

Catholic Diocese of Bunbury Guidelines and Procedures for Leasing Parish Property

BACKGROUND

Ownership

In the civil law of Western Australia, all property (both real property and personal property) of the Church owned by the diocese or its parishes is held under the title of the “The Roman Catholic Bishop of Bunbury”, registered as a “Corporation sole” under the Roman Catholic Bunbury Church Property Act No. 28 of 1955. Titles to real property are held at the Diocesan Offices.

Any leasing of diocesan or parish property must take place under the seal of The Roman Catholic Bishop of Bunbury.

Diocesan Financial Administrator

The Bishop is ultimately responsible for the supervision of parishes in administration of parish property.

The Bishop has delegated his duty of supervising the administration of property belonging to the parishes to the Diocesan Financial Administrator. The Diocesan Financial Administrator who is chairman of the Diocesan Resources Committee administers the property and finances of the Diocese in the name of the Bishop.

Diocesan Resources Committee

The Diocesan Resources Committee is a consultative body appointed by the Bishop to assist him, the Diocesan Financial Administrator and parishes on the best use of property, and to advise the Bishop, Diocesan Financial Administrator and parish on such matters. The Diocesan Resources Committee does this by attending to the implementation of policies approved by the Bishop. The Chairman of this Committee is the Diocesan Financial Administrator.

Parishes

Parishes derive their property as a legacy from the past, and as a result of current initiatives. The property offers the parish the means to resource its apostolates in the present era and is also a heritage to be held in trust for future generations.

Accordingly a parish has a responsibility to be diligent in stewardship of its property as well as seeking out new property that will assist the future work of the Parish.

The Diocesan Resources Committee supervises the leasing of property by parishes. It does this in accordance with these guidelines.

Schools

Besides the parish’s church, centre, hall, or presbytery, the most significant other buildings on real property are likely to be a Catholic parish school.

School buildings in most circumstances are built on real property held in trust by the parish. The school therefore should be considered as one of the major apostolic works of the whole parish and not just of its teachers and pupils.

Because the parishioners are called upon to contribute to a school's real property requirements or its building, the parish becomes a partner in the operation of the school according to the principles and procedures outlined from time to time by the Catholic Education Office.

In undertaking any leasing that could affect the parish school, the parish should consult the Catholic Education Office.

GUIDELINES

The granting of exclusive possession of property by a parish to another party for a specified period of time requires the observance of canonical principles and civil laws. Church goods include both real property and personal property.

Canonical Principles

There are two canons on leases in the Code of Canon Law. The first specifies that it is for the national bishops' conference to establish norms for leasing of church property.¹ The second specifies that except for objects of little importance, no church property is to be leased out to their own administrators or close relatives of those administrators (up to the fourth degree) unless approved by a higher authority.

The Australian Catholic Bishops Conference established norms for leasing in 1985.² These norms state;

1. All leases of church property are to be drawn in accordance with the norms of civil law.
2. The monetary consideration is to approximate the ruling market value, except when the lease is to a body engaged in an apostolate.
3. Leases for periods in excess of nine years require the consent of the Bishop

Civil Law Issues

All leases bind the Bishop contractually to the terms of the lease. Therefore every lease, whether for real property or personal property, shall be documented in the form of a written lease executed by the Bishop in accordance with civil laws.

All leases shall be prepared by the diocesan solicitor. The Diocesan Financial Administrator shall liaise with the diocesan solicitor on behalf of the parish, and once satisfied with the preparation of the lease, shall cause the lease to be executed by the Bishop under seal.

PROCEDURES

Negotiation of the lease

The negotiation of the lease shall be the responsibility of the Parish Administrator. Negotiations can be undertaken by the parish administrator or if delegated by the Parish Administrator, a parish employee or parishioner(s) who is experienced in lease negotiations. At least one parishioner so delegated should be a member of the Parish Finance Committee.

¹ Canon 1297

² Australasian Catholic Record (1985) Volume 62 page 429

The Diocesan Financial Administrator should be included as early as possible within lease negotiations, and kept informed regularly of the progress of any negotiations. In the case where the parish may not have any parish employee or parishioner experienced in lease negotiations, then the Diocesan Financial Administrator should assume this role.

Lease documentation

Legal advice must be obtained in drafting any lease of church property.

The lease will include, but not be limited to, the following:

1. a clear statement of the length (term) of the lease
2. clear identification of the parties, lessor and lessee
3. a clear description of the leased property
4. a clear statement of what the lease payments are, and where, when and how they will be paid
5. a clear statement of how the leased property will be used by the lessee
6. how and by whom it will be maintained
7. where the risk of loss, and so duty to insure, lies for a partial or total loss of the property
8. which party is responsible for the maintenance, utilities and property taxes
9. a tax clause placing the burden of taxes arising from the lease on the lessee
10. what remedies are to be followed if the lessee fails to perform

It is also prudent to include a specific purpose clause in the lease, making clear that a material breach of the lease has occurred if the leased property is used for any illegal or immoral purpose or any other purpose inconsistent with the ethos of the Catholic Church. This clause should be specific, should be brought to the attention of the lessee as part of the negotiation process, and should be non-negotiable.