

Procedures re Lease of Church Property to a Third Party

A. Summary of relevant Rules (Code Book - 2016)

2.20 Board responsibility

The board must:

- f) obtain approval, at a congregational meeting called for that purpose, by a majority of at least two-thirds of the communicants and adherents personally present (as required by the Model Trust Deeds) to:
 - i) sell, purchase, lease, mortgage, or otherwise incur debt which is to be secured on, property;
 - ii) erect, demolish, remove or structurally alter or add to any building.

2.21 Approval for property matters

2.21.2 The sale, lease, purchase or mortgage of congregational property is subject to approval by the presbytery, the Law Agent, and any other prescribed authority.

4.79 Permission to sell, mortgage, lease, purchase, etc.

If a congregation applies for permission to sell, mortgage, exchange, lease or purchase property or to borrow funds a presbytery must:

- a) not give permission without taking account of all the circumstances and the best interests of the church in general and of the particular congregation;
- b) if permission is granted, forward the application to the relevant General Assembly committee.

5.15 Law Agent revises all property transactions

All title deeds conveying property to the church or any of its congregations, institutions or agencies, not prepared by the Law Agent, must be submitted to him or her for revision, as must all transfers, conveyances, mortgages, exchanges or leases authorised by the General Assembly, to which the moderator's signature is necessary by Section 20(1) of the Presbyterian Trusts Act 1890.

B. Presbyterian Trusts Act 1890, Section 20, Sub-section 1

20. When any sale mortgage exchange or lease of any church land (whether held upon the trusts of "The Model Trust Deeds of the Presbyterian Church of Victoria" or either of them or otherwise) is made in pursuance of and in conformity with such trusts or the trusts upon which the same is held –

- (1) the transfer conveyance mortgage exchange or lease shall be made with the consent in writing of the Moderator and shall have no force or effect without

such consent: Provided that this sub-section shall not apply to any mortgage or lease of any church land which the trustees thereof by virtue of the Act or deed under which the same is held have at the time of the passing of this Act power to mortgage or lease without the consent of the General Assembly, but such trustees shall nevertheless give notice in writing to the Moderator of any such mortgage or lease prior to the execution thereof.

Presbyterian Trusts Act 1890, Part B. – Rule (made under the Act) Relating to the Consent of Moderator to Dealings with Property.

11. The consent of the Moderator to any transfer, conveyance, mortgage, exchange, or lease, under section 20, sub-section 1, of the said Act shall not be given unless a law agent of the Church shall first approve thereof.

C. Board of Investment and Finance Regulation 16 a

Sale, mortgages, leases, transfers etc

16. a) A sale, lease or mortgage shall not be effected without the consent of the Assembly or Commission of Assembly, provided that the Board of Investment and Finance (BIF) may give consent to any application which in the opinion of the Presbytery and the BIF is urgent and the BIF shall report the action taken to the Assembly or the Commission of Assembly, as the case may be.

D. Model Trust Deeds

The Church and Manse Sites are held under the terms of the Model Trust Deeds which state:

“that the said Trustees or Trustee shall from time to time demise or let such part or parts of the said hereditaments as shall not for the time being be actually required for the purposes of public worship or other Congregational purposes for such term or terms at such rent or rents upon such conditions and subject to such covenants as shall be approved under the Rules of the Church and shall have been directed by any such vote as aforesaid but the revision in the hereditaments derived or let shall continue subject to the powers of mortgaging and selling respectively herein contained provided that the clear rents arising from any such demise or letting shall be collected by the Treasurer for the time being of the said Congregation and be paid and applied for such purposes as shall have been directed by any such vote as aforesaid and approved by any such Presbytery as aforesaid .. and that every covenant and arrangement that shall be entered into and every mortgage, conveyance or lease which shall be executed by the said Trustees or Trustee pursuant to the trusts hereinbefore declared shall be as good and effectual both at law and in equity as if every member and adherent of the said Congregation shall have joined therein or assented thereto and shall be binding and conclusive on all persons claiming any benefit or interest under or by virtue of these presents”.

That extract refers to a vote and the vote is “the vote of at least two-third parts in number of such of the members and adherents for the time being as shall be personally present at a public meeting thereof called and held pursuant to notice in that behalf duly given in accordance with and in conformity with the Rules and Regulations of the said Church for the time being effecting the convening and the holding of meetings of members and adherents in similar cases”.

E. Notes

1. The procedure follows a logical progression of approval starting with the Board, then the Congregation, Presbytery, Law Agent and Assembly/BIF. At each level, approval should not be given unless the previous level has met its responsibility. The Moderator will only give his consent when all other approvals have been granted.
2. The congregation must approve the lease with at least a two thirds majority of those members and adherents present.
3. A problem arises because the specific terms of the lease are often not known at the early stages nor are the name or names of the tenants. Therefore, it is recommended that the Board of Management seeks advice concerning the likely rental and then obtains permission from the Congregation and Presbytery for letting the premises for a term of X months at a rental of “not less than Y dollars per month”.
4. The lease must be prepared in the name of the legal owner of the title as Landlord. In most cases this will be The Presbyterian Church of Victoria Trusts Corporation. Where the property in question is held by local trustees, the lease should be in their name as trustees for the congregation. No other person is authorised to sign a lease or any other document relating to the property. The Trusts Corporation maintains a register of trustees for all church properties. The Board of Management should seek confirmation from the General Manager as to who are the registered trustees so that the lease can be properly drawn.
5. The usual practice is for the Moderator and the Law Agent to endorse their consent on the original lease. The Law Agent is aware of the form of consent and seeking his early advice will avoid delays. However, the approval of the Law Agent and consent of the Moderator cannot be granted until the specific terms are known and the lease document is completed.
6. Where a manse is being let the standard Residential Tenancy Agreement in Victoria should be used with such Special Conditions as are appropriate in the circumstances.
7. It is common for estate agents to sign leases on behalf of the landlords. When dealing with agents, it is important to make clear that the agent is not authorised to sign the lease on our behalf.
8. The signature of the tenant should be obtained sufficiently in advance of the commencing date to enable the landlord, Moderator and Law Agent to fulfil their responsibilities subsequent to those signatures being obtained.
9. When making a submission to the Board of Investment and Finance, Presbytery should indicate whether the matter is considered urgent as per BIF regulation 9a. If the matter is not urgent, then it is referred to the next General Assembly.
10. Failure to follow the procedures properly and confirm the approvals by gaining the consent of the Moderator renders the agreement invalid and without force. Where a lease is signed without the Moderator’s consent the persons who have signed the lease become personally liable for the consequences which may include damages sought by the other party to the lease.