

EPISCOPAL CHURCH IN VERMONT
REAL ESTATE POLICIES, PROCEDURES & BEST PRACTICES
FOR PURCHASES, SALES, ENCUMBRANCES, & LOANS

(Approved by Diocesan Council on March 19, 2005)

The Standing Committee and the Trustees of the Diocese of Vermont are resolved to ensure that congregations and Diocesan institutions¹ are good stewards of the real property that has been entrusted to them and to provide for the disposition of that property in a timely, orderly and canonical manner. The acquisition of real estate, the sale of real estate, the borrowing of money, or the encumbrance of real estate can be a major project for a congregation or a Diocesan institution, often engaging the valuable time and emotional energy of parishioners and those volunteering to help in governing Diocesan institutions. With the increasing cost of land and improvements thereon, as well as mission opportunities and budgetary issues, congregations and Diocesan institutions are often faced with difficult decisions around the creative and responsible use of real property under their stewardship.

Title to Real Estate

The Canons of the Episcopal Church are clear that “All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church [The Episcopal Church] and the Diocese thereof in which such Parish, Mission or Congregation is located.” {Title I, Canon 7, Section 4 of the ECUSA Canons}

In the Diocese of Vermont, the title to most Church property is held in the name of the Trustees of the Diocese of Vermont, a Vermont nonprofit corporation whose Board members are elected at the Diocesan Convention. Any newly acquired property should be titled in the name of the Trustees of the Diocese of Vermont. Any property currently not so titled may be voluntarily transferred to the Trustees of the Diocese of Vermont by contacting the President of the Board of Trustees, or the Bishop.

In the event that real estate is acquired at a future date, and is titled in the name of a Parish, Mission, Congregation or Diocesan institution, the deed transferring title to such Parish, Mission, Congregation or Diocesan institution shall have the following language included for the purpose of providing actual and constructive notice of the requirements of the Canons of the Episcopal Church.

“Grantee acknowledges that it/they hold(s) title to the premises herein conveyed in trust for the benefit of the Episcopal Diocese of Vermont pursuant and subject to its Canons; and that no subsequent transfer, conveyance or encumbrance of any interest in said property shall be valid unless first consented to by both the Bishop and the Standing Committee of the Episcopal Diocese of Vermont.”

¹ The Diocesan Canons establish two “institutions:” (i) Rock Point School and, (ii) Brookhaven School for Boys. Any legal entity created by or for the benefit of a congregation or Diocesan institution and that holds title to Church property is subject to the requirements of these policies, procedures and good practices.

Sale, Disposition or Encumbrance of Property

The Diocesan and ECUSA Canons require the written consents of the Bishop and Standing Committee for any encumbrance or alienation of real property, including all property titled to the Trustees, Diocesan Institutions and congregations. {See Episcopal Church Canons Title I, Canon 7, Section 3 and Diocesan Canon 16. 4.} These Canons reflect the understanding that the Bishop with, in this case, the additional advice and consent of the Standing Committee, is responsible for the overall missionary strategy of the Diocese and is charged with assuring that individual congregations, Diocesan institutions and the Trustees have carefully reviewed their stewardship role with respect to Church property and any resulting impact on missionary strategy.

Sections 901-903 of Title 27 of the Vermont Statutes also apply to sales and encumbrances of Church real estate titled in the name of a parish; a copy of these sections is attached.

To assist congregations and Diocesan institutions that plan to sell, transfer or encumber real estate, the Bishop, the Trustees of the Diocese of Vermont and the Standing Committee have adopted the following guidelines for and conditions. They have been designed to make the consent process work as smoothly as possible.

- A. As provided in the Canons, the consents of the Bishop and the Standing Committee are to be obtained for all sales, dispositions or encumbrances of real property. (An “encumbrance” includes a mortgage, a lease with a term greater than one year, a lien, easement, right of way, encroachment, or other restriction on the property or on its use, including such things as cell phone tower licenses or leases.) Therefore, congregations should include this consent in their planning for any sale or encumbrance.
- B. The Standing Committee meets monthly, September through June, usually on the third Tuesday of the month. Requests for consent should be sent, in writing and in duplicate, one to be sent to the Bishop and one to the President of the Standing Committee (both addressed to the Diocesan Office, 5 Rock Point Road, Burlington, VT 05408) at least three weeks in advance of the Standing Committee meeting date. This allows time for review of the request by the Canon to the Ordinary and the Diocesan Financial Administrator, who will consult with the congregation or Diocesan institution if there are any questions and then forward a recommendation to the Bishop and Standing Committee.
- C. Some of the items in these guidelines require advance planning, e.g., appraisal and, for parishes, an annual or special parish meeting (Diocesan Canon 16.4). Diocesan institutions are not governed by vestries, and must follow their own governance and formal decision-making processes.

- D. It is suggested that a congregation or Diocesan institution retain an attorney to assist it in all aspects of any disposition or encumbrance. The attorney should be made aware of the need for consent from the Bishop and Standing Committee, and of the requirements of the Canons and Title 27, Vermont Statutes Annotated, Sections 901-903 (see Appendix A). The best practice is to include within a listing, sales or lease agreement (greater than one year in length) the receipt of these consents as a pre-condition of the parish's obligation to sell or lease. The Chancellor may be able to assist or offer consultation to congregations and Diocesan institutions, or their attorneys. To inquire about assistance from the Chancellor, please contact the Canon to the Ordinary.
- E. As long as the specific items in these guidelines are completed and in proper order, it is possible for the consents to be given before a sale to a specific buyer, a lease to a specific tenant, or a mortgage from a lender is in place.
- F. When a congregation wishes to convey or encumber property that is titled in the name of the Trustees of the Diocese of Vermont, the Trustees must give their approval and sign all documents of sale, transfer or encumbrance for property so titled. This includes most of the property under the stewardship of congregations in the Diocese of Vermont. Following the consents from the Bishop and Standing Committee, the congregation asks the Trustees for approval and execution of the proper documents. Action by the Trustees is necessary to authorize the execution of the documents. Alerting the President of the Trustees early on in the process will help expedite matters.
- G. The Bishop and Standing Committee will send their respective written consents to the congregation or Diocesan institution as soon as possible after the consents have been issued. The Bishop shall keep written certification of his or her consent in the permanent records of the Diocese. The Secretary of the Standing Committee shall keep written certification of the Standing Committee's consent in the permanent records of the Committee. In each case, the consent may contain a statement of any terms governing that consent. As a general rule and except as otherwise stated in a consent, consents will be effective for only twelve (12) months. Transactions not completed within that 12-month period will require new consents.
- H. A request for consent should be accompanied by the following written material:
1. A statement of the reasons for the sale, lease, encumbrance or other disposition.
 2. A statement of the use (s) of the sale, lease or mortgage proceeds.
 3. If the sale involves clergy housing, a statement as to what alternative arrangements have been made for clergy housing, both in the near and long term future.

4. In the case of a sale, an independent appraisal of the property in question by a qualified independent appraiser who has no other interest in the sale.
5. A history of the use of the property and proposed use by the buyer or tenant.
6. The date of acquisition of the property and its acquisition cost or value.
7. In cases of encumbrances, the terms of the proposed encumbrance, including samples of any proposed lease, lien, easement or other restriction.
8. In case of sales, a statement of the minimum “net” price (after payment of commissions, existing mortgage loans and estimated closing fees) to be received by the congregation or Diocesan institution.
9. Evidence in the case of a sale or greater than one-year lease that efforts to keep the property in the non-profit sector for nonprofit mission/ministry uses of such groups has been diligently explored and is either being accomplished or is not feasible.
10. A certificate of the Secretary of the Vestry or Diocesan institution to the effect that a parish meeting (or, in the case of a Diocesan institution, a governance meeting) was duly held in accordance with the Canons of the Diocese and any local bylaw provisions and that, at the meeting, a resolution (the text of which should accompany the certificate) was properly adopted by majority vote, which authorizes the sale, lease, encumbrance or other disposition and sets forth the details thereof, including but not limited to:
 - i. Full address or other proper identification of the property.
 - ii. The minimum “net” price to be gained from the sale, lease or other disposition.
 - iii. In cases of any other encumbrance, the reasons therefore and any associated costs of expenses.
 - iv. The body (e.g., vestry, building committee, parish.) or persons (e.g., wardens, treasurer, secretary) authorized by the meeting to negotiate and approve final actions and the person authorized to sign final documents (an officer of the Trustees of the Diocese of Vermont for all property to which the Trustees hold title). For property held in the name of a parish, only a member of the Vestry may be authorized to sign the documents (Canon 16:4).

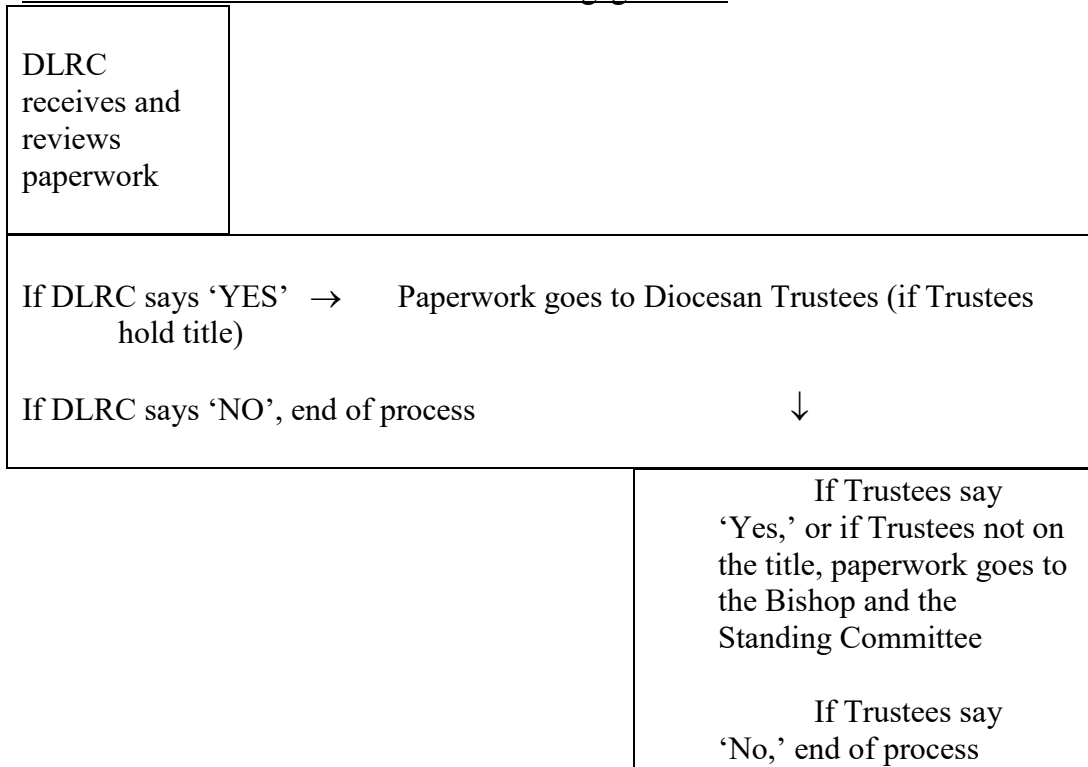
Mortgages and Loans

These are encumbrances that require additional and specific attention on the part of congregational (or Diocesan institution) leaders and in many cases involve more substantive review on the part of the Bishop and Diocesan leadership. To assist congregations and Diocesan leaders in this area, a Diocesan Loan Review Committee (DLRC), appointed by the Bishop and Diocesan Council to function as a committee of Council, is the primary clearinghouse for review and recommendation regarding congregational requests for loan approvals. The Loan Review Committee will review all non-emergency Bishop Butterfield Loan requests and all requests for approval of commercial loans.

- A. Bishop Butterfield Loans (BBLF): The application form for a Bishop Butterfield Loan is provided in the Diocesan Handbook. Some key provisions are:
1. Non-emergency loans, in excess of 25% of a congregation's annual operating budget, require the approval of a parish meeting.
 2. Non-emergency loans, less than 25% of a congregation's annual operating budget, require Vestry approval. A Vestry may determine that in the best interests of the congregation even this level of borrowing should be brought to the congregation for a vote.
 3. Emergency loans not to exceed \$2,500 may be granted by the Bishop and reported to Diocesan Council.
 4. Emergency Loans not to exceed \$10,000 may be granted by the Executive Committee of Diocesan Council and reported to Council
 5. All other loans from the BBLF require the recommendation of the Diocesan Loan Review Committee, the Executive Committee of Council and Diocesan Council approval.
 6. The filing of a current Parish Audit and Parochial Report are both required before BBLF applications will be considered.
 7. An Architect/Engineer's report or a minimum of (2) bids (where possible) is required for BBLF requests in excess of \$25,000.
 8. It is recommended that a congregation alert the Bishop's office early on when contemplating a Bishop Butterfield Loan, so that full assistance and guidance through the process can be provided.
- B. Other Loans:
1. All loans secured by any mortgage or other lien placed on any Church owned real estate requires the approval of the Bishop and Standing Committee. The prior approval of the Trustees of the Diocese of Vermont is required for all property to which the Trustees hold title. Approvals are made after the recommendation of the Diocesan Loan Review Committee.
 2. Any paperwork submitted to the lender from whom a mortgage loan is being sought will be made available to the Diocesan Loan Review Committee, plus any additional information required by the DLRC.
Information required by the DLRC needs to be inserted here.
 3. All the Canonical requirements as well as the pertinent Diocesan procedures relating to encumbrances will be followed in seeking approval for a mortgage loan.
 4. It is recommended that a congregation alert the Bishop's office early on when contemplating a mortgage loan, so that full assistance and guidance through the process may be provided.
 5. While not required, it is recommended that any unsecured loans be approved by the parish or Diocesan institution and reviewed by the DLRC.

Congregation submits paperwork to mortgage lender and sends a copy to the Diocesan Loan Review Committee (DLRC).

Outline of Process for non-Butterfield Mortgage Loans



Changes to Church Edifice or Permanent Furniture Thereof

No material change in the “fabric of the Church edifice or in the permanent furniture thereof” shall be made until the plans of such changes have been submitted to the Bishop for advice and approval (Canon 16, Section 13 of Diocesan Canons).