



THE EPISCOPAL DIOCESE OF MARYLAND

STANDING COMMITTEE OF THE EPISCOPAL DIOCESE OF MARYLAND

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GUIDELINES FOR REAL PROPERTY TRANSACTIONS REQUIRING STANDING COMMITTEE APPROVAL

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The Standing Committee of the Episcopal Diocese of Maryland provides the following guidelines to assist parishes and other bodies in the Diocese who desire to sell or encumber real property that they own.

There are certain canonical requirements that require the prior consent of the Standing Committee and the Bishop before such transactions may occur. The Standing Committee recommends that any parish or Diocese institution that is considering a real property transaction review these guidelines as they discern whether or not to sell or encumber property.

I. INTRODUCTION

Vestries of parishes and other bodies in the Diocese may from time to time wish to undertake transactions that affect the real property of the churches or institutions they serve. These transactions can take various forms.

The sale of real property is readily understood. Real property means land and the buildings and improvements that are on it. Examples of real property include such things as land, rectories, buildings and parking lots. An encumbrance of property can take various forms, such as renting real property to others, taking a loan or mortgage on property, liens, easements, rights of way, and covenants. Encumbrances affect the title to the property while it is still owned. An alienation of property occurs when an ownership right to property or a piece of property is conveyed to another person through sale or other means.

II. CANONICAL REQUIREMENTS

When a vestry or other body desires to undertake a transaction affecting real property, the Canons work to assure that the interests of the Diocese and the Church are considered.

The 2015 Constitution and Canons for the Protestant Episcopal Church in the USA provide for certain approvals before property may be encumbered, alienated, or otherwise disposed of.

Title 1.7.3 and 1.7.4 of the Constitution:

Sec. 3. No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part, except under such regulations as may be prescribed by Canon of the Diocese.

Sec. 4. All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which such Parish, Mission or Congregation is located. The existence of this trust, however, shall in no way limit the power and authority of the Parish, Mission or Congregation otherwise existing over such property so long as the particular Parish, Mission or Congregation remains a part of, and subject to, this Church and its Constitution and Canons.

Canon 14.1:

Sec. 2. Except as provided by the law of the State or of the Diocese, the Vestry shall be agents and legal representatives of the Parish in all matters concerning its corporate property and the relations of the Parish to its Clergy.

Canon 6.2, 6.3 and 6.4

Sec. 2. It shall not be lawful for any Vestry, Trustees, or other body authorized by laws of any State or Territory to hold property for any Diocese, Parish or Congregation, to encumber or alienate any dedicated and consecrated Church or Chapel, or any Church or Chapel which has been used solely for Divine Service, belonging to the Parish or Congregation which they represent, without the previous consent of the Bishop, acting with the advice and consent of the Standing Committee of the Diocese.

Sec. 3. No dedicated and consecrated Church or Chapel shall be removed, taken down, or otherwise disposed of for any worldly or common use, without the previous consent of the Standing Committee of the Diocese.

Sec. 4. Any dedicated and consecrated Church or Chapel shall be subject to the trust declared with respect to real and personal property held by any Parish, Mission, or Congregation as set forth in Canon 1.7.4.

In the Episcopal Diocese of Maryland, several canonical requirements also apply.

Canon 1-410: Of the Standing Committee

Sec. 6. The Standing Committee shall have the responsibilities, rights and duties as provided in the Constitution and Canons of The Episcopal Church with respect to ecclesiastical and related matters and also as to matters as provided for in these

Canons. Specifically, with respect to the sale or other disposition of real property of any Parish, Separate Congregation or Parochial Mission, and with respect to the sale of any Diocesan real property on which is located any consecrated and dedicated Church or Chapel, the consent of the Bishop and the Standing Committee shall be required. The Standing Committee, after consulting with the Bishop, shall determine the appropriate disbursement of any proceeds belonging to the Diocese and resulting from any sale or other dispositions of any church, chapel or other property used or formerly used as a place of worship.

Canon 2-120: Of Aided Parishes and Separate Congregations Under Missionary Administration

Sec. 5. Expenditures of any Capital Fund or the alienation of any property belonging to an Aided Parish or Separate Congregation shall only be made with the approval and consent of the Bishop and the Standing Committee.

Canon 2-180: Of the Alienation or Encumbrance of Church Property

Sec. 1. In conformity with the Canons of the General Convention, application must be made to the Bishop and Standing Committee for leave to alienate or encumber any church property. The applicant shall furnish with the application sufficient data to enable the Bishop and Standing Committee to determine that:

- (a) The proposed alienation or encumbrance will not render the applicant insolvent or unable to pay its debts as they mature; and*
- (b) The proposed transaction is not likely to result in any foreclosure or other loss of church assets or to impair the ability of the applicant to continue to meet the other obligations of its Christian mission.*

Sec. 2. Whenever an application to encumber or alienate unconsecrated church property is denied by the Bishop and Standing Committee, the applicant shall have the right to appeal to the Convention, whose decision shall be final.

Committee Note: The phrase "church property" in the foregoing Canon means real estate and does not include personal property.

III. THE PROCESS FOR SEEKING STANDING COMMITTEE APPROVAL

Obtaining the necessary consents to undertake certain property transactions is a three-step process.

First, the vestry or governing body must take formal action approving the property transaction and document that in the form of a resolution. The Standing Committee will need to see this documentation when you request its consent.

Second, on almost all transactions the vestry or governing body must obtain the written consent of the Bishop. The Standing Committee requires that this permission be obtained first before seeking its consent to the transaction. A copy of the Bishop's written consent will need to be provided to the Standing Committee.

Third, the Standing Committee must consent to the transaction by a majority vote at a Standing Committee meeting. Before the Committee can make that decision, there are certain informational materials and documentation that must be provided before placing the proposal on a meeting agenda. This provides Committee members the opportunity to thoroughly understand the proposed sale and develop any questions for the parish, or to seek further clarification before rendering a decision. The Committee recommends that the same documentation be provided to the Bishop.

The Standing Committee generally meets monthly, most often on the last Thursday of each month at the Diocese Center in Baltimore. Meeting agendas are typically drawn up about one week before the meeting. Those who want to propose a property transaction to the Committee should plan accordingly and assemble their information package well in advance. A representative of the parish or governing body should also be prepared to attend the Committee meeting to present the proposal. The Standing Committee may also need to consult with the Chancellor or other Diocese staff as appropriate.

The Standing Committee reviews proposed property transactions with care. Vestries and governing bodies seeking Standing Committee approval for a property transaction should bear in mind that sufficient time is needed for a careful review. Although the Committee makes every effort to work with governing bodies, the Committee cannot ensure that last-minute requests will be accommodated. Failure to submit required documents may result in delays in obtaining the consent of the Standing Committee. Governing Bodies desiring to consummate transactions under a particular schedule or deadline should bear in mind the requirement to submit documents to the President of the Committee well in advance and ensure that all relevant information is provided.

The Standing Committee welcomes any additional materials or background information that a governing body may wish to submit in connection with a request for consent. In particular, governing bodies seeking to borrow funds are encouraged to submit complete descriptions of their proposed sources and timing of repayment. The Standing Committee will also examine the financial health of the parish or body to determine the ability of the body to repay a loan or mortgage.

While there is no formal expiration of the Standing Committee's consent, the Committee may impose such a requirement. The Committee may also impose such conditions on the sale or transaction in the best interest of the Church and Diocese. The Committee may also make recommendations to the body in such areas as how the proceeds from a property transaction are used or alternatives to the proposed transaction.

Final Documents. Within thirty (30) days after a transaction has been completed, a full set of copies of the final executed legal documents shall be forwarded to the President of the Standing Committee. A copy of the final deed, lease or other transactional documents shall also be provided to the Bishop and appropriate Diocese staff for their review and for archival purposes.

Checklists A and B, attached to these Guidelines, are intended to assist governing bodies in obtaining the Standing Committee's consent to real property transactions. This checklist and the required documentation must accompany all requests of this type.

IV. PROPERTY TRANSACTIONS THAT DO NOT REQUIRE STANDING COMMITTEE APPROVAL

Certain types of Church property transactions are exempt from the requirement that the parish or body obtain the written consent of the Standing Committee. However, the Standing Committee requests that copies of documentation related to exempt leases and agreements be provided to it, the Bishop, and relevant Diocese staff. No Standing Committee consent is required for any of the following transactions:

1. Temporary leases or agreements to use real property that have a term of less than 12 months and which are not renewable.
2. Transactions involving interment or cemetery lots.
3. Leases in which the parish or governing body is the lessee.

V. CHECKLISTS FOR INFORMATION REQUIRED BY STANDING COMMITTEE

The checklists at the end of these guidelines must be completed and submitted along with the required documentation.

Checklist A - lists documents that need to be furnished to the Standing Committee for transactions involving alienation (sales, gifts or other conveyances) of real property.

Checklist B - lists documents that need to be furnished to the Standing Committee for transactions involving encumbrances (leases, loans, mortgages, easements, rights of way, etc.) and the like.

VI. OTHER TRANSACTIONS

If a contemplated transaction does not appear to fall within any of the categories described above, the seeker of the required consent should address inquiries to the President of the Standing Committee, who may consult with Diocese Staff, the Bishop and/or Chancellor on the proper method to proceed.

VII. ROUTINE DISPOSITIONS OF TANGIBLE PERSONAL PROPERTY

No consent from the Standing Committee is required for the sale, exchange, abandonment, surrender, or other disposition of any tangible Personal Property (for example, typewriters and other office equipment, motor vehicles, general furniture and furnishings, appliances, books, etc.) acquired and used directly in the normal and routine course of the conduct of the work and program of the Church in the Diocese. Questions about the canonical requirements for disposing of this form of property, especially if it has been consecrated, should be directed to the Bishop or Diocese staff.

Checklist A

Sale, Gift, or Outright Conveyance or Alienation of Real Property

To obtain the consent of the Standing Committee for a sale, outright conveyance or alienation of Real Property, the applicant shall provide the following documents to the President of the Standing Committee at least fourteen (14) days prior to the next regularly scheduled Standing Committee meeting. The Standing Committee may, in its discretion, require a delegation of the Governing Body to appear and present the proposal in person.

_____ Resolutions. A certified copy of a resolution of the Governing Body authorizing the sale or conveyance.

- (a) Identify the property;
- (b) Set forth the terms of the sale (including the price agreed or sought);
- (c) Provide a copy of any listing with a real estate agent and attach a copy of any listing agreement;
- (d) Give the reasons for the sale, including the proposed use of the sale proceeds; and
- (e) Include a statement that the property is not needed for the ongoing operations of the parish or institution.

_____ A copy of the Bishop's written consent

_____ Along with the Resolution, an applicant shall submit the following documents:

- (a) The most recent Parochial Report.
- (b) The most recent Annual Audit.
- (c) A copy of the deed(s) to the property proposed for sale.
- (d) A statement of the financial condition of the parish or body along with documentation
- (e) A copy of any outstanding loans or encumbrances on the property and their status

_____ Appraisal. A copy of a recent appraisal or marketing analysis of the property to be sold or conveyed, conducted by a real estate appraiser or agent licensed by the State of Maryland and who is not a member of the parish or body or connected to any party involved in the transaction.

_____ Parish or body as lender: If the sale involves the parish or governing body as lender, or is financing a mortgage or loan to the buyer, please provide a written explanation of this proposed arrangement and any proposed legal documents (e.g., the sale agreement, promissory note and mortgage (primary or second) or deed of trust securing repayment of such note).

_____ Copy of a map or plat showing the location of the property and its boundaries, and photos of the interior and exterior of the property. Copies of tax maps and aerial photos that are readily available on the internet are also helpful.

_____ Copy of any property inspection report, if applicable.

Checklist B

For Transactions Involving Encumbrances (leases, loans, mortgages, easements, rights of way, etc.)

To obtain the consent of the Standing Committee for the encumbrance of real property, the applicant shall provide the following documents to the President of the Standing Committee at least fourteen (14) days prior to the next regularly scheduled Standing Committee meeting. The Standing Committee may, in its discretion, require a delegation of the Governing Body to appear and present the proposal in person.

_____ Resolution. A copy of a resolution of the vestry or governing body authorizing the lease. The resolution shall:

- (a) Identify the property;
- (b) If this involves a lease, set forth the proposed terms of the lease;
- (c) Give the reasons for the encumbrance, including how the rent or other proceeds will be used by the parish or body;
- (d) Include a statement that the property is not otherwise needed for the ongoing operations of the congregation or institution; and
- (e) Contain facts supporting the opinion of the Governing Body that the rent or other provisions of the encumbrance are fair and adequate.

Along with the Resolution, a parish applicant shall submit the following documents:

- (a) The most recent Parochial Report.
- (b) The most recent Annual Audit.
- (c) A copy of the deed(s) to the relevant property
- (d) A statement of the financial condition of the parish or body along with documentation
- (e) A copy of any outstanding loans or encumbrances on the property and their status

_____ A copy of the Bishop's written consent

_____ Encumbrance Document. A copy of the proposed lease, easement, right of way, etc.

_____ Copy of a map or plat showing the location of the property and its boundaries, and photos of the interior and exterior of the property. Copies of tax maps and aerial photos that are readily available on the internet are also helpful.

_____ In the case of an easement or right-of-way, please provide the following:

- (a) Set forth the proposed details of the easement or right of way
- (b) State the consideration or lack of consideration to be paid and the Governing Body's opinion as to the adequacy thereof;
- (c) State whether the Governing Body considers that the grant will enhance or injure the property;
- (d) State the application or use to be made of any consideration to be paid for the grant; and

(e) State whether the grantee has the power of eminent domain.

_____ In the case of a loan or mortgage, please provide the following:

- (a) Identify the property to be encumbered and whether the loan will be secured by real or other property;
- (b) Set forth the reasons for the proposed loan;
- (c) Set forth the amount, rate of interest and repayment period of the loan; and
- (d) Set forth the anticipated schedule and source of repayment, and the terms of any repayment privileges or penalties.
- (e) Provide an appraisal from a professional appraiser licensed in the State of Maryland.
- (f) The audit report and parochial report for the previous year (the parochial report need not be submitted if information as to communicant and financial strength is readily available in the *Journal of Convention* for the previous year);
- (g) The current year's budget;
- (h) The most recent balance sheet and year-to-date statement of revenues and expenditures (if a current balance sheet is not available, a comprehensive statement of (1) ALL capital assets, including real estate, endowment funds, funds held in reserve, special funds, investments, bank accounts, and other assets of any kind, and (2) ALL liabilities, including notes payable, federal and state withholding taxes payable, unpaid ad valorem taxes constituting a lien on Real Property, arrears in Church Pension Fund assessments, arrears in accepted Diocesan assessments, arrears in health insurance premiums, other accounts payable, and other liabilities of any kind); and
- (i) Next year's budget (if available).