

Leases, Easements,
& Sales:
What every church
needs to know



**Serviam
Institute**

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ENCUMBERING YOUR PROPERTY

- Leases, Easements, Mortgages and Sale are all ways in which a church makes a formal commitment regarding its property.
- As the legal and fiduciary representatives of the church, only the Vestry can make such commitments
- The Vestry should be fully-informed and prepared before encumbering their property.

THIS TRAINING WILL:

- Review legal and canonical obligations
- Discuss best practices
- Walk through the process of diocesan review

RENTALS, LEASES AND LICENSES

Before you rent:

Evaluate your campus and consider:

What spaces are most attractive?

What kind of tenants/partners do you want?

What kind of activities you will allow?

Once you have the answers, it is a best practice for the Vestry to then establish a Rental Policy

A RENTAL POLICY GENERALLY APPLIES TO SHORT-TERM RENTALS

It should include clear terms covering:

- Cost including deposits and a schedule for when payment is required.
- Who can use the space? Are there different rates for parishioners?
- What activities are permitted/prohibited?
- Who is responsible for set up and clean up?
- Is alcohol permitted and if so, under what conditions?
- Insurance requirements.
- Monitoring of children
- Use of the kitchen
- Thermostats
- Any other issues your church feels are important

PRIOR TO USING CHURCH SPACE, ALL PROSPECTIVE RENTERS MUST HAVE:

Insurance

- Must meet liability minimums
- Workers compensation



A Lease/Contract



These conditions also apply to parishioners using the space for private activities.

INSURANCE

While your insurance covers the church for all events, it DOES NOT cover those who rent/use church space for activities that are not explicitly part of official church ministry and activities.

- This includes parishioners who are renting church facilities for private events.

All outside groups/renters must have their own insurance and provide the church with a copy of the rider or declaration sheet.

Renters should add the church, its clergy, vestry and the diocese as named additional insured to their policy. This can be done at no cost to them.

Insurance must meet diocesan minimums of \$1 million per occurrence, \$3 million aggregate

All renters should also sign something that acknowledges that they are not covered by your insurance and indemnifies the church.

If you need further clarification contact your insurance agent



HOW DO PROSPECTIVE RENTERS GET THE NECESSARY INSURANCE?

All businesses and non-profit groups should already have insurance

Individuals who rent for parties, etc. can either:

- Purchase a rider through their homeowners or renter's policy or
- Purchase Event Insurance

Note: Most 12 Steps groups do not have insurance. If they do not then you should have them sign a Waiver/Indemnification Agreement

LEASES AND LICENSES

All uses of church space by non-church groups should be accompanied by a lease, license or other form of agreement.

A written and signed document protects both parties

We will discuss specific considerations for both Short-Term and Long-Term agreements

LICENSES VS LEASES

Licenses are an alternative to leases and can offer the church several advantages to a lease

Licenses are particularly appropriate for short term agreements but can be used for long-term

Licenses differ from leases in that they allow the landlord to retain access to the rented area of the property giving greater flexibility

Licenses of 12 months or more still require review and approval from Diocesan Governance

SHORT TERM RENTALS

These can include:

- Private Parties
- Performing Arts Groups
- Community Events
- Health Screenings
- Etc.

All groups should fill out a rental/use agreement (including indemnification) regardless of whether they pay or not.



ANY AGREEMENT FOR RENTAL/USE SHOULD INCLUDE:

- Name and contact information
- Specifics on the event/rental
- Time of event including arrival, setup, the event itself, departure and cleanup
- What room(s) are being used
- Payment information including due dates
- Specifics on deposits
- A check list of when things are received from the renter

Agreements should be signed by both parties and both parties should get a copy.

Keep a copy of all past rental agreements for a minimum of one year, if not longer

LONG TERM RENTALS AND LICENSES

These tend to be with businesses such as:

- Schools
- Exercise Classes
- Other Churches
- Office Space
- Rental of Rectories
- Cell Towers

We recommend using a qualified professional such as an attorney or real estate agent/broker to help you draw up a lease. A sample lease is included in the resources that accompany this presentation.

Long Term rentals can be broken up into both Residential and Commercial Leases

BEFORE SIGNING A RESIDENTIAL LEASE

- Establish Rent Based on Market Comps
- Perform a Credit Check
- Specify term of Lease
- Specify Rent and Deposit
- Prepare Space For Occupancy
- Specify Utilities (who will pay what?)
- Inspect the HVAC System
- Specify Maintenance Responsibility
- Photos In and Out
- Clarify if the church will owe Taxes
- Is a Confession of Judgment Required?
- Obtain Diocesan Review and Consent

BEFORE SIGNING A COMMERCIAL LEASE

- Establish Rent Based on Market Comps
- Specify Term of Lease
- Perform a Credit Check
- Specify Rent, Increases, and Deposit
- Clarify and Specify Space Access and Sharing
- Prepare Space For Occupancy
- Specify Utilities (who will pay what?)
- Inspect the HVAC System
- Specify Responsibility for Maintenance
- Photos In and Out
- Clarify if Taxes may be Owed and Specify who is Responsible for Paying them
- Is a Confession of Judgment Required?
- Obtain Diocesan Review and Consent

TAX LIABILITY

- If a church rents out a significant portion of its space on a regular basis, it may incur a tax liability.
- It does not matter if the tenant is non-profit or for profit
- If a tax liability is incurred it would be based on the percentage of the building that is rented. The church would then be obligated to pay that percentage of the tax bill that would normally be waived.
- For example: St. Swithin's rents 25% of its parish hall to a Zumba class. Their hall is assessed at \$5,000 in annual taxes. Because of the commercial rental the church would potentially owe \$1,250 in taxes.
- It is recommended that the lease include a provision that the tenant will pay part/all of any taxes if they are incurred in the future
- Note: if you are in Philadelphia make sure your lease states that the tenant is liable for any Business Privilege Tax that might be incurred.

GOVERNANCE REVIEW AND APPROVAL

**All leases of 12 months or longer must
be reviewed and approved by
Diocesan Governance.**

**This includes shorter-term leases that
automatically renew.**

WHY IS THIS NECESSARY?

As Christians, we are charged to be good stewards of the gifts God has given us. What we now enjoy reflects the generosity and labor of those who came before us and it is part of our sacred duty to ensure that it is cared for and managed to the best of our ability so that future generations may also come to enjoy and benefit from it. When it comes to managing and caring for our buildings and grounds, this obligation is particularly pronounced.

To that end, both in the Episcopal Church, and in our Diocese of Pennsylvania, when a church seeks to lease, grant an easement, mortgage, sell or otherwise encumber its real property, it needs to first obtain the consent of the Bishop and Standing Committee.

While we respect that every vestry engages in decision making focused on the best interests of their church, as Episcopalians, we are all part of a single hierarchical religious organization with a broad interest in ensuring that all assets within our Diocese are maintained and utilized appropriately. This process seeks to balance both church autonomy and diocesan oversight.



WHY IS THIS NECESSARY? (CONTINUED)

Just as your vestry seeks to make decisions in the church's best interests, the Diocese is also required by our Canons to fulfill oversight obligations relating to how, when, and whether a church leases, grants an easement, mortgages or sells its property. This requirement also protects your church by ensuring that any leases, sales or other arrangements are reviewed by people who have expertise in finance, real estate and the law, at no cost to you.

Therefore, before you enter into any contract or agreement, we want to be sure that your vestry knows the who, what, when, and where of Diocesan decision-making in order to avoid any delays or frustrations as you seek to advance your goals and mission.



DIOCESAN CHECKLISTS

Q: When do you need to consult a checklist?

A: *These checklists should be consulted whenever your parish is considering leasing, granting an easement, mortgaging, or selling its real property. While there are minor differences depending on the type of transaction, the basic process is the same for all.*

Q: When should you first speak to the Diocesan Property Manager/Offices of the Diocese if your vestry is considering a lease, easement, mortgage or sale of your church's real property?

A: *As soon as possible. As soon as your vestry begins discussion, a call should be made to the Diocesan Property Manager to give him or her early notice of the possible transaction. Real estate transactions are often complex. The Diocesan Property Manager will help you navigate this process. Guidance may be obtained in advance of any specific transaction.*

Each type of encumbrance has its own specific checklist. The following checklist is for leases but mirrors the process for easements, mortgages and sales.



DIOCESAN CHECKLIST FOR LEASES

Necessary Action/Documentation Provided	Date to Property Manager or Committee
<p>1. Contact the Diocesan Property Manager and Provide him/her with documents identified in this checklist</p> <p>No less than one week prior to the monthly Property Subcommittee meeting (usually held on the 4th Thursday of the month) to inform him of the proposed transaction and the parish's need for Diocesan approval.</p>	
<p>1. Get in touch with the Chair of the Diocesan Property Subcommittee</p> <p>Tell him or her that the Congregation intends to seek Diocesan approvals of a real estate lease and provide any documents identified in this check list or arrange to have them delivered to him/her by the Property manager.</p>	
<p>1. Provide him/her with a written Resolution by the Vestry</p> <p>This Resolution must authorize the property transaction and include the reasons why the transaction is in the best interests of the Congregation's mission and ministry.</p>	
<p>1. Intended use of the rental proceeds</p> <p>If not included in the vestry resolution, a Parish's written statement regarding the intended use of the proceeds. This statement must be approved by its vestry.</p>	

DIOCESAN CHECKLIST FOR LEASES, CONTINUED

<p>1. Rental Price is Fair</p> <p>Written materials to show that that the rental price to be paid by tenant is fair (such as competing rents in the area, parish's inability to obtain tenants at a higher rental rate, information from a broker working for the Congregation or from another real estate specialist etc.). These materials must be endorsed by the Vestry. See Question 6 (b) on page 4 for other information required under certain circumstances.</p>	
<p>1. Less than fair value</p> <p>If the property is being leased at less than its fair rental value, a statement approved by the vestry as to why the transaction serves the best interests of the Congregation, and its mission.</p>	
<p>1. Proposed Lease Agreement</p> <p>Provide a copy of the lease agreement and, unless the lease contains this information, the property's address and the name and address of the tenant.</p>	
<p>1. Any brokerage or listing contract used by the Parish.</p>	
<p>1. Parish Financial Information</p> <p>Most recent annual budget, parochial report and audit, and treasurer's report.</p>	

Questions to be submitted to the Property Subcommittee

(some questions will be answered on the face of any lease agreement and if so, you may so indicate)

	<u>Yes (add details)</u>	<u>No</u>
1. Deconsecration Does the property need to be deconsecrated?		
2. Title and Deed Restrictions Is the title to the leased property held in the name of the congregation? If not, identify name on the deed. Has the deed been reviewed for use restrictions?		
3. Rent If the lease automatically renews, are there provisions regarding future increases in rent? If not, why not? If so, how were the economic terms regarding increased future rent determined?		
4. Maintenance Does the lease allocate responsibility for maintenance of the property and if certain maintenance obligations belong to the congregation, are they specifically spelled out in the lease?		
5. Access Does the lease provide landlord with reasonable access to the leased property for inspection or other purposes?		

<p>6. Security Deposit</p> <p>(a) Does the lease include a requirement for a security deposit?</p>		
<p>(b) If the security deposit amount is less than two month's rent, provide the basis for the decision to use a smaller deposit amount as part of the statement described Rental Price statement.</p>		
<p>(c) Have arrangements been made to hold the deposit in the appropriate, segregated interest bearing account during the period of the leasehold?</p>		
<p>(d) Does the lease permit landlord to use the deposit upon notice to tenant if and when tenant fails to pay either rent or other financial obligations?</p>		
<p>(e) Does the lease require tenant to replenish the security deposit or face eviction in the event it is depleted in whole or in part by landlord's withdrawals?</p>		
<p>(f) In the event that the tenant does not make payments required under the lease other than rent (such as payments for insurance, any and all taxes or licensing payments), can the parish use the lease deposit to make said payments and require tenant to replenish the security deposit?</p>		
<p>7. Confession of Judgment</p> <p>Is the lease appropriate for the use of a Confession of Judgment provision?</p>		
<p>8. Review by Counsel/Broker</p> <p>(a) Was the Lease reviewed by an attorney or a broker working for you?</p>		
<p>(b) If yes, the name of the individual who reviewed the lease.</p>		
<p>(c) State whether that person recommended changes to the lease which were not accepted by the tenant and the changes proposed.</p>		

9. Inspections and Licensing

(a) Have you determined whether your township or county requires any particular inspections or licenses prior to entering into a residential or commercial lease?

(b) If licensing or inspections are required, specify the nature thereof, whether they have been obtained or occurred and attach copies of licenses or inspection documents generated by that process.

10. Added Rent-Taxes or other fees (all leases)

(a) Does the lease require the tenant to assume the burden of any real estate taxes or other taxes which may arise by reason of the leasehold?

(b) If no, explain why not.

11. Insurance (all leases)

(a) Does the lease require the tenant to insure the property during the tenancy?

(b) How much insurance is the tenant required to have and how was that amount determined?

(c) Has proof of insurance been obtained from tenant?

(d) If the lease automatically renews, is there a process in place which insures that that the tenant has annually satisfied the insurance requirements?

(e) Does the lease require the insurance to name as additional insureds the Parish, those listed on the deed, and the Diocese of Pennsylvania, and is this shown on tenant's proof of insurance?

(f) Have you spoken to your broker to see if your parish insurance is adequate in light of the tenant's presence on the property?

<p>12. Non-Residential Leases (include all information above, plus the following)</p>	
<p>(a) Has an insurance broker been consulted to determine the types and amounts of insurance that the tenant should be required to have in place in light of the non-residential use of the property?</p>	
<p>(b) If yes, what did the broker advise?</p>	
<p>(c) Were the broker's recommendations followed and if not, why not?</p>	
<p>(d) Have you determined what licenses, if any, are required by tenant to use the leasehold for his business or other operation?</p>	
<p>13. Non-Exclusive Leases or similar agreements (e.g., use of a parking lot three days a week, use of school buildings on particular days)</p> <p>(a) Has an insurance broker been consulted to determine whether the tenant requires its own insurance, and the amounts thereof, for its non-exclusive use of the property, or whether the parish's insurance needs change by reason of tenant's limited use of the property?</p>	
<p>(b) Does the lease require the tenant to assume the obligation to pay any taxes imposed on the parish by reason of the non-exclusive lease of its property (e.g., the parish may be required to pay a pro-rata real estate tax)</p>	



THE PROCESS OF REVIEW AND APPROVAL

Our Diocesan Canons require any property transaction to be reviewed first by the Diocesan Property Subcommittee, which makes a recommendation to the Finance Committee, which, in turn, makes a recommendation to the Bishop and Standing Committee. These groups meet monthly, therefore, we recommend that you begin the process as early as possible so that your request can be evaluated promptly and not delayed for another month because of incomplete submissions.

Throughout this process, and even before your church is ready to seek final approvals, it is wise to remain in touch with the Diocesan Property Manager who may be able to identify issues in your proposed transaction likely to cause a possible delay in decision-making. As we hope you know, the Staff of the Offices of the Diocese and Diocesan Governance wants to help your church but we need your help so that we can fulfill our obligations and promptly let you know if we see something that might require an adjustment to your plans.

In addition, at any step in the process, Governance may seek information in addition to what you are asked to provide in the checklist. It might also discuss with you whether its approval will be issued with a condition – for example, a condition that the church put some or all of the sales proceeds be placed in trust, with access to the principal permitted only with consent of the Bishop and Standing Committee, or a condition that prior Diocesan loans be repaid.



SPECIFIC CONSIDERATIONS FOR EASEMENTS

- Be clear in what way(s) the proposed easement might impact life and ministry at the church
- Be clear in what way(s) the proposed easement might impact your neighbors especially if this might generate any opposition

SPECIFIC CONSIDERATIONS FOR MORTGAGES

- How will the funds further mission and ministry?
- What is the church's capacity to repay the debt service? Is it dependent upon any variables such as a single or small group of generous donors?

SPECIFIC CONSIDERATIONS FOR SALES

- Why are you looking to sell? How will the sale of the property will further the church's mission? An operating deficit does not necessarily constitute sufficient reason as the deficit may be addressed in other ways.
- Before selling, have you considered every possible use of the property in question? Are there other ways in which it could generate income or be used productively for ministry?
- If the property under consideration might be developed, might the community oppose the sale? How might you/the prospective buyer address those concerns?
- Be aware that the proceeds of such sales are sometimes subject to restrictions as previously noted.

THANK YOU!

Any questions please contact us

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All checklists as well as a sample lease and license is available through Serviam or can be provided on request.

We are happy to come to your churches, tour your property, meet with your vestry, or do anything else to help support you

