

## **REQUIREMENTS IN ORDER TO LEASE, MORTGAGE, OR SELL REAL PROPERTY IN THE DIOCESE OF LONG ISLAND**

**General Requirements.** The items set forth below are required by applicable provisions of the National and Diocesan Canons, the policies and procedures of the Standing Committee of the Diocese, and by New York law:

*Property Held in Trust.* All real and personal property held by or for the benefit of any parish, mission, or congregation is held in trust for the Episcopal Church and the Diocese in which such parish, mission, or congregation is located. (See Title I, Canon 7, Section 4 of the National Canons, Title II, Canon 7, Section 4 of the National Canons, Title V, Canon 3, Section IV of the Diocesan Canons, and Article 3, Section 42-a of the Religious Corporations Law of the State of New York). The existence of this trust is so strong that Title I, Canon 7, Section 5 of the National Canons provides that "The several Diocese may, at their election, further confirm the trust declared under the foregoing Section 4 by appropriate action, but no such action shall be necessary for the existence and validity of the trust."

*Consent of Standing Committee and Bishop Required.* Any lease, mortgage, or sale of real property requires the written consent of the Standing Committee of the Diocese and the written consent of the Bishop of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons).

*Requirements of New York Law.* In addition, application to and permission of the Supreme Court of the State of New York is required for any lease of real property extending 5 or more years, any mortgage of real property, or any sale of real property. (See Article 2, Section 12, Paragraph 1 of the Religious Corporations Law of the State of New York.) A religious corporation may execute a purchase money mortgage or a purchase money security agreement creating a security interest in personal property without application to and permission of the Supreme Court of the State of New York. (See Article 2, Section 12, Paragraph 1 of the Religious Corporations Law of the State of New York.)

*Rector Must Be Present at Vestry Meeting.* The Rector of the Parish must be present at any meeting of the Vestry authorizing the lease, mortgage, or sale of its real property. (See Article 2, Section 12, paragraph 2 of the Religious Corporations Law, and Article 3, Section 42, Section 3 of the Religious Corporations Law.)

*Vestry Must Approve by at Least a 2/3 Vote.* The lease, mortgage, or sale of real property must be approved by at least a 2/3 vote of the entire Vestry. (See Section 509 of the Not-For-Profit Corporation Law.)

*Procedures.* Standard forms of resolutions, consents, petitions, and applications will be supplied by the Secretary of the Standing Committee upon request. The Vestry of the petitioning Parish is cautioned to establish a date for closing the transaction which shall allow ample time for the preparation and consideration of all of the items set forth below. It is suggested that the Bishop be informed of the Parish's desire to lease, mortgage, or sell its property well in advance of taking any formal steps. Either the

Bishop or his designee (i.e. an Archdeacon) will review with the Parish the appropriateness of the request and the details of the transaction. In addition, the petition and its accompanying schedules should be reviewed by counsel for the petitioner before the filing of the petition with the Standing Committee or the application to the Court. The Standing Committee will seek the advice of the Chancellor of the Diocese or his designee (i.e. a Vice Chancellor) as to whether the documents are in acceptable legal form prior to their consideration of the petition. Petitions and applications which do not comply with the foregoing requirements will not be entertained by the Bishop or the Standing Committee.

*Petitions Before Standing Committee.* Upon receipt of the items required by the Standing Committee, the Secretary of the Standing Committee will advise the petitioning Parish of the manner in which it will entertain the petition. Normally petitions will only be considered by the Standing Committee at one of its regularly scheduled meetings, at which representatives of the petitioner will be required to appear before the Standing Committee in support of the petition. Unless the petitioner is advised to the contrary, the Rector and the Treasurer (or other officer who is familiar with the finances and statistics in the petition and its accompanying annexes) shall appear before the Standing Committee and shall be prepared to answer questions relating to the petition.

**Specific Requirements.** The specific requirements for the petition are set forth below:

Lease of Property for less than 5 Years.

*Vestry Resolution.* A resolution by the Rector, Wardens, and Vestry of the Parish (i) stating that the Rector of the Church was present at the meeting of the Vestry authorizing the lease of its real property, (ii) authorizing the lease of the real property by at least a 2/3 vote of the entire Vestry, (iii) authorizing the filing of the petition to the Standing Committee and requesting its consent to the transaction, and (iv) requesting the consent of the Bishop of the Diocese to the transaction.

*Consent of the Standing Committee.* The written consent of the Standing Committee of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons). The petition to the Standing Committee of the Diocese must contain or be accompanied by supporting schedules containing the following:

1. A description of the property to be leased.
2. Information as to whether the property has been consecrated.
3. A description of the lessee and the proposed use of the property by the lessee.
4. The reason or reasons for leasing the property.
5. A statement regarding the use of the proceeds of the lease.
6. A copy of the proposed lease agreement.

*Consent of the Bishop.* The written consent of the Bishop of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons).

Lease of Property for more than 5 Years.

*Vestry Resolution.* A resolution by the Rector, Wardens, and Vestry of the Parish (i) stating that the Rector of the Church was present at the meeting of the Vestry authorizing the lease of its real property, (ii) authorizing the lease of the real property by at least a 2/3 vote of the entire Vestry, (iii) authorizing the filing of the petition to the Standing Committee and requesting its consent to the transaction, (iv) requesting the consent of the Bishop of the Diocese to the transaction, and (v) authorizing the filing of the application to the Supreme Court of the State of New York and requesting its consent to the transaction. (See Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York.)

*Consent of the Standing Committee.* The written consent of the Standing Committee of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons, and Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York). The petition to the Standing Committee of the Diocese must contain or be accompanied by supporting schedules containing the following:

1. A map of the property to be leased.
2. A description of the property by metes and bounds.
3. Information as to whether the property is improved, and if so, the nature of any buildings thereon and their present use.
4. Information as to whether the property has been consecrated.
5. A written appraisal of a qualified real estate appraiser.
6. A description of the lessee and the proposed use of the property by the lessee.
7. The reason or reasons for leasing the property.
8. A statement regarding the use of the proceeds of the lease.
9. A copy of the proposed lease agreement.

*Consent of the Bishop.* The written consent of the Bishop of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons, and Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York).

*Requirements of New York Law.* Application to and permission of the Supreme Court of the State of New York. Among other things, the application must state that the Rector of the Church was present at the meeting of the Vestry authorizing the lease of its real property, and that the consent of the Bishop and the Standing Committee of the Diocese has been obtained for the lease of real property. Notice to the Attorney General of the State of New York is not required. (See Section 511 of the Not-For-Profit Corporation Law of the State of New York, as that section is modified by Article 1, Section 2-b, paragraph (d-1) of the Religious Corporations Law of the State of New York).

#### Mortgage of Property.

*Vestry Resolution.* A resolution by the Rector, Wardens, and Vestry of the Parish (i) stating that the Rector of the Church was present at the meeting of the Vestry authorizing the mortgaging of its real property, (ii) authorizing the mortgaging of the real property by at least a 2/3 vote of the entire Vestry, (iii) authorizing the filing of the petition to the Standing Committee and requesting its consent to the transaction, (iv) requesting

the consent of the Bishop of the Diocese to the transaction, and (v) authorizing the filing of the application to the Supreme Court of the State of New York and requesting its consent to the transaction. (See Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York.)

*Consent of the Standing Committee.* The written consent of the Standing Committee of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons, and Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York.) The petition to the Standing Committee of the Diocese must contain or be accompanied by supporting schedules containing the following:

1. A map of the property to be mortgaged.
2. A description of the property by metes and bounds.
3. Information as to whether the property is improved, and if so, the nature of any buildings thereon and their present use.
4. Information as to whether the property has been consecrated.
5. A written appraisal of a qualified real estate appraiser.
6. A statement of the size and terms of the mortgage, including the interest rate, duration, amortization period, and the name of the lending institution.
7. The reason or reasons why it is necessary to borrow the money secured by the mortgage.
8. A statement that the Parish will be able to repay the amount borrowed.
9. A statement of the present Parish membership showing the number of baptized persons and communicants as contrasted with comparable figures of five years ago.
10. A brief income and operating statement of the Parish for the last two fiscal years showing sources of income, including pledges, plate offerings, rental income from investments, and the like; and expenses, including salaries and other operating expenses.
11. A statement that the Parish has met its Diocesan Quota for the previous three years; if not, the reasons therefore.
12. A statement of any other outstanding indebtedness.
13. A copy of the proposed mortgage.

*Consent of the Bishop.* The written consent of the Bishop of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons, and Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York.)

*Requirements of New York Law.* Application to and permission of the Supreme Court of the State of New York. Among other things, the application must state that the Rector of the Church was present at the meeting of the Vestry authorizing the mortgage of its real property, and that the consent of the Bishop and the Standing Committee of the Diocese has been obtained for the mortgage of real property. Notice to the Attorney General of the State of New York is not required. (See Section 511 of the Not-For-Profit Corporation Law of the State of New York, as that section is modified by Article 1, Section 2-b, paragraph (d-1) of the Religious Corporations Law of the State of New York).

## Sale of Property.

*Vestry Resolution.* A resolution by the Rector, Wardens, and Vestry of the Parish (i) stating that the Rector of the Church was present at the meeting of the Vestry authorizing the sale of its real property, (ii) authorizing the sale of the real property by at least a 2/3 vote of the entire Vestry, (iii) authorizing the filing of the petition to the Standing Committee and requesting its consent to the transaction, (iv) requesting the consent of the Bishop of the Diocese to the transaction, and (v) authorizing the filing of the application to the Supreme Court of the State of New York and requesting its consent to the transaction. (See Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York.)

*Consent of the Standing Committee.* The written consent of the Standing Committee of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons, and Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York.) The petition to the Standing Committee of the Diocese must contain or be accompanied by supporting schedules containing the following:

1. A map of the property to be sold.
2. A description of the property by metes and bounds.
3. Information as to whether the property is improved, and if so, the nature of any buildings thereon and their present use.
4. Information as to whether the property has been consecrated.
5. A written appraisal of a qualified real estate appraiser.
6. If the purchase price is to be paid other than in cash, the terms of payment, together with the rate of interest, whether the balance of the purchase price is to be secured by a mortgage of the premises, and if so, the terms of the mortgage.
7. The reason or reasons for selling the property.
8. A statement regarding the use of the proceeds of sale.
9. A statement of the present Parish membership showing the number of baptized persons and communicants as contrasted with comparable figures of five years ago.
10. A brief income and operating statement of the Parish for the last two fiscal years showing sources of income, including pledges, plate offerings, rental income from investments, and the like; and expenses, including salaries and other operating expenses.
11. A statement that the Parish has met its Diocesan Quota for the previous three years; if not, the reasons therefore.
12. A statement of any other outstanding indebtedness.
13. A copy of the proposed contract of sale.

*Consent of the Bishop.* The written consent of the Bishop of the Diocese. (See Title I, Canon 7, Section 3 and Title II, Canon 7, Section 2 of the National Canons, and Title V, Canon 3, Section III of the Diocesan Canons, and Article 2, Section 12, Paragraph 2 of the Religious Corporations Law of the State of New York.)

*Requirements of New York Law.* Application to and permission of the Supreme Court of the State of New York. Among other things, the application must state that the Rector of the Church was present at the meeting of the Vestry authorizing the sale of its real property, and that the consent of the Bishop and the Standing Committee of the Diocese has been obtained for the sale of real property. Notice to the Attorney General of the State of New York is not required. (See Section 511 of the Not-For-Profit Corporation Law of the State of New York, as that section is modified by Article 1, Section 2-b, paragraph (d-1) of the Religious Corporations Law of the State of New York).