



# Charities Act 1993

## 1993 CHAPTER 10

### PART V

#### CHARITY LAND

#### **39 Supplementary provisions relating to mortgaging**

- (1) Any mortgage of land held by or in trust for a charity shall state—
  - (a) that the land is held by or in trust for a charity,
  - (b) whether the charity is an exempt charity and whether the mortgage is one falling within subsection (5) of section 38 above, and
  - (c) if it is not an exempt charity and the mortgage is not one falling within that subsection, that the mortgage is one to which the restrictions imposed by that section apply;and where the mortgage will be a registered disposition any such statement shall be in such form as may be prescribed.
- (2) Where subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, the charity trustees shall certify in the mortgage—
  - (a) (where subsection (1) of that section applies) that the mortgage has been sanctioned by an order of the court or of the Commissioners (as the case may be), or
  - (b) (where subsection (2) of that section applies) that the charity trustees have power under the trusts of the charity to grant the mortgage, and that they have obtained and considered such advice as is mentioned in that subsection.
- (3) Where subsection (2) above has been complied with in relation to any mortgage, then in favour of a person who (whether under the mortgage or afterwards) acquires an interest in the land in question for money or money's worth, it shall be conclusively presumed that the facts were as stated in the certificate.
- (4) Where—
  - (a) subsection (1) or (2) of section 38 above applies to any mortgage of land held by or in trust for a charity, but

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*Status: This is the original version (as it was originally enacted).*

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(b) subsection (2) above has not been complied with in relation to the mortgage, then in favour of a person who (whether under the mortgage or afterwards) in good faith acquires an interest in the land for money or money's worth, the mortgage shall be valid whether or not—

(i) the mortgage has been sanctioned by an order of the court or of the Commissioners, or

(ii) the charity trustees have power under the trusts of the charity to grant the mortgage and have obtained and considered such advice as is mentioned in subsection (2) of that section.

(5) In section 29(1) of the Settled Land Act 1925 (charitable and public trusts)—

(a) the requirement for a mortgage of land held on charitable, ecclesiastical or public trusts (as a “conveyance” of such land for the purposes of that Act) to state that it is held on such trusts shall not apply to any mortgage to which subsection (1) above applies; and

(b) the requirement imposed on a mortgagee (as a “purchaser” for those purposes), in the circumstances mentioned in section 29(1) of that Act, to see that any consents or orders requisite for authorising a transaction have been obtained shall not apply in relation to any mortgage in relation to which subsection (2) above has been complied with;

and expressions used in this subsection which are also used in that Act have the same meaning as in that Act.

(6) In this section—

“mortgage” includes a charge, and “mortgagee” shall be construed accordingly;

“land” means land in England or Wales;

“prescribed” and “registered disposition” have the same meaning as in the Land Registration Act 1925.