

SALE OF CHURCH REAL PROPERTY In the Episcopal Diocese of Long Island

Policies, Procedures and Practices

There are specific procedures that must be followed in order for a parish to sell church real property. These procedures are based on National and Diocesan Canons, The Religious Corporations Law of the State of New York, and diocesan administrative requirements.

The goal of this document is to clarify these canonical and legal procedures as well as the particular requirements of this Diocese and to make what can be a sometimes-complex process as user-friendly as possible. For the sale of church property for redevelopment please see Sale of Church Real Property for Real Estate Development procedure. For property owned by the Trustees of the Estate Belonging to the Diocese of Long Island please consult the Diocesan Real Estate Manager.

INITIAL STEPS AND IMPORTANT CONSIDERATIONS

Property is 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, Sec 4 of the National Canons, Title V, Canon 3, Sec IV of the Diocesan Canons, and Article 3, Sec 42-a of the Religious Corps Law of the State of NY). A local congregation cannot of its own accord encumber property without the consent of the Diocesan Bishop and Standing Committee.

Consent of the Bishop and Standing Committee

Parishes, missions or congregations seeking to encumber property (sell, mortgage or lease) must seek the written consent of The Bishop and the Standing Committee. (cf. 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). It is the ultimate responsibility of the Bishop and the Standing Committee to ensure that any deal being proposed is in the best interest of the church and will contribute to the short and long-term good of the church.

Requirements of New York State Law

In addition to the consents of the Bishop and the Standing Committee, 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.).

Vetting and Reviewing Proposals

A parish shall communicate to the Bishop, preferably in writing, their intention to sell any of their property. This initial step opens the lines of communication between the Bishop's Office and the local congregation and makes it possible for the Bishop and the staff of the diocese to be of

assistance to the process. At this juncture, the Bishop will generally ask for a brief overview of and rationale for the sale of property.

The Bishop will early on involve the Real Estate Manager, the Chancellor and the Canon to the Ordinary and other designees as may be appropriate. In most cases it is best to discuss the initial proposal with the Real Estate Manager first who is available to assist by providing guidance on the sale process to the vestry.

Vestry Resolution

The rector/priest-in-charge (if there be one) of the parish must be present at any meeting of the Vestry authorizing the 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.) The 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.) A formal vestry resolution and secretary's certificate should be crafted, conveying the terms of the deal. The resolution generally always contains a clause that grants permission for the rector or presiding officer to sign documents on behalf of the vestry. An example of a formal vestry resolution is appended further on in this document.

Legal Agreements

The congregation seeking to sell property will require a legal agreement for said sale. The document needs to be created by a qualified attorney. In order to present the contract for consents, it must be fully executed, signed by all parties. A clause similar to the one that follows must ALWAYS appear at the conclusion of the document: **“CONSENTS: This Sale shall not be binding upon either the Seller or the Buyer until the consents in writing of the Bishop of the Diocese of Long Island and the Standing Committee of the Diocese of Long Island, and the consent of the NY Supreme Court have been obtained”** (this clause is relative to a sale agreement).

The Standing Committee

When the Bishop and the Chancellor have determined that a sale agreement is solid, the Bishop will bring the matter to the Standing Committee for their consent (The Standing Committee generally meets on the second Tuesday of each month in the Mercer School of Theology). The rector or coordinating vestry officer shall be in contact with the Executive Administrative Assistant to the Bishop who will coordinate with the Secretary of the Standing Committee to ensure that the congregation's matter is placed on the agenda of the next Standing Committee meeting. Unless otherwise requested, parish representatives do not attend Standing Committee meetings.

PROCEDURE FOR THE SALE OF CHURCH PROPERTY

Initial review and sale preparation process

The following steps should be undertaken to fully understand the sale process and the steps necessary to prepare the property for sale.

1. Consult the Diocesan Real Estate Manager who will meet with the parish representatives, inspect the property and advise on the sale process and risks

2. Determine the scope of the sale, what is to be sold and what is to be removed prior to sale e.g. are specific items such as memorials or stained glass windows to be removed or included in the sale. Note: memorials should be removed if possible and reinstalled / used or recorded as to their demise
3. Locate the deeds to the property and examine them to ensure the sale will not violate any condition of gift or grant attached to the property
4. Obtain an appraisal from a qualified appraiser to establish the potential value of the property and obtain a market opinion from a licensed real estate broker
5. Obtain proposals from three real estate brokers, or use a pre-qualified broker that has worked for the Diocese, and properly engage them for the sale management
6. Agree the asking price and marketing strategy
7. Obtain bids and select the preferred bidder. All cash offers are superior to those requiring mortgage finance
8. Appoint a suitably qualified real estate attorney to prepare the contract for sale and provide the contract to the buyer.

NOTE: The contract draft should be approved by the Chancellor prior to issue to the buyer's attorney. No warranties should be given in relation to environmental or other property conditions. A suitable period of time (45 – 60 days) should be given for the buyer to conduct their own due diligence.

Diocesan approval process

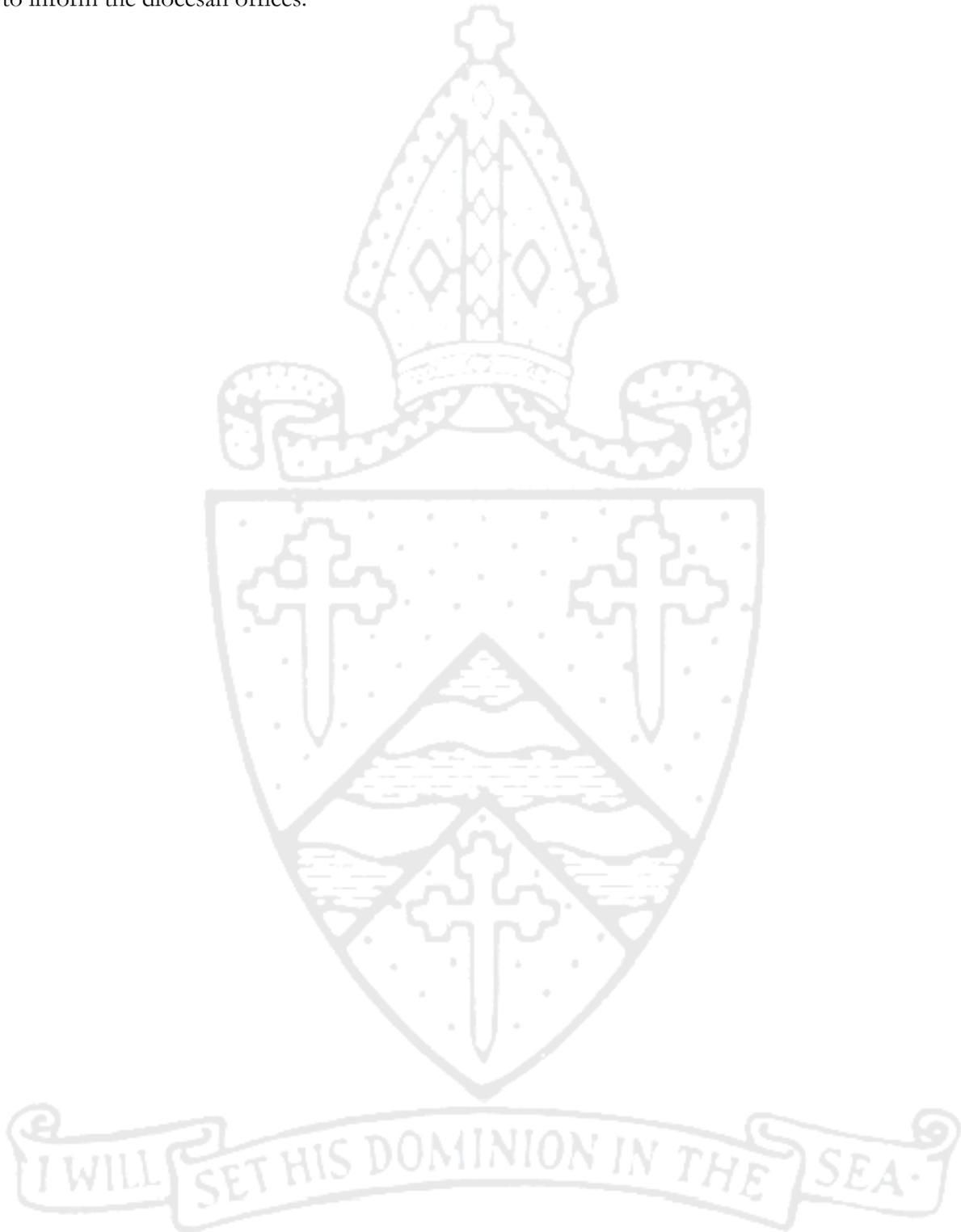
The following items should be submitted to the Chancellor in duplicate no less than three weeks in advance of the Standing Committee meeting in which the agreement is scheduled to be reviewed. If the agreement is lengthy and complex a one to two month lead-time is expected.

1. Appraisal of property showing fair market value;
2. Copy of contract of sale with provision conditioning contract upon approval of Bishop and Standing Committee and receipt of Court Order authorizing sale;
3. Resolution of Vestry approving contract of sale;
4. Letter from Rector (Priest in charge) explaining why the Church wants to sell the Property and what the Church intends to do with the proceeds. The letter should also contain evidence that the Church has paid its Diocesan Tithe over the last three years.

The Chancellor will review the materials. If there are no concerns or problems detected, the Chancellor will craft a memorandum for the Bishop and the Standing Committee outlining the salient points of the agreement and data that supports what the congregation proposes. If the Chancellor identifies any problems with the agreement the parish representatives and/or the attorney representing the congregation will be apprised of the concerns. The congregation can generally expect the Chancellor to work with the local congregation as they seek to remediate any deficiencies. On some occasions, the Chancellor will rule that a given agreement is either not sustainable or in some manner undermines the best interest of the Church and will counsel the Bishop and the Standing Committee to reject the plan. The likelihood of this happening is rare if the congregation has worked closely with the Bishop's Office from the very beginning.

If consent of the Standing Committee is granted, the petition will be returned to the Chancellor who prepares the consent document for the bishop, who then signs. All executed consent documents

will be forwarded to the church. It is then the responsibility of the church to have their legal counsel apply for Supreme Court approval. Once approvals are received, the congregation is asked to inform the diocesan offices.



APPENDIX

A SAMPLE VESTRY RESOLUTION

nb. This resolution is only an example. Each vestry resolution must contain the details of the legal sale/mortgage/ or lease agreement. The particulars of a resolution may be drawn-up by the attorney representing the parish.

RESOLVED, that St. Swithen's Episcopal Church (St. Swithens), Garden City New York, enter into an agreement with _____ for the sale of the premises located at _____ New York for the agreed upon sum of _____ in the form submitted to the Vestry of St. Swithens on _____, and, be it further

RESOLVED, that from the net proceeds of the sale of _____ shall be invested with the Trustees of the Estate Belonging to the Diocese of Long Island and held in trust for St. Swithens as permanent endowment, the interest of which may be used at the parish's discretion and, be it further

RESOLVED, that should the parish wish access the principal of said one million dollars they must have the consent of the bishop, and, be it further

RESOLVED, that The Rev. _____, Rector, be and he hereby is authorized to execute said agreement of sale on behalf of St. Swithens _____ New York, and all further documents as may be required to effectuate the sale, and, be it further

RESOLVED, that the Vestry consents and authorizes the submission by St. Swithens, of a petition to the Standing Committee of the Diocese of Long Island for it's consent to the sale transaction and be it further

RESOLVED, that the Vestry of St. Swithens consents to the submission to the Bishop of the Diocese of Long Island of a request for the Bishop's consent to the sale transaction, and be it further

RESOLVED, that the Vestry of St. Swithens, hereby authorizes of the filing of an application for approval of the sale transaction of the Supreme Court of the State of New York, _____ County.



SAMPLE SECRETARY'S CERTIFICATE

I, _____, Clerk of the Vestry of St. Swithen's Episcopal Church (St. Swithen's), Garden City, New York, do hereby certify that the Resolution attached hereto is a true copy of a Resolution duly adopted by the Vestry of St. Swithens, on the ____ day of _____, and that such resolution has not been amended, modified, or rescinded and remains in full force and effect and such resolution is the only resolution adopted by the Vestry of St. Swithen's relating to the matter set forth therein.

IN WITNESS WHEREOF, I have hereunto signed my name and signature.

Dated: _____

(name of clerk)
Title: Clerk of the Vestry

I, _____, Rector/Priest-in-Charge of St. Swithen's Episcopal Church (St. Swithen's), Garden City New York hereby certify that _____ is the duly appointed, qualified, and acting Clerk of the Vestry of St. Swithens and that the signature appearing above is her signature.

IN WITNESS WHEREOF, I have hereunto signed my name.

Dated: _____

(rector/priest-in-charge's name)
Title: Priest-in-Charge

