-3-1, identifying the tracts intended for sale by legal description and, if possible, by key number and street address. The notice must include the offering price and a statement that:

1. The property may not be sold to a person who is ineligible under IC 36-1-11-16; and

2. An offer to purchase the property submitted by a trust (as defined in IC 30-4-1(a)) must identify each:

   a. Beneficiary of the trust; and

   b. Settlor empowered to revoke or modify the trust.

At the time of publication of notice under the subsection, the disposing agent shall send notice by certified mail to all abutting landowners. This notice shall contain the same information as the published notice. [IC 36-1-11-5(e)]

Property Appraisal. The disposing agent shall also have each tract appraised. The appraiser must be professionally engaged in making appraisals, a person licensed under IC 25-34.1, or an employee of the political subdivision who is familiar with the value of tract. However, if the assessed value of the tract is less than two thousand dollars ($2,000), based on the most recent assessment of the tract or of the tract of which it was a part before it was acquired, the disposing agent is not required to have the tract appraised. [IC 36-1-11-5(f)]

Offer to Purchase. If within ten days after the date of publication, the disposing agent receives an offer to purchase a parcel listed in the notice at or in excess of the offering price, the disposing agent shall conduct the negotiation and sale of the parcel as required in IC 36-1-11-4(c) through (g). [IC 36-1-11-5(g)]

Offer to Purchase - Abutting Landowner. If, within ten days after the date of publication of the notice, an offer to purchase the parcel at or in excess of the offering price is not received from any person other than the abutting landowner the disposing agent shall conduct the negotiation and sale of the parcel as follows:

1. If only one abutting landowner makes an eligible offer to purchase the tract, then without further appraisal or notice, offer to negotiate for the sale of the parcel with that abutting landowner.

2. If more than one abutting landowner submits an offer to purchase the parcel, the other abutting landowners who submit offers shall be informed of the highest offer received and be given an opportunity to submit one additional offer. The parcel shall be sold to the abutting landowner who submits the highest offer for the parcel.

3. If no abutting landowners submit an offer to purchase the parcel, the disposing agent may sell the parcel to any person who submits the highest offer for the parcel. [IC 36-1-11-5(h)]

Sale or Transfer of All Other Real Property

Any other sale or transfer of real property must comply with the following requirements:

Appraisal. The property must first be appraised by two licensed appraisers or employees of the political subdivision familiar with the value of the property. The appraisers shall make a joint appraisal of property. [IC 36-1-11-4(b)]

Notice. After the property is appraised, the disposing agent shall publish a notice two times, at least one week apart, with the second publication made at least three days before the event, setting forth the terms and conditions of the sale. If the disposing agent determines that the best sale of the property can be made by letting the bidders determine certain conditions of the sale (such as required zoning or soil or drainage conditions) as a prerequisite to purchasing the property, the disposing agent may permit the bidders to specify those conditions. The notice must state that bids will be received beginning on a specific date; that the sale will continue from day to day for a period determined by the disposing agent of not more than sixty days; and the property may not be sold to a person who is ineligible. [IC 36-1-11-4(c)]

Bid. A bid must be open to public inspection. A bidder may raise his bid, and that raise takes effect after the disposing agent has given written notice of the raise to the other bidders. [IC 36-1-11-4(d)]

Auction. The disposing agent may also engage an auctioneer licensed under IC 25-6.1 to conduct a sale by public auction. The auction may be conducted either at the time for beginning the sale in accordance with the public notice or after the beginning of the sale. The disposing agent shall give each bidder who has submitted a bid written notice of the time and place of the auction. Any advertising conducted by the licensed auctioneer is in addition to the notice required by law and shall include a detailed description of the property to be sold. [IC 36-1-11-4(e)]

Acceptance/Rejection of Bids. The disposing agent may, before expiration of the time set out in the notice, sell the property to the highest and best bidder. However, the property may be sold for less than ninety percent of the appraised value only after having an additional notice of the sale published. The disposing agent may reject all bids. [IC 36-1-11-4(f)]

Hiring of Broker/Auctioneer. The disposing agent may hire a broker or auctioneer to sell the property, and pay the broker or auctioneer a reasonable compensation out of the proceeds of the sale. However, the disposing agent must still comply with the procedural requirements of this section. The disposing agent may hire one of the appraisers as the broker or auctioneer. [IC 36-1-11-4(g)]

Sale and Rental Proceeds

Proceeds generated by the sale or rental of property should be receipted into the fund which originally purchased the property unless otherwise provided by statute.

SPECIAL PROVISIONS REGARDING CERTAIN SALES OR TRANSFERS OF REAL PROPERTY

Sale or transfer of Real Property to Governmental Entity or Not-for-Profit Corporation

The following rules may apply to sales or transfers to governmental entities or not-for-profit corporations.

1. A transfer or exchange of property may be made with a governmental entity upon terms and conditions agreed upon by the entities as evidenced by adoption of a substantially identical ordinance or resolution by each entity. Such a transfer may be made for any amount of real property, cash, or other personal property, as agreed upon by the entities. [IC 36-1-11-8]

2. The sale or lease of property by a unit to an Indiana nonprofit corporation organized for educational, literary, scientific, religious, or charitable purposes that is exempt from federal income taxation under Section 501 of the Internal Revenue Code or the sale or reletting of that property by the nonprofit corporation is not governed by the provisions of IC 36-1-11. [IC 36-1-11-1 (b)(7)]

3. IC 36-1-11 does not apply to the disposal of residential structures or improvements by a political subdivision without consideration to:

   a. A governmental entity; or

   b. A nonprofit corporation that is organized to expand the supply or sustain the supply of good quality, affordable housing for residents of Indiana having low or moderate incomes. [IC 36-1-11-1(b)(20)]

4. IC 36-1-11 does not apply to the disposal of historic property without consideration to a nonprofit corporation whose charter of articles of incorporation allows the corporation to take action for the preservation of historic property. **"Historic Property"** means property that is listed on the National Register of Historic Places or eligible for listing on the National Register of Historic Places, as determined by the division of historic preservation and archeology of the Department of Natural Resources. [IC 36-1-11-1(b)(21)]

5. IC 36-1-11 does not apply to the disposal of real property without consideration to a governmental agency or a nonprofit corporation that exists for the primary purpose of enhancing the environment when the property is to be used for compliance with a permit or an order issued by a federal or state regulatory agency to mitigate an adverse environmental impact. [IC 36-1-11-1(b)(22)]

Transfer or Sale of Real Property Originally Given to the Political Subdivision

The following rules may apply in the transfer or sale of property originally transferred to the political subdivision as a gift.

1. If a parcel of real property was originally transferred to a political subdivision as a gift and public funds have not been expended to improve the property since the original transfer, the political subdivision may convey it back to the original grantor or the grantor's successors with their consent without consideration upon a determination by the disposing agency that:

    a. The property is surplus; and

    b. The original grantor or the grantor's successors are eligible to receive the property under IC 36-1-11-16. [IC 36-1-11-14]

2. If a parcel of real property was originally transferred to the political subdivision as a gift by a not-for-profit corporation or organization, the disposing agent may convey it back to the original grantor or the grantor's successors with their consent without consideration upon a determination by the disposing agent that:

    a. The property is surplus; and

    b. The original grantor or the grantor's successors are eligible to receive the property under IC 36-1-11-16. [IC 36-1-11-15]

Public-Private Agreement

IC 36-1-11 does not apply to the disposal of property to a person under an agreement between the person and a political subdivision under IC 5-23. [IC 36-1-11-1(b)(23)]

LEASEBACK PROVISION OR OPTION TO REPURCHASE

A disposing agent who wants to sell or transfer real property, and as a condition of sale, includes a provision for leaseback or leaseback with option to repurchase must follow these procedures:

1. The disposing agent shall publish a notice in accordance with IC 5-3-1 setting forth the terms and conditions of the sale (published two times, at least one week apart, with the second publication made at least ten days before the date the bids will be received). The notice must state the following:

    a. Bids will be received beginning on a specific date.

    b. The sale will continue day to day for a period to be determined by the disposing agent of not more than sixty days.

c. The property may not be sold or transferred to a person who is ineligible under IC 36-1-11-16.

d. A bid submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each beneficiary of the trust and settlor empowered to revoke or modify the trust.

2. A bid must be open to public inspection.

3. After the period for receiving bids has expired, a disposing agent may sell the property to the highest and best eligible bidder. The highest and best eligible bidder must have complied with the requirements of IC 36-1-11-4.1(b)(4).

4. IC 36-1-10 does not apply to this section. [IC 36-1-11-4.1]

LEASE OF REAL PROPERTY

Lease of Property

The disposing agent may lease property rather than sell, transfer, or exchange it only if the disposing agent determines that a lease rather than a sale, transfer, or exchange would be in the best interest of the political subdivision and the public. The disposing agent must follow these procedures unless they determine that use of these procedures is not feasible, in which case IC 36-1-11-12 will be used. [IC 36-1-11-10(a)]

Procedures Under IC 36-1-11-10

1. The disposing agent must have the property appraised by two appraisers. The appraisers shall determine the fair market rental value of the property.

2. The disposing agent shall receive bids and lease the property to the highest and best bidder. However, the property may be leased for less than 90% of the appraised fair market rental value only after having an additional notice of the lease published.

3. The disposing agent shall determine the terms and conditions of any lease, which may include options to renew and options to purchase. The property may not be leased to a person who is ineligible.

4. The terms of a lease with option to purchase may provide that all or part of the rental payments under the lease apply to the purchase price. The purchase price must be equal to at least the minimum sale price.

5. Property owned by a political subdivision may be leased for a term longer than three years if the lease is approved by the fiscal body of the political subdivision. [IC 36-1-11-10]

Alternative Procedures Under IC 36-1-11-12

If the disposing agent chooses to use this procedure instead of IC 36-1-11-10, the disposing agent must make a written determination stating the reasons that use of the procedure in IC 36-1-11-10 is not feasible. Authorization to use the following procedure must be granted by the executive of the political subdivision.

1. Proposals to develop specifications shall be solicited through a request for proposals, which must include all of the following:

    a. The factors or criteria that will be used in evaluating the proposals, including a statement that the property may not be leased to a person who is ineligible; and a proposal submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each beneficiary of the trust and each settlor empowered to revoke or modify the trust.

    b. A statement concerning the relative importance of price and the other evaluation factors.

    c. A statement concerning whether the proposal must be accompanied by a certified check or other evidence of financial responsibility.

    d. A statement concerning whether discussions may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

2. Notice of the request for proposals shall be given by publication in accordance with IC 5-3-1.

3. As provided in the request for proposals, discussion may be conducted with the offerors for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements.

4. Eligible offerors must be accorded fair and equal treatment with respect to an opportunity for discussion and revision of proposals.

5. After the procedures outlined in IC 36-1-11-12 have been completed, the disposing agent shall make a determination as to the most appropriate response to the request for proposals and shall dispose of the subject property in accordance with that response.

Sale and Rental Proceeds

Proceeds generated by the sale or rental of property should be receipted into the fund which originally purchased the property unless otherwise authorized by statute.

SALE OR TRANSFER OF SURPLUS PERSONAL PROPERTY [IC 5-22-22]

All political subdivisions must follow IC 5-22-22 in disposing of surplus personal property. However, certain transactions are exempted from the requirements of IC 5-22-22. These exemptions are listed in IC 5-22-22-1(b).

Definitions

"Purchasing Agency" means a governmental body that is authorized to enter into contracts by IC 5-22, rules adopted under IC 5-22, or by another law.

General Provisions

A purchasing agency may sell personal property that:

1. Has been left in the custody of an officer or employee of a governmental body and has remained unclaimed for more than one year; or

2. Belongs to the governmental body but is no longer needed or is unfit for the purpose for which it was intended. [IC 5-22-22-3]

Auction

If the property to be sold is one item with an estimated value of $1,000, or more than one item with an estimated total value of $5,000 or more, the purchasing agency may engage an auctioneer licensed under IC 25-6.1 to advertise the sale and conduct a public auction. The advertising by an auctioneer must include a detailed description of the property to be sold. [IC 5-22-22-4]

The purchasing agency shall pay an auctioneer who conducts a sale under this section from the gross proceeds of the sale received before other expenses and liens are paid. [IC 5-22-22-4]

Internet Auction

(a) The purchasing agency may sell surplus property using an Internet auction site that satisfies both of the following:

1. The site is approved by the intelenet commission.
2. The site is linked to the electronic gateway administered by the intelenet commission.

(b) The purchasing agency's posting of the sale on the Internet action site must include a detailed description of the surplus property to be sold.

(c) The purchasing agency may pay the costs of conducting the auction on the Internet site as required by the person maintaining the auction site.

Public Sale or Sealed Bids

If an auctioneer is not engaged under IC 5-22-22-4 or the surplus property is not sold through an Internet auction site under IC 5-22-22-4.5, the purchasing agency shall sell the property at a public sale or by sealed bids delivered to the office of the purchasing agency before the date of sale. Advertisement of the sale shall be made in accordance with IC 5-3-1. All sales shall be made to the highest responsible bidder. [IC 5-22-22-5]

Public or Private Sale or Transfer Without Advertising

If the personal property to be sold is one item with an estimated value of less than $1,000, or more than one item with an estimated total value less than $5,000, the purchasing agency may sell the property at public or private sale or transfer the property, without advertising. [IC 5-22-22-6]

Recyclable Material

If the personal property to be sold is material that may be recycled and has been collected in conjunction with a recycling program, the purchasing agency may, without advertising, sell the property at public or private sale or transfer the property. [IC 5-22-22-7]

Worthless Property

If the property is worthless, it may be demolished or junked. Property may be considered worthless if the value of the property is less than the estimated costs of the sale and transportation of the property. [IC 5-22-22-8]