

## **LEASE 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 lease church real property. Lease in this procedure refer to short-term leases under 10 years. Longterm ground leases for development are covered under the procedure for Sale of Church Real Property for Development. 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.

### **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 lease 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 lease of property. Depending upon the scope of the deal, the Bishop or a designee may decide that it is best to meet with the local congregation in person.

Complicated real estate proposals are fraught with legal, financial and business-related complications and risks and are best sorted out in initial meetings, conversations, and discourse, ensuring a solid vetting process. In this instance, The Bishop will early on involve the Diocesan Real Estate Manager, the Chancellor and the Canon to the Ordinary and other designees as may be appropriate.

### **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 lease 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 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.) 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 lease or sell property will require a legal agreement for said sale or lease. The document needs to be created by a qualified attorney. In order to present the contract/lease 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 Lease shall not be binding upon either the Landlord or the Tenant until the consents in writing of the Bishop of the Diocese of Long Island and the Standing Committee of the Diocese of Long Island have been obtained”** (this clause is relative to a lease agreement).

### **The Standing Committee**

When the Bishop and the Chancellor have determined that a sale, lease or mortgage 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 LEASE OF REAL PROPERTY**

### **Feasibility, review and bid process**

Congregations often share their facilities to outside groups such as AA and scout troops. These arrangements are not considered encumbrances but there should still be a rental agreement between

the parties. However, in some instances, congregations enter into formal lease arrangements with outside groups such as Preschools and other congregations who rent space. These lease situations are regarded as an encumbrance of church property and as such require the consent of the Bishop and the Standing Committee.

The following items should be examined and resolved prior to entering in to a lease with a third party.

1. Determine what space is being offered for the exclusive use of the tenant, and what space is only being offered as shared space
2. Determine what are the access requirements for the tenant and the parish? Is there a requirement for a dedicated entry, ADA compliant access or are there specific security issues such as for a daycare center?
3. Determine what renovation work is required to make the space available for the tenant? It is best for the parish to complete renovation work that is to remain after the tenant vacates. Such work might be bathroom renovations, kitchen renovations, ADA access ramps etc. By doing this work it allows the parish to maintain control of the space and the rent. Specific tenant fitout work should remain the responsibility of the tenant. Funding for renovation works could come from the parishes resources, loans or grants
4. Determine what uses are permissible within the city, village or town codes
5. Procure from two real estate brokers an assessment of fair market rental for the space and for specific uses if known e.g. daycare center
6. If necessary engage a real estate broker to market the space and find suitable tenants
7. Engage a real estate or suitably qualified attorney to prepare the lease / rental agreement (Note: Utilities and Property Tax must be included as a cost to tenants in all commercial leases. Residential rents tend to include the cost of these expenses but please confirm with the broker as these are two large expenses and will reduce parish income.)
8. Submit the final agreed lease to the Chancellor for review

### **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 the property showing fair market rental value.
2. Copy of lease conditioned upon the approval of the Bishop, the Standing Committee and receipt of a Court Order approving lease if it is for a term of five years or more.
3. Resolution of Vestry approving lease.
4. Letter from Rector (Priest in charge) explaining why the Church wants to lease the property, what it intends to do with the rent and what provision has been made for the payment of real estate taxes should they be assessed as a result of the lease.

As stated earlier, consent of the Bishop and Standing Committee 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. It is generally NOT in the best interest of the Church to enter into leases for more than 2-3 years at a time, thus a lease of 5 years or more would receive heightened scrutiny.

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 keep the diocesan offices in the loop.



**APPENDIX**

**A SAMPLE VESTRY RESOLUTION**

*nb. This resolution is only an example. Each vestry resolution must contain the details of the legal 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 lease 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 lease of \_\_\_\_\_ shall be deployed for the ministry of the gospel [explain how] or 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 The Rev. \_\_\_\_\_, Rector, be and he hereby is authorized to execute said agreement of lease on behalf of St. Swithens \_\_\_\_\_ New York, and all further documents as may be required to effectuate the lease, 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 lease 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 lease transaction, and be it further

**RESOLVED**, that the Vestry of St. Swithens, hereby authorizes of the filing of an application for approval of the lease 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

