

**PROPERTY USE CHECKLIST  
AND CONSIDERATIONS TO BE MADE  
BY A CHURCH PRIOR TO ALLOWING USE BY THIRD-PARTIES**

*The following is intended to help religious organizations in their review and analysis of the implications of a third party's use of the Church's real property.*

A religious organization considering renting or sharing its facility or properties with another organization should consider the following questions as part of the initial analysis. If the parties decide to go forward and enter into an agreement or lease or revocable permit, the services of an experienced attorney should be used to draft the license/use/lease/revocable permit or sharing agreement.

**Compatibility of the Proposed Use with  
the Mission and Ministry of the Church**

1. What is the third party's business, purpose, and mission?
2. What is the third party's intended use of the property?
3. Are the third party's business, purpose, and mission and intended use of the property compatible with the mission, ministry, principles and ecumenical objectives of the Church?
4. Has the third party filled out an application or submitted a letter of request outlining the general purpose, times, and fees for the proposed use?
5. Do you understand the nature of the third-party organization?
6. Are references part of the application?
7. What is the social agenda of the third party?
8. What potential social/political conflicts may arise between the church organization and the third party because of its social agenda?
9. Can potential problems be avoided or reduced by careful communication and agreements?

10. Will the sharing of space with this third-party organization adversely affect either party's public image or reputation? (For example, rental to a tobacco shop or a store that sells lotto tickets or weekly meetings of an extreme political group.)
11. Will allowing the third party to use the property cause tension within the church organization?
12. Has the church organization reviewed the political, practical, and social implications of the proposed use in relation to its neighbors and the community? (For example, 7 nights a week homeless shelter operation in a residential area, four miles from public transportation.)
13. Is the space sharing agreement intended to enhance the church's religious, educational, and charitable outreach, or simply to provide income?
14. What precedent will be set by allowing this organization to use church property?
15. Is there a common basis for conflict resolution between the organizations?

#### **Compatibility of the Proposed Use with Existing and Future Uses**

16. Does the church organization understand exactly how the third party intends to use the property?
17. Will the parties execute an agreement that clearly identifies what uses are prohibited or limited by the third party?
18. During what days and times will the third party use the property?
19. Has the church organization analyzed how the proposed use would impact or limit the church's present and/or future ministry, goals, programs, and activities?
20. How much of the property does the third party want to use?

21. Will the proposed uses interfere with or impact existing meetings or functions?  
(Consider security concerns, sound problems, washroom facilities, cooking facilities, parking space, etc.)
22. What space should be used in common, and what space will be used exclusively by one party or the other?
23. For common space sharing, has a schedule (including set-up/take-down time) been developed that will work for joint usage?
24. Will the use of space be long term or short term?
25. If the use will be long term, has the church organization considered how this may limit its ability to sell, renovate or expand the property?
26. How will access to, and locking up of, the building be overseen? (Keys, electronic key cards, password codes, church personnel, security company, etc.)

### **Financial Impact of the Proposed Use**

27. How much does it cost now to operate the facility annually? Per square foot?
28. How will the proposed use impact the operating, maintenance, and utility costs for the property (e.g., heating, cooling, other utilities, janitorial, supervisory personnel, etc.)?
29. Will the third party bear any additional costs generated by the proposed use? If not, how will the costs be apportioned between the parties in the agreement?
30. Who will be responsible for cleaning and maintaining the property used by the third party and the common areas? Who will pay for this?

31. What standards will be used in maintaining the property?
32. Will the church receive any rental income from the proposed use of the property? If so, how much?
33. Will the income be used to defray the increased costs of operating the building, or does the church expect to get more income than the increased operating costs?

### **Insurance, Liability and Legal Issues**

34. Has the church organization assessed the risks associated with the proposed use?
35. Has the church organization considered the appropriateness of the proposed use for the property?
36. Has the church adopted a facilities use policy?
37. Has the church adopted a Child Protection Policy and Mandatory Policy For Reporting Abuse?
38. Have the parties agreed on their respective rights and responsibilities regarding the use of the property?
39. Who will pay to defend against or pay for any claims arising out of the third party's use of the property?
40. What security issues does the proposed use create? (For example, fencing around playground equipment).
41. Who is responsible for addressing such security issues?
42. Does the third party have a sufficient risk management plan to address any risks caused by its use of the property? If so, has the church organization reviewed it?

43. Will the third party be required to defend and indemnify the church organization against claims related to its use of the property?
44. Will the third party be required to have insurance with certain minimum coverages and limits to back up its obligations under any use agreement?
45. Will the third party be required to list the church as an additional insured on its insurance policy and present a certificate of insurance?
46. Does the lease/license or agreement reflect such insurance requirements?
47. Has the church organization consulted with an attorney and its insurance professional regarding the best way to address risks related to the proposed use?
48. Does the church organization have adequate insurance coverages and limits given the proposed use?
49. What steps should be taken to protect and secure valuable property and equipment belonging to the parties from damage, theft, or misuse?
50. What is the duration of the proposed use?
51. What is the legal status of each organization, e.g., not-for-profit corporation, religious corporation, or unincorporated association?
52. Do you have a standard rental/license/use agreement or does a new agreement need to be drafted? Has your legal advisor reviewed the final agreement before signing?
53. What legal authority does each participant need in order to enter into a legally binding agreement? (Some groups require corporate resolutions to authorize negotiation and execution of a lease.)
54. Have adequate provisions been made for termination of the agreement?
55. Has the church organization consulted with an attorney regarding the proposed use

and the drafting of an agreement to memorialize the terms and conditions of the proposed use?

### **Real Property Tax Issues**

56. Will the proposed use affect the church organization's real estate tax exemption?
57. Can any adverse real estate tax consequences be minimized?
58. Who will pay any additional real estate taxes incurred?
59. Does the lease/license/use agreement provide that the third party is responsible for paying any and all real estate taxes that become due because of the proposed use?
60. Will any rental payments include reimbursement of property taxes that may be imposed on the church because of the proposed use?
61. Is the third party a nonprofit entity that is recognized as exempt from federal income taxes under the Internal Revenue Code? If so, do the activities of the third party complement or further the church's mission?
62. Does an annual real property tax exemption certificate need to be filed with the state or county to maintain the church's exemption?
63. Is the church organization required to notify the state or county when it leases or allows its property to be used by a third party?
64. Are careful records required to be kept as to the square footage leased or licensed or permitted to the lessee/licensee/permittee and the rental income collected by the church organization?
65. The church organization should prepare and retain minutes of any meeting in which

the topic of leasing the church's property was discussed. The minutes should reflect discussion as to whether or not entering into a lease with a particular lessee would be in furtherance of the church's mission.

### **Federal Income Tax and Other Tax Issues**

66. In many instances, rental of church property is exempt from unrelated business income tax (UBIT). However, consider whether in your case, the rental income received by the church will cause any local, state, or federal tax liabilities. Your tax or legal advisor should consult with you on specific UBIT issues. See IRS Publication 1828 regarding UBIT issues and analysis.
67. How can any adverse income tax consequences be minimized?
68. Who will pay any additional income taxes incurred? The relationship between the church organization and the lessee/licensee/permittee should not be one of a partnership or a joint venture.
69. The amount of rent charged should not be tied to the income or profits of the lessee/licensee/permittee.
70. If personal property is leased in connection with real property, the portion of the rental payment allocated to the personal property must be "incidental" (not more than 10%) in comparison with the total rental payment.
71. If the property leased is subject to a mortgage or is otherwise "debt financed," then the rental income will be subject to UBIT unless one of the following exceptions apply:
  - At least 85% of the lessee's use of the property is substantially related

to the exercise or performance of the church's mission;

- The property is used by the lessee for research activities; or
- Substantially, all of the lessee's work is performed without compensation, the lessee's business is carried on primarily for the convenience of members, students, patients, officers, or employees, or the lessee's business is the selling of merchandise, substantially all of which was received as gifts or contributions.

72. Who will ensure proper payment of any state sales tax on retail sales out of the facility that may be subject to state sales taxes?

### **Zoning, Access, Permit and Other Regulatory Issues**

73. What are the permitted uses under the property's present zoning?
74. Is the proposed use a permitted use? If not, is the third party's use contingent on the third party obtaining a zoning change or variance allowing for the proposed use?
75. Is the third party required to follow all local, state, and federal rules, regulations, and statutes applicable to the proposed use, including any license requirements?
76. Will allowing the third party to use the property require the church organization to comply with local or state handicap access statutes or the Americans with Disabilities Act? If yes, will modifications be required? If so, who will pay for them?
77. Is the building structure appropriate for the intended use, or will renovations be required to bring the building into compliance with the local building, safety, and fire codes?



78. If improvements need to be made before the proposed use begins, who pays for them, who makes sure they are up to code, and who benefits from them when the agreement ends?