

## **MORTGAGE 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 mortgage 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.

NOTE: this procedure relates to mortgages required from institutional or private lenders and not to loans from the Episcopal Church Building Fund which do not require mortgages.

### **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 and 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 mortgage 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 mortgage of property being considered by a given parish.

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 mortgage 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 mortgage 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 mortgage 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 mortgage property will require a legal agreement for said mortgage. The document needs to be created by a qualified attorney. In order to present the mortgage agreement 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 Mortgage shall not be binding upon either Party 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”**.

### **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 MORTGAGE OF REAL PROPERTY**

### **Initial review of need for mortgage**

The following steps should be undertaken to fully understand the mortgage process and the steps necessary to procure a mortgage.

1. Consult the Diocesan Real Estate Manager to discuss the needs of the parish to raise finance
2. Prepare an assessment of the need for finance that would be provided by the mortgage e.g. if the mortgage proceeds are for the undertaking of maintenance provide a condition report stating the extent of capital required to effect the maintenance
3. Assess options for raising finance and provide evidence of this consideration. The Episcopal Church Building Fund provides loans up to \$750,000 (refer Diocesan website). No mortgage is required as the Trustees underwrite the mortgage. A separate process is required to apply for this type of loan through the Trustees
4. Identify the property to which the mortgage is to be registered. It is best that mortgage security is only offered for property other than the church and parish house property itself
5. Obtain from a mortgage lender a proposal that sets out the loan to be provided, the secured property and the conditions of the loan
6. Appoint a suitably qualified attorney to represent the parish and then consult with the Chancellor

### **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 offered as security showing fair market value.
2. Mortgage commitment from an institutional lender.
3. Resolution from Vestry approving mortgage
4. Letter from Rector (Priest in charge) explaining why the Church wants to mortgage real property; what it will do with the net proceeds of the mortgage and how it anticipates being able to repay the mortgage loan. The letter should also contain evidence that the Church has paid its Diocesan Tithe over the past three years.

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 mortgage 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 a mortgage agreement with \_\_\_\_\_ with the security 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 mortgage of \_\_\_\_\_ shall be deployed as follows \_\_\_\_\_ and, be it further

**RESOLVED**, that The Rev. \_\_\_\_\_, Rector, be and he hereby is authorized to execute said mortgage agreement on behalf of St. Swithens \_\_\_\_\_ New York, and all further documents as may be required to effectuate the mortgage, 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 its consent to the mortgage 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 mortgage transaction, and be it further

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

