

## **WHEN TO CONTACT THE PRESBYTERY BOARD OF TRUSTEES**

### **SELLING, ENCUMBERING, OR LEASING CHURCH REAL PROPERTY**

Section G-8.0500 of the Book of Order requires any sale or encumbrance (i.e., mortgage or other pledge of church real property (i.e., land and/or buildings), lease of worship space, or lease of non-worship space for five years or more, be approved in advance by the presbytery. The Board of Trustees recommends transactions to the presbytery for approval.

*G-8.0500: A particular church shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.*

*A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church.*

### **THE ROLE OF THE BOARD OF TRUSTEES**

All real estate owned by a congregation is held in trust for the benefit and use of the Presbyterian Church (U.S.A.). The congregation is responsible for all expenses and costs associated with the property, and has the right to occupy and use it. When a congregation is dissolved, care and disposition of the property reverts to the presbytery's Board of Trustees. The presbytery is beneficiary of the proceeds from the sale of the property. The Board of Trustees protects this residual interest on behalf of the presbytery by reviewing and recommending (or not) for approval changes in the use, occupancy, encumbrance, or ownership of church property. The Board of Trustees' call is to shepherd, stewardship, and evangelism rather than authority or power. It also can provide local congregations access to leadership and expertise that may exist elsewhere in the presbytery.

Christ calls the Church, which is His body, into being and gives it faith and life. WE are called to be God's faithful people; to proclaim the gospel for the salvation of humankind. Christ establishes and extends his Kingdom through the ministry of the Church (Book of Order, G-1.0100-1.0200). One of the first songs our children learn in the church nursery is some variation of "the church is not a building/the church is not a steeple/the church is not a resting place/the church is the people." But when we think of, or refer to, a particular church we often envision its building and geographic location and consider the people within as "worshippers", "members", or "congregants." It is important that, as churches formulate and the Board of Trustees evaluates specific transactions, all involved consider a "church" to be a group of people.

### **THE PROCESS**

When a church session is ready to actively pursue a transaction described above, a representative should contact the president of the Board of Trustees to make an appointment to present the intended transaction at the next Trustees meeting. Trustees meet five times a

year, generally a few weeks in advance of a presbytery meeting. Although special meetings can be called they are rare. The purpose and context of this meeting is to inform the Trustees of the session's plan and for the Trustees to provide feedback and input.

Once the session has a firm agreement (i.e., contract of sale, lease ready for signature) the representative should again contact the president of the Trustees to make an appointment to present the final transaction. Once approved the Trustees will then recommend the presbytery approve the transaction at the next presbytery meeting. The congregation's attorney will also obtain approval for sale or mortgage transactions from the New York State Supreme Court (this is required by New York State law). Then the session is free to complete the transaction as approved.

## **REAL ESTATE SALES**

All real estate sales must be presented to the Trustees and approved by presbytery. The initial presentation should address the following issues:

- **Property fair market value.** Obtaining an independent MAI appraisal is strongly advised. Recommended listing price or estimates provided by a real estate agent are not sufficiently reliable. Sale at below market value is generally not advisable, as the discount provided the buyer is equivalent to a mission grant. Would the congregation consider providing a mission grant of that size in cash to the buyer?
- **Improvement or repairs to be made prior to sale.** Often structural deficiencies like deteriorated roofs, substandard wiring, leaky plumbing, etc., must be repaired or replaced prior to sale, or the price might be reduced by the amount required to fix the problem. Underground oil tanks can be particularly problematic if there is any evidence of leakage. Some tracts may require soil testing.
- **Issues that may delay or detail the buyer.** Sales dependent upon the buyer obtaining financing, and zoning or property use changes can delay closing the sale for month. Financial penalties for undue delay can be effective in keeping the process on track. Under no circumstances should a church consider providing seller financing. Just as banks are not ministries, churches are not banks.
- **Use of non-manse sale proceeds.** This is probably the most important consideration. How will the transaction grow, enhance, or strengthen the congregation's witness to the community? Will a portion (tithe) be set aside for mission? Realizing a sum of money can be exciting, particularly when a church is facing financial stress. But using the proceeds from a liquidation of assets to fund operating expenses is not likely to strengthen the congregation. The reverse may happen as a congregation's willingness to challenge itself financially can mirror its willingness to challenge itself spiritually.

- **Use of manse sale proceeds.** Proceeds shall generally be used in one of the following ways: 1) set aside so that interest can be used to fund housing allowance for the current pastor; 2) to purchase a different manse; or 3) for other capital projects.
- **Investing the proceeds.** Money that is committed to fund a specific project (i.e., purchase a new manse, capital improvements etc.) should be retained in cash and invested in certificates of deposit, money market funds, and the like where there is no risk to principal. Funds should be invested in mutual funds or stock only if the congregation does not currently have plans to draw on them for a specific use. The Presbyterian Foundation owns and operates a family of mutual funds, Covenant Funds, that are invested and managed consistent with the church's philosophy. For example, Covenant does not purchase the stock of companies that produce tobacco, fire arms, and some military weaponry. Proceeds can also be invested in the Presbyterian Church Investment and Loan Program, Inc., that lends funds provided by individuals, congregations, church agencies, and governing bodies for new church development, redevelopment, and capital projects within the denomination. PILP pays a fair rate of interest and offers discounted borrowing rates to groups that invest with it.
- **How will the loss of use of the property impact the life of the church?** Would the sale of adjacent, undeveloped land preclude growth? Is parking adequate? Would new activity (i.e., noise, traffic) on the site diminish the congregation's ministry of quality of life? Does the congregation have the additional funds required (if any) to purchase a new manse?
- **Contractual terms.** All contracts of sale MUST be contingent upon approval of presbytery and the New York State Supreme Court. Please also consider this when setting the closing date. Under no circumstances should a church ever allow a buyer to begin to make changes, move any belongings onto, or be given a key to the property prior to the final closing of the sale.
- **Transfer or sale of all or part of manse equity to pastor.** Pastors living in church owned manses do not benefit from rising real estate values. In attempt to access a new source of pastoral compensation, and to help prepare the pastor to purchase a home in the future, some churches have devised various schemes to share an increase in manse value with the pastor. Although appealing in theory, equity participation schemes have generally been unsuccessful and should be avoided. When a church chooses to sell a manse to the current pastor, it should consider carefully: will it have the funds required to provide housing for the next pastor; what would be the church's response to the pastor's inability or unwillingness to maintain the manse and all obligations with respect to it; how would the current pastor's continued residence in the manse after the call is completed affect the new minister and life of the congregation.

## MORTGAGES

The paragraphs above that address use and investment of proceeds, and contractual terms also apply to mortgage loans and should be included in the initial meeting plus:

- **Statement of purpose:** When mortgaging a piece of property, it is crucial to first develop a clear statement of why the funds are being borrowed, how the proceeds will be used to enhance the mission of the congregation, and the Presbyterian Church (U.S.A.), and how the congregation plans to accomplish the initiative. Funds that are borrowed to meet budget deficits or pay operating expenses are generally not advisable and are not like to be approved.
- **What to bring to the initial meeting with the Trustees.** Bring a commitment letter or term sheet from the lender that identifies all terms and requirements of the mortgage loan. Bring the loan contract to the final meeting.
- **Building Code requirements.** Extensive building renovation or improvement, particularly involving changes to building electric, plumbing, or footprint, may require a building permit. These will not be issued unless the project also includes whatever work is required to bring the building and surrounding property in compliance with local building code, including requirements of the Americans with Disabilities Act. The Board of Trustees strongly encourages congregations to voluntarily and affirmatively upgrade and adapt church property for energy efficiency and accessibility. The Synod and General Assembly offer low interest rate loans for these improvements.
- **Monthly payments.** What is the congregation's source of funds to make monthly principal and interest payments? Is it reliable? What is the backup plan in case revenue from the first plan falls short?
- **Fixed versus adjustable interest rates.** Neither loan type is inherently superior to the other. Typically, if interest rates are considered low and are expected to increase, a fixed rate loan may be preferable. If interest rates drop, a borrower can benefit, at least to an extent, without refinancing by using an adjustable rate loan. The choice ultimately depends upon the terms offered by the lender and the preferences of the congregation.
- **Balloon payments.** Congregations should consider carefully non self-liquidating loans that require a large portion of the principal to be paid off at once. Will the congregation have access to sufficient funds or another lender when that payment is due?
- **Potential lenders.** Banks and finance companies that are active lenders in your area may be good places to contact. The Presbytery, Synod and General Assembly also provide loans to congregations in good standing. There is a standardized process and set of forms which are available through the presbytery office. Each governing body establishes its own requirements and schedule. Amount and terms vary depending upon purpose. Synod and General Assembly loans must first be approved by the presbytery, which guarantees payment.

- **Refinancing to reduce the interest rate.** If only the interest rate and subsequently the monthly payment changes, but the lender and all other terms (i.e., principal balance, number of payments remaining, final payoff date) remain the same, presbytery and New York State Supreme Court approval are not required. The Board of Trustees requests that it be informed upon refinancing so that it can properly maintain presbytery records.

## LEASES

Lease of ANY worship space for ANY period of time, whether the space is rented for an hour or a period of years, or of other space for five years or more must be approved by the presbytery. The five year term refers to the maximum life of the lease, including all option and renewal periods. For example, a four year lease with no renewal periods would not have to be approved by presbytery; but a one year lease with a one year option period and three renewals must be approved by presbytery. The paragraph above that addresses use of proceeds, plus the following issues should be addressed in the initial presentation:

- **The nature of the tenant's usage.** Tenant activities should be not-for-profit and consistent with, if not complementary to, church ministry. Typical tenant or building users include 12 step programs, nursery schools, and other non-competing congregations. What about tenant storage? Who should have a key to the building and how will it be secured? What about damage to property and furnishings? If the tenant meets in the building periodically (like a 12 step program), is there access to a telephone? What about access to kitchen facilities?
- **How will the tenant change the life of the church?** How would the tenant strengthen or expand the church's witness to the community? How would the lack of access to newly leased space impact the church's ability to meet its own needs? Is parking adequate? What expenses will the tenant be directly responsible for? How will church operating expenses (e.g., heat, water electricity, custodial) increase? If the increase in expense exceeds the rental income the difference is, in effect, a mission grant to the tenant. How will the income effect stewardship? If rental income is sufficiently large so as to dominate a church's operating budget, that congregation then becomes a landlord organization first, and a church second. What if the tenant leaves?
- **Nursery Schools.** A nursery school can be a convenient way to use educational space during the week and introduce and welcome young families to the church. Although secular schools may have wider appeal in the community, they cannot be counted on as sources of evangelism and church growth. The congregation should consider carefully whether it is, in effect, outsourcing a material portion of its youth and family ministry through a secular nursery school. How many children are anticipated? Ages? Is supervision adequate? Are the personnel properly licensed? Are the premises appropriate and safe for young children? Are the fire extinguishers properly inspected and charged? Are there proper fire exits? How will the children be dropped off and picked up? How will the

nursery school affect church activity during the week, like funerals, meetings, etc.? Is the church welcome to distribute literature to nursery school families, and invite them to participate in various church events? Shall religious symbols and church-related items remain on display during the week? Will church members object to the display of secular seasonal symbols, or those of other religions? It is strongly recommended that church staff use different rest room facilities.

- **Insurance.** All leases must require that the tenant provide its own liability insurance of at least \$XXXX, and sexual misconduct protection insurance. No lease will be approved without this. Churches may not provide coverage to tenants through their own insurance policies. In addition, nursery schools must provide child protection insurance. The session should require the tenant to provide it a copy of the policy annually. Non-compliance with any insurance requirement shall result in immediate termination of the lease.
- **Signage.** Nursery schools, congregations, and other tenants with on-going operations might want to post their signs on the lawn or inside the building. What are the church's concerns about signage? Would these signs detract from the church's ministry and witness in the community? Is your church's place in the community at risk of going from "the people who" to "the building where"?
- **Managing the tenant relationship.** The session should develop a process for developing and maintaining good, neighborly relationship with tenants. This is the responsibility of the pastor or other church staff only if it is specifically included in the pastor's terms of call or a job description. The session should appoint one or more contact persons, and expect regular reports on the relationship. How will misunderstandings and disputes be resolved?
- **Cellular telephone antennas and towers.** Church steeples (particularly tall ones) are popular sites for cellular telephone antennas, and church property is popular for towers. These can provide welcome income with little, if any, cost or life style changes to the congregations. As the leases are long term, they are not appropriate for churches at risk for dissolution, or considering relocation during the term of the lease including all extensions. Issues regarding towers include: height, size, zoning, placement, impact on income and property tax status, insurance, and removal at the end of the lease.

## **BENEDICTION**

We hope this brief is helpful. If you have additional questions or concerns, please contact the president of the Board of Trustees or the Executive Presbyter.

May 23, 2005  
Board of Trustees  
The Presbytery of Long Island

