

## **PEIA PROPERTY PROCEDURES**

**In the Presbyterian Church (USA), individual congregations are required to obtain approval from their Presbytery before purchasing, selling, mortgaging, refinancing, leasing, or otherwise encumbering their real property (see the *Book of Order* G-4.0206, G-3.0303, sections b and f).** In this context, 'mortgaging' property means using church land or facilities as collateral in order to borrow money for any purpose.

**In the Presbytery of East Iowa, the Trustees are authorized to consider and act on all requests related to the above transactions (see Approval Chart for Congregational Real Estate Activities).** In most instances, the Trustees will bring the proposed action to PCC for approval prior to docketing the action for vote at a Presbytery meeting.

The Presbytery Trustees in conjunction with PCC approve loan guarantees on behalf of the Presbytery, and the PEIA Finance Policy authorizes the corporate officers to sign documents related to loan guarantees as well as the purchase, sale, or encumbrance of real property.

The Presbytery Trustees are also authorized to manage any real property that is under the direct jurisdiction of the Presbytery (i.e., real property that is owned by the Presbytery with all the rights of ownership e.g. property of a dissolved congregation) and is responsible for the repairs, maintenance and renovations of such real property. At the direction of PCC, the Trustees also manage the sale, purchase or leasing of church property that is under the direct jurisdiction of the Presbytery. Such transactions require the approval of Presbytery before closing.

-----

**As specified in the *Book of Order*, purchasing, selling, leasing or encumbering a church with debt financing requires congregational approval. Congregations wishing to undertake any of the property-related transactions that require Presbytery approval should start by contacting either the Stated Clerk or the Moderator of the Presbytery Trustees and describing the proposed project.** It is helpful to this conversation if the church has already consulted the Approval Chart for Congregational Real Estate Activities and is aware of the appropriate process. Based on the type of project being proposed, the Trustees will provide further information and answer any questions that may arise.

### **Advice on Property Transactions**

A congregation planning a property transaction (purchase or sale), facility expansion or re-development project is urged to hire an experienced outside consultant (real estate attorney or agent) to help the church understand the full costs and risks of its project, as well as to develop the best strategy for minimizing the risks and managing the project successfully. The cost of these services is borne by the congregation. In the case of major construction projects, a church is also urged to consider hiring a professional project manager to help the church select,

contract and oversee the work of the project architect, the general contractor, and any specialty vendors not included in the general contractor's contract, as well as to manage the project budget.

As the process moves forward, the Trustees prefer that a church's Session or congregation has approved the proposed action before a motion for formal approval is requested. Regardless of the approval sequence, it is prudent to contact the Stated Clerk and moderator of the Presbytery Trustees as early as possible in the church's planning process.

Church borrowing requires Presbytery approval when a church loan (1) will be secured with a mortgage or deed of trust on the real property of the church and/or (2) needs to be guaranteed by PEIA. Loan requests are evaluated by the Presbytery Trustees based on a review of the risk factors for the congregation, the proposed project or transaction, and other known information. The Presbytery will approve only those loans that have a strong likelihood of being repaid on time or ahead of time. Church loans from the PILP, as well as from many commercial lenders, require the Presbytery to guarantee the loan. If the church needs PEIA to co-sign or guarantee its loan, an additional, and more restrictive, set of approval criteria are applied for two reasons:

1. Guaranteeing a church loan puts the Presbytery's assets at risk (e.g. if the church is ever unable to pay its debt service on time). Consequently, PEIA may limit the total dollar value of church loans it will guarantee at any one time.
2. PEIA's loan guarantee may result in a congregation borrowing more than it may be capable of supporting over time, as well as tempting banks to approve larger loans than the church's credit-worthiness justifies without PEIA's participation as a co-signer or guarantor.

### **Evaluation Criteria**

In evaluating loan requests, the Presbytery Trustees and the PCC consider many factors that can affect a church's ability to repay all debt service on time, including:

#### **1. Congregational health**

- Is the church growing, or at least remaining stable, in membership, attendance, giving, and ministry activities?
- How broad and strong is leadership support for the project and the borrowing?

#### **2. Budget**

- If the loan is to be used for capital repairs, improvements or new construction, are the design documents and specifications sufficiently detailed to permit an

accurate construction cost estimate by a professional cost estimator, or preferably, an actual bid by a construction firm?

- Is the project budget complete and competently prepared?
- Have adequate contingencies been included, both for hard and soft costs?

### 3. Affordability

- Will the church have sufficient funds in time to cover all soft and hard costs of the project, including contingencies?
- Will the church be able to pay the following new expenses without cutting existing staff, programs, or missions?
  - Construction loan interest.
  - Permanent loan principal and interest.
  - Future potential increases in debt service due to increases in the interest rate.
  - Increased operating expenses related to new space, if applicable.
- Will the church be able to pay debt service even if membership and/or giving decline over the lifetime of the repayment schedule?
- Specific measures of affordability include:
  - Loan should not exceed 80% of total project cost.
  - Loan should not exceed 70% of property value.

### 4. Borrowing History

- What is the repayment history for any loans the church currently has or has taken in the recent past?

### 5. Project Results

- Is the project funded by the loan likely to increase, or at least stabilize, church membership?
- Is the project likely to improve the church's financial sustainability?
- Will the project help the church grow its ministries?

-----

## **Church Acquisition of Property**

### **Background**

A church may wish to sell its primary property for a variety of reasons. For instance, the church's membership and resources may have declined to the point that property upkeep is unaffordable. Selling its property may allow the congregation to continue in another, more affordable location. Sometimes the church may wish to use or develop the church site for a mission that will serve the community.

Due to varying circumstances and objectives, elements in the approval process for proposed sales will vary for each church. In all cases, the Trustees and PCC, working together with the congregation, will fashion a joint proposal to refer to Presbytery for approval.

-----

Congregational acquisition of real property (land and/or improvements) requires Presbytery approval if the property is being encumbered with mortgage financing. Though not required for a non-mortgaged property purchase, Trustee and PCC review and approval is strongly encouraged as a means of helping congregations avoid the various risks associated with acquiring property.

Property purchases are evaluated by ACCP based on an overall review of the risk factors present in acquiring, owning, and using the property. The evaluation will include, but is not be limited to, the following:

#### **1. Affordability**

- Does the church have the resources to cover the purchase price?
- If new borrowing is involved, how will the church cover this new cost?
- Does the church have the resources to cover the cost of operating and maintaining the property?

#### **2. Site Risks**

- Will the church be able to acquire clear title, without liens, encumbrances, or easements that may impact the property's value?
- Is the property (land and improvements) free of environmental hazards that may be expensive or impossible to remediate?
- Are property values in the surrounding neighborhood stable or growing?
- Is there any chance the property will be acquired in part or whole by eminent domain for public infrastructure improvements?

### 3. Purchase contracts

- Is the contract fair and advantageous to the church?
- Will the church have a sufficient study period to assess the property prior to making a purchase commitment?

#### **A copy of the final purchase and sales agreement is required after Presbytery approval.**

**Please note:** If a congregation is also proposing to relocate in connection with the purchase of real property, Presbytery approval is required for the relocation. Presbytery will delegate to an Administrative Commission:

1. the responsibility to assist the congregation in developing a relocation and mission plan before selling its property to help ensure a sustainable future for the congregation.
2. the responsibility to analyze any proposed sale from a financial and risk perspective, and (2) to recommend approval or disapproval to through PCC to the Presbytery

**Presbytery approval is required for the sale of church property including worship space.**

-----

#### **Licensing (Leasing) Church Property to Individuals or Organizations**

Presbytery approval is required for the following types of church licenses (leases):

- Licenses (leases) that include the church's worship space(s) and have a term longer than one month
- Licenses (leases) of any church space or land that have a term longer than 5 years.

#### **Background Concern**

**Tax assessors have become more active in recent years in partially revoking the property tax exempt status of churches that rent space to outside individuals or organizations (including organizations that are registered with the IRS as 501(C)(3) non- profit). Churches need to be cautious in choosing renters (rent only to 501(c)(3) organizations) and setting rents (avoid the appearance of making a 'profit' off of rental activity). This is an evolving area of church regulation, and it is wise for churches to consult an attorney knowledgeable in church tax matters and about tax assessors in your jurisdiction before the church commits to a significant new rental.**

## **Licensing (Leasing) Church Building Space**

**Application Procedure.** Submit the following information to the Presbytery Trustees as far in advance of each new or renewing lease as possible:

1. Session resolution approving the license, certified by the Clerk of Session.
2. The name, address and corporate status (individual, unincorporated group, for-profit corporation or not-for-profit corporation) of the entity wishing to license worship space (licensee)
3. A completed but unsigned copy of the proposed license agreement, preferably using one of PEIA's model license agreements. The agreement must contain the following important language:

*Notwithstanding anything contained in this License to the contrary, in the event that the Landlord as a religious organization is dissolved, Licensor or the Presbytery of East Iowa may terminate this License, provided that notice of such dissolution is provided to Licensee at least ninety (90) days prior to the anticipated date of dissolution, and (ii) the License shall not terminate for ninety (90) days after the date of such dissolution unless otherwise agreed by the Parties.*

4. The contact person's name, address, phone number, and email.
5. A certificate of insurance that shows all of the renting organization's insurance policies and lists the church as an "additional insured" for the full coverage limit of each of the policies.

## **Approval Criteria**

1. PEIA can supply a model license agreement for each congregation to use when it rents space. This model can be adapted by a congregation to reflect the particular information of the anticipated transaction.
2. License vs. lease form of agreement  
The model provided by PEIA is a license agreement rather than a lease agreement. Licenses grant fewer rights to the renting organization, making it easier for the church to terminate the agreement without undue time or complications.
3. Religious compatibility  
PEIA reserves the right to disapprove a lease to any organization (including a church) if it or its parent body (1) actively disparages the Presbyterian Church (USA), (2) denies that the PC(USA) is a branch of the true church of Jesus Christ, and/or (3) engages in activities or promotes values that are antithetical to those of the PC(USA).

4. Adequacy of insurance. Churches take on significant liability risks when they allow other churches, schools, or other organizations to use their space, with or without paying rent, particularly when children are involved. Insurance claims and lawsuits against licensees (lessees) for child abuse, injuries, and neglect often involve the licensor (lessor). ACCP will look for evidence that the church as licensor has taken at least the following steps to protect itself:

- Does the intended licensee have general liability, umbrella and workers' compensation insurance to cover all risks associated with its operations?
- If the licensee is a church, a school, or child-care provider, does its liability and umbrella policies provide coverage against claims of child abuse or molestation?
- Is the licensee's insurer a strong, reputable company?
- Does the certificate of coverage satisfy the criteria listed under application step 5 (above)?

5. Tax risk

- Is the renting organization a 501(C)(3) non-profit? Does the church have a copy of the organization's 501(C)(3) determination letter from the IRS to verify the organization's tax status?
- Can the church show that the rent being charged does not exceed the church's cost of providing space, maintenance, utilities, and other services to the renter?

6. Compatibility of Renter

- Has someone from the church visited the intended licensee at its current location to assess how compatible it is likely to be in terms of care for facilities, track record with prior landlords, etc.?

**Licensing Church Property or Land for More Than Five Years**

The application procedure and approval criteria are the same as described above for licensing church building space.

**Leasing Space for a Cell Tower**

Most cell phone companies require long-term leases (in excess of five years), renewable at the cell tower company's discretion, and thus require ACCP approval.

The application procedure is the same as described above for licensing church building space, except that most cell tower companies will require their own lease agreement, which is acceptable to PEIA as long as both PEIA and the church review the agreement well before it is signed.

Regardless of its origin, the lease agreement must contain the following provision:

*Notwithstanding anything contained in this Lease to the contrary, in the event that the Landlord, as a religious organization, is dissolved, Landlord or the Presbytery of East Iowa may terminate this Lease, provided that (i) notice of such dissolution is provided to Tenant at least ninety (90) days prior to the anticipated date of dissolution, and (ii) the Lease shall not terminate for ninety (90) days after the date of such dissolution unless otherwise agreed by the Parties.*

### **Approval Criteria**

1. Term of agreement. If the cell tower lease has an initial term in excess of five (5) years, and/or an option to extend for multiple renewal terms, the lease will provide an option for the church to terminate the agreement after ten (10) years without cost or penalty.
2. Rental payment and escalation terms. Is the rent reasonable, based on similar cell tower agreements in the area? Does the agreement provide an annual rent escalation provision?
3. Design documents. Does the lease include detailed plans and specifications that ensures the appearance of the cell tower (or the replacement steeple) and associated ground equipment will be acceptable? If a replacement steeple is being proposed, what guarantees concerning the lifetime of the steeple are provided?
4. Easements and Access. Is the church being required to provide a maintenance easement in connection with the lease agreement? Will the proposed easement inhibit the church's use or expansion of its facilities? The agreement should specify that no inspections or maintenance work will be performed on the tower during worship services.



## **Relocation - Churches Leasing Property for Their Own Use**

**Approval Authority.** Congregations wishing to relocate must have approval to do so first from PCC, and then from Presbytery. If a congregation plans to move to leased space, the Presbytery Trustees assists PCC by reviewing the proposed lease agreement. In those cases, PCC generally will not recommend approval of the relocation until the Trustees have approved the lease agreement.

**Application Procedure**—the following items must be submitted to the Presbytery Trustees:

1. Session resolution approving the relocation plan and proposed lease (certified by the Clerk of Session).
2. Copies of any materials, including the relocation plan
3. Contact information for the property owner (often another church).
4. Three years of the congregation's financial reports.

### **Approval Criteria**

- If the church will be moving to a new location, will the rented space, parking and location support church growth?
- Do the terms of the proposed lease agreement adequately protect the church's interests?
- Does the proposed lease agreement include the following termination provision?--

*Notwithstanding anything contained in this Lease to the contrary, in the event that the Tenant, as a religious organization, is dissolved, Tenant or the Presbytery of East Iowa may terminate this Lease, provided that (i) notice of such dissolution is provided to Landlord at least ninety (90) days prior to the anticipated date of dissolution, and (ii) the Lease shall not terminate for ninety (90) days after the date of such dissolution unless otherwise agreed by the Parties.*

- Is the proposed rent fair, based on local comparable rents, and affordable for the congregation?

### **Required after ACCP Approval**

The church's Session must approve the approved lease document prior to the lease being signed. After both parties have signed the lease, the Stated Clerk must receive a copy of the signed lease and a copy of the session meeting minutes, certified by the Clerk of Session, approving the primary details of the lease.