

PROPERTY GUIDELINES AND PROCEDURES

TORONTO SOUTHEAST PRESBYTERY

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TORONTO SOUTHEAST PRESBYTERY PROPERTY GUIDELINES AND PROCEDURES

This information is for the guidance and direction of the Trustees and/or the Official Boards, Church Board or Church Council of pastoral charges contemplating or engaged in any matter involving congregational property and/or assets.

1. BACKGROUND AND INTRODUCTION

a. References And Authority

- i. The Manual 2010 deals with congregational property in the following clauses
267 in respect to requirement of prior consent of Presbytery
271 in respect to procedures to be followed by the Board of Trustees
335 in respect to Presbytery duty in dealing with Real Property
APPENDIX II Trusts of Model Deed setting out authority and responsibilities of the Trustees
- ii. **Congregational Trustees Handbook 2004** provides detailed information on the responsibility and authority of Trustees, how they are organized and function, and how they deal with disposition of Property. It is available for download from the United Church of Canada General Council Website.
<http://www.united-church.ca/files/handbooks/trustees2004.pdf>
Users should note that like this document, it is a guide and does not replace or modify the requirements of the Manual.
- iii. **Toronto Southeast Presbytery Governance 2009**
See Pages 27 – 30 Finance and Property Team sets out exercise of responsibility for presbytery actions under section 335 of the Manual
See Pages 10 – 12 Executive sets out exercise of responsibility for presbytery action under section 334 of the Manual regarding amalgamations, disbanding, relocations, etc

b. Congregational Property: What is it and who does it belong to?

- i. **The Manual 2010 Clause 001** provides the necessary definitions:
“Real Property” means land, buildings, and anything else affixed to or growing on land or buildings and rights relating to these.

“Personal Property” means all property other than Real Property. Personal Property includes without limitation, money, investments, furniture, and equipment.
- ii. **Page 11 of the Congregational Trustees Handbook** provides a detailed explanation of ownership but in summary
Trustees hold title to Congregational property which by virtue of the definitions above is everything.
Trustees hold the property as a trust for the use and benefit of the congregation as a part of the United Church of Canada.
In dealing with property, Trustees must follow the lawful directions of the Official Board, Church Board, or Church Council.
Trustees cannot deal with certain property matters without first obtaining the consent of presbytery.
Trustees have a responsibility to understand ownership of property in the context of the United Church of Canada and the ramifications of that in dealing with property. In turn congregational boards and councils need to understand the responsibilities of trustees.

c. Congregational Property Matters and Presbytery

- i. **Presbytery consideration and decision regarding direction to Trustees and consent of Presbytery in property matters, as set out in Manual 2010 sections 267 and 335, is provided by the Finance & Property Team** which has been mandated to

act as a commission in these matters. The decision of the Team is reported to the Toronto Southeast Presbytery and received into the Official Minutes of the Presbytery.

- ii. **The decision of the Presbytery may be appealed** to Toronto Conference by any five members of the congregation. Given that the decision of Presbytery may reasonably result in actions that expose the congregation to liability and financial risk any such appeal should be initiated in a timely manner.

- iii. **Major Renovations and Major Personal Property** has been defined by Toronto Southeast Presbytery in a policy adopted in May 2010

Policy:

In regard to the Manual 2007 section 335 (a), it is the policy of Toronto Southeast Presbytery that

1. *Effective July 1, 2010 and notwithstanding any past policy or practice of any previous presbytery, **Major Personal Property** constitutes any item or group of items under the same consideration contemplated in Manual 2007 section 267 (b) in the accrued amount or valuation of One Hundred Thousand Dollars (\$100,000) or greater.*
2. *Effective July 1, 2010 and notwithstanding any past policy or practice of any previous presbytery, **Major Renovations** constitutes any repair, work, addition, upgrade or capital improvement or like project to the Real Property of a Congregation or Pastoral Charge estimated or expected to cost \$100,000 or more with all costs in including without limitation applicable taxes, design, permits, project management and commissioning.*

- iv. **At what point is consent of presbytery required?**

Manual 2010 Section 267 states: *“Such consent shall be sought in the first instance at the preliminary planning stage, and at such other times as the Presbytery may direct.”*

Congregational Trustees Handbook 2004, page 43: *“To avoid disappointed expectations on the part of the congregation, it is wise for some authorized representative of the congregation to inform the presbytery of the congregation's intentions well before they are finally determined, and to get a sense of what sort of dealing would meet with the approval of the presbytery and what conditions, if any, might be attached to its consent. Our polity requires that consent be sought in the first instance at the preliminary planning stage, certainly at the time of listing in the case of a sale, and at such other times as the presbytery may direct. (By-Laws, section 267) Before submitting the application, it is wise to find out from the presbytery what supporting material is required, to avoid delays in receiving an answer. Also, be aware that presbyteries need enough lead time to give a considered response to the application.”*

- v. **What constitutes Presbytery Consent and Approval?**

In Toronto Southeast Presbytery, the Finance and Property Team is constituted to act as a commission to make decisions for the Presbytery in matters of Congregational Property.

When Trustees are directed by their Congregational Board or equivalent to do something with the congregational property as set out in Manual 2010 Section 267, **Trustees must ask for the agreement**; i.e., consent or approval, of the Finance and Property Team **prior to taking action and that agreement must be obtained in writing**. Consequently the decisions of the Finance and Property Team should always be confirmed in writing.

- vi. In giving approval Presbytery (Finance and Property Team) has the authority to attach conditions that it deems appropriate and that are binding on the Trustees and Congregation.

2. MAJOR RENOVATIONS AND CAPITAL IMPROVEMENTS

a. **What is a Major Renovation and What does it imply?**

- i. In Toronto Southeast Presbytery and for the purposes of the Manual Section 267 and 335, a ***Major Renovation constitutes any repair, work, addition, upgrade or capital improvement or like project to the Real Property of a Congregation or Pastoral Charge estimated or expected to cost \$100,000 or more with all costs in including without limitation applicable taxes, design, permits, project management and commissioning.***
- ii. Note that **the \$100,000 is to include all costs.** A project will not be broken up or staged to avoid the \$100,000 threshold.
- iii. If the work contemplated fits the definition of a **Major Renovation, the Trustees must obtain prior written consent of Presbytery; i.e., the Finance and Property Team.**

b. **What if the Renovation is not Major?**

- i. If the work contemplated **is under the \$100,000 threshold, approval and consent of Presbytery is not required.** However the discernment and planning of the congregation should be no less diligent and thorough and its internal approvals should be properly undertaken and documented.
- ii. **Where funds held by the Trustees are involved, the Trustees require clear direction from the Official Board, Church Board, or Church Council to make use of those funds.**

c. **Dealing with Major Renovations and Improvements**

- i. Congregational planning and discernment will determine the scope and budget of the work to be undertaken. For major projects congregations are encouraged to use professional engineers and architects to ensure the quality and appropriateness of the work. This will require the expenditure of funds before the feasibility of the project can be assessed and an estimate of cost determined. Planning should also include a funding plan for the project.
- ii. If the project is likely to require the consent/approval of Presbytery, **an early consultation with the Finance and Property Team is helpful** to the later approval process and may result in helpful suggestions and contacts.
- iii. **Congregational Approval for a Major Renovation:** As part of the congregational approval process and regardless of whether the Trustees are actively involved in the planning and delivery of the renovation project, **the Official Board, Church Board or Church Council will direct the Trustees to seek the approval of Presbytery.** If funds held by the Trustees are to be used in the renovation, **the Official Board, Church Board or Council must direct the Trustees to provide the necessary funds.**
- iv. **The Trustees will meet in a properly constituted meeting and pass the necessary resolution seeking the approval of the Presbytery.**

The form of the resolution is as follows but may need to be customized for the circumstances of the work to be undertaken:

Whereas the congregation of (pastoral charge) has determined to undertake a repair/renovation/upgrade/improvement to (insert brief description) as set out in the attached project description and scope of work, and

Whereas the Official Board/ Church Board/ Church Council of (Pastoral Charge) at its meeting of (day/month/year) has directed the Trustees to

seek the approval of Toronto Southeast Presbytery for major renovation to the real property of the congregation,

We the Trustees of the congregation of (pastoral charge), hereby request the consent of Toronto Southeast Presbytery to the repair/renovation/upgrade/improvement to (insert brief description), a major renovation as set out in the attached (name of project) /description and scope for a total cost of \$ xxxxxx to be funded by (provide description or reference to a document)

The resolution once adopted should be certified as follows:

Certified to be a true copy of a resolution passed by the Trustees of the congregation of (pastoral charge) the _____ day of _____, 20 ____.

***Chairperson or Secretary,
Board of Trustees
(..... Pastoral Charge).***

- v. The resolution will be forwarded in writing with accompanying supporting documents to:
Secretary,
Toronto Southeast Presbytery,
963 Pharmacy Avenue
Scarborough, ON M1R 2G5

With a cc to:
Chair
Finance & Property Team
Toronto Southeast Presbytery,
963 Pharmacy Avenue
Scarborough, ON M1R 2G5

For expediency transmission may be via email with a follow up hard copy or fax

d. Presbytery Action re Major Renovation

- i. Finance and Property Team will invite representatives of the Trustees and/or Chair of Official Board/Church Board/Council to present the proposal at a Team meeting. The Chair may wish to delegate this to those most knowledgeable of the project and its financing. The decision of the Finance and Property Team will be recorded as a formal motion and communicated to the presbytery as a whole.
- ii. The Finance and Property Team may direct the Trustees to provide progress reports.

e. Follow up Steps

- i. If following the Presbytery approval, **the project is significantly modified in scope or increased cost, the Trustees have an obligation to seek further direction from the Official Board/Church Board/Council and the consent of Presbytery** for those changes.

3. SALE OF CONGREGATIONAL REAL PROPERTY

There are several stages that a pastoral charge goes through in the process of a sale of congregational real property.

- a. Pastoral Charge discernment, planning, and decision
- b. Listing of property for sale
- c. Requesting Presbytery approval for listing
- d. Request for approval of Presbytery for the offer for purchase/sale of property.
- e. Follow up and reporting

a. Pastoral Charge Discernment, Planning And Decision

- i. Through its own structures and governance the Pastoral Charge will identify the issues and needs around the property in question, the options to be considered including opportunities and challenges, and, in the event of sale, how the proceeds would be used. This planning and discernment process should involve the Trustees of the congregation because of their particular responsibilities for real property and financial assets. Part of that early planning may include matters identified for early consideration under the sale committee [see b. iii below].
- ii. Although Congregations need not seek presbytery approval to initiate a planning and/or discernment process, **an early consultation with the Presbytery may result in useful advice** regarding possible resources, information about similar undertakings of other congregations, and approval processes. As property sales are not a frequent occurrence in the life of a pastoral charge, the Trustees and other officers of the pastoral charge may wish to review and/or seek advice as to their respective responsibilities. A briefing of and consultation with the Finance & Property Team during the planning process and prior to framing the final recommendation and seeking approval of a preliminary plan will identify those matters where the Presbytery may have a concern and may require changes.
- iii. **Consultation with Presbytery on the Use of Funds from a Sale:** While prior consultation with Presbytery is not a general requirement of United Church Policy when a Pastoral Charge is considering the Sale of Property, **there is one specific part of the process where it is mandated. Manual 2010 Section 267 (b) requires that** *“The Official Board or Church Board or Church Council shall develop, in consultation with the Presbytery (emphasized font added), a proposal in respect of the disposition of the proceeds after providing for all costs and payments of indebtedness of the Trustees. The Presbytery shall make a decision in respect of such proposal.”* The Finance & Property Team is mandated to act for Presbytery in respect to Section 267 and will engage in that consultation. The determination of the use of the proceeds of disposition requires careful financial planning and discernment by the congregation and any such plan will be carefully reviewed by Finance & Property Team. This consultation may begin with an initial proposal from the Official Board or equivalent and may be quite general initially moving to greater specificity as the proceeds from sale are established with greater accuracy. At each stage where there is a request for consent, the plan for use of proceeds will be included and may not be finally approved or consented to in its final form until after the sale itself is approved.
- iv. **Typically in the sale of a manse, the proceeds of disposition** in whole or in some portion are designated by the Presbytery (Finance & Property Team) and are held by the Trustees in a **Presbytery Restricted Fund** with the income to be used first to support the housing costs of ministry personnel and any unused income to support the general ministry, program, or operating costs of the congregation. The amount so set aside depends on the reasonable expectations of investment income, the cost of housing allowances, replacement of net earning on rental of the property, etc. The congregation may wish to put aside the balance for capital improvements or supplement to the invested funds held by the Trustees for the benefit of the congregation and its ministries. In setting up funds for income, some thought needs to be given to how inflation might affect the income requirements from any such fund. **A Presbytery Restricted Fund means that any change in the use of the income and any encroachment on capital**

requires the prior approval of the Presbytery.

- v. While Finance and Property will necessarily deal with property matters, contact with Pastoral Oversight and Mission Strategy could be important for a congregation seeking new directions in ministry. If ministry personnel are likely to be affected in the outcomes of the plan, Pastoral Relations may need to be involved.
- vi. Any resulting report and recommendations will be considered by the Pastoral Charge Board or equivalent court of the congregation. Although the Official Board or equivalent has the authority to act for the congregation, some congregations may also seek congregational approval at an Annual General Meeting or special meeting of the congregation.
- vii. The decision of the congregation, however made, needs to include **clear direction from the Official Board or equivalent to the Board of Trustees** to sell the property and to apply the proceeds as has been determined by the Official Board or equivalent in consultation with the Presbytery.
- viii. **As part of the planning and direction**, the Official Board, Church Board or Council needs to determine **who will manage the sale process and what authority they will be given**. This could be delegated in full or in part to the Trustees or a Sale Committee could be established. The advantage of delegating to the Trustees is that they are instrumental to the approval and legal processes involved and can act once direction has been given and within the terms of that direction. Otherwise the Official Board, Church Board or Council will need to receive and act in a very timely manner on recommendations from the Sale Committee and provide continuing direction to the Trustees.

The sale processes require a high degree of delegation of responsibility to a small group and trust on the part of the congregation, Board and/or other Trustees. In dealing with agents and offers of purchase, the sale committee must be able to speak for the congregation. Where the Sale Committee is to bring a recommendation back to the Board of Trustees or a Congregational Board due thought needs to be given to the time required to do that.

In the case of manse sales where the timing of offers may not be in the control of the buyer, it may be expedient for the Sale Committee to have the authority to accept. In the case of a church property sale in the commercial real estate market, there may be a deadline for offers which allows for some planning of your approval process.

- ix. **Setting Special Conditions for Sale: If the congregation has any expectations or conditions for the sale or buyer**, they need to be made clear to the sale committee. For example, a congregation may have concerns for the future use of its site or want to give special consideration to buyers who are religious or socially worthy organizations. If so, this needs to be **fully disclosed to the Presbytery at every stage of approval and explicitly included in any approvals**. In the Presbytery approval process, Finance and Property will need to consider and balance both the interest of the United Church of Canada as ultimate owner and the realistic financial plans of the congregation for the use of the proceeds. Consequently Finance & Property may not agree and want to discuss alternatives. Generally speaking and regardless of the outcome of the sale, **Finance and Property has an interest**, hopefully shared by the Congregation, **in knowing the value or cost of any such consideration** in the sale; i.e., how much United Church of Canada asset is being contributed to others, and that an assessment and careful judgement of that cost has been made in accepting an offer of sale of less than full market value.
- x. Where a property sale may result **in proceeds in excess of the immediate and foreseeable needs of the congregation** and for which the congregation sees it has

some discretion in their disposition, they are encouraged to **consider allocating some portion to the wider church.**

xi. If the sale and/or disposition of property is part of an amalgamation, the plan of disposition is part of the determination of “Surplus” for which there are other processes and considerations [Manual 2010 Sections 268 and 334.] However, in dealing with the congregational property, Trustees are required to seek consent as set out in Manual Section 267 and these guidelines.

xii. If the sale and/or disposition of property is as a consequence of a Congregation asking to disband or relocate, the plan of disposition is subject to process and considerations set out in the Manual [Manual 2010 Section 269 and 334]. However, in dealing with the congregational property, Trustees are required to seek consent as set out in Manual Section 267 and these guidelines.

b. Listing A Property For Sale

i. This section assumes that the Trustees have been directed to sell a property. If a Sale Committee has been struck outside the Trustees they would need to follow the same steps, keeping in mind that it is the responsibility of the Trustees to get presbytery consent and execute the sale.

ii. The Trustees need to decide how the listing and sale of the property is to be managed. Typically a sale committee (or task group) of about 4 or 5 is struck. If the number of Trustees is small, it could be the whole Board of Trustees. It may be made up solely of Trustees but can be a mix of Trustees and members/adherents of the congregation or even include an experienced member of a neighbouring congregation. Regardless the members of the sale committee need to be prepared to commit significant time over a short period and be readily available for meetings and consultation.

iii. The responsibilities of the sale committee are to manage the sale process and represent the seller in the process, including but not limited to selecting a listing agent, determining the terms of the listing, overseeing the sale process, determining the suitability of offers, and the acceptance of a suitable offer to purchase. The mandate should be clear as regards the committee’s authority as to the circumstances in which it decides and those in which it recommends. Because the sale committee is de facto speaking for the Trustees who must implement its decisions and for the Board or congregation who has an interest in the sale process it has initiated, it must provide progress reports. It must also maintain the degree of confidentiality expected in real estate transactions.

Among the matters the sale committee needs to pay attention to at an early stage are:

- Is the title to the property clear and up-to-date? Some times the name of a Church has changed but the title has not been updated or the title is in the name of specific Trustees who no longer serve or are deceased. [The Trustees Handbook advises that in Ontario title can be in the name of “Trustees of XYZ United Church.”]
- Do you have a survey on file or do you need to arrange for one?
- Do you need to sever the property from other church property? Consultants can help you with this if you need to sever and if you do, the Trustees will to be directed by the Congregational Board or equivalent and then seek Presbytery consent.
- Who will provide the legal services for the sale? If your legal advisor is also a member of the sale committee and receiving a fee for legal services related to the sale, you may need to explore the perception of a conflict of interest and/or otherwise seek your legal services outside the sale committee. The benefit of receiving services for free or a reduced rate should always be considered in terms of the obligation taken on in accepting such services and the potential conflict of interest the committee must deal with if there are issues with the services.

- Has the property any environmental issues that need to be dealt with or disclosed such as a buried oil tank or asbestos in the building?
- You may want to consider hiring a consultant to perform a Level (Phase) I Environmental Study to identify issues with the property that you may want to deal with prior to putting the property on the market to reduce the number of purchaser conditions in an eventual offer of sale and purchase. To ensure that a purchaser can make use of any such report, ask your consultant or provider of any environmental work about their providing a “Letter of Reliance.”
- Are there heritage designations or other covenants attached to the property and do you have good documentation of them?

iv. The Listing Agent: For the listing for sale, the sale committee will identify at least three potential agents to make proposals to be the listing agent. To avoid any perception of conflict of interest and/or favouritism to a particular member of the congregation, any agents so considered will be at arms length from the congregation; i.e., will not be members of the congregation or belong to the immediate family of a member of the congregation. The benefit of receiving services for free or a reduced rate should always be considered in terms of the obligation taken on in accepting such services and the potential conflict of interest the committee must deal with if there are issues with the services. The committee will receive proposals and presentations from each agent under consideration taking great care that the process be open and fair to all invited to participate.

For the **sale of manses, residential real estate agents** known in the local community should be solicited.

For the **sale of church property, commercial real estate agents** should be used as they have the experience and contacts in that market.

As part of the selection process, the sales committee needs to **share with the agent any expectations and conditions** referred to above [a. viii] and be assured that the agent will be comfortable with including a condition that you may accept an offer that is less than the highest price. Be aware that such conditions usually impact the sale price and this may lead to a discussion of how to deal with the agent’s commission.

Sellers conditions should be disclosed when the property is listed for sale but worded in such a way to allow the seller to accept offers which may not be the highest price but still encourage market value offers. Because offers come with buyers conditions, regardless of the seller’s conditions, the “best offer” may not be the one with the highest price. **The fuller discussion of this occurs after the listing agent has been selected** and the sales and marketing materials are being developed.

Having selected one agent the sales committee will negotiate the terms of the listing. Any such agreement to list should include the condition “**subject to the approval of Toronto Southeast Presbytery of the United Church of Canada.**” It should be made clear to the listing agent that said phrase will be part of any offer to purchase document.

If it is necessary to put a time limit on the approval of presbytery such should be discussed beforehand with the Chair of Finance and Property Team or the Presbytery Staff person involved with property matters. **Any timetable for receiving and disposing of offers will recognize a reasonable time frame for Presbytery approval** and such should be discussed with the Presbytery people involved.

Be aware that the listing process may change the expectation for what may be realized in the sale of the property which may necessitate changes to the planned use of funds. For this reason the use of the funds from disposition may be described generally or tentatively but with sufficient specificity that it is clear to Presbytery what is the intent.

In reporting the results of the search for an agent and the listing process, the sales committee should provide an outline of the process used and rationale for selection. This should be included in any submission to Presbytery.

c. Requesting Presbytery Approval For Listing

- i. Having being advised by the sale committee of the choice of agent and terms of the listing, the Trustees will meet in a properly constituted meeting (See Manual 271) to pass a resolution requesting the approval of Toronto Southeast Presbytery. The form of the resolution is as follows but may need to be customized for the circumstances of the listing:

Whereas the congregation of (pastoral charge) has determined to sell its (specify manse/church building/other property), and

Whereas, the (Official Board/Church Board/Council) of (Pastoral Charge) at its meeting of (day/month/year) has directed the Trustees to do so,

We the Trustees of the congregation of (pastoral charge), hereby request the consent of Toronto Southeast Presbytery

- (1) to the listing for sale of the (specify manse/church building/other property), the legal description of which is (lot and plan) and the municipal address of which is (address), pursuant to the listing agreement with (agent/agency) dated (mm/d/year) and attached and subject to Presbytery approval, the terms of which are as follows: (period of listing, commission, offer price or alternative, etc.), and***
- (2) to the following disposition of the proceeds arising from the transaction: (provide description of disposition and how funds to be used)***

The resolution once adopted should be certified as follows:

Certified to be a true copy of a resolution passed by the Trustees of the congregation of (pastoral charge) the _____ day of _____, 20 ____.

***Chairperson or Secretary,
Board of Trustees
(..... . Pastoral Charge)***

- ii. The resolution is forwarded in writing with the accompanying supporting documents including rationale and copy of the listing agreement to:

Secretary,
Toronto Southeast Presbytery,
963 Pharmacy Avenue
Scarborough, ON M1R 2G5

With a cc to:

Chair
Finance & Property Team
Toronto Southeast Presbytery,
963 Pharmacy Avenue
Scarborough, ON M1R 2G5

For expediency transmission may be via email or fax with a follow up hard copy.

iii. **The Finance & Property (F&P) Team will consider the request and render a decision.** Finance & Property will likely **require additional supporting documentation** when making its decision. This will include:

- Any congregational planning and discernment documents relevant to the decision to sell the property
- Current year budget
- Annual financial statements for preceding three years
- Trustee financial statements for preceding three years
- Trustees current holdings and investment policy

What is expected should be made clear in the early consultation stages but pastoral charges should provide the above regardless.

Except in unusual situations involving a high degree of prior consultation, it would be the normal procedure for the Trustees to have time on the agenda of the Finance & Property Team meeting to present their request prior to the Team making a decision. The decision of the Finance and Property Team will be recorded as a formal motion and communicated to the presbytery as a whole.

d. **Offer of Purchase and Sale and Request For Approval Of Presbytery.**

i. The listing of the property will eventually result in an offer to purchase or withdrawal of the property from sale. The sale committee will work with the agent in negotiating the agreement for sale. Note that the document must include the condition, "**subject to the approval of Toronto Southeast Presbytery of the United Church of Canada**" and allow an appropriate time frame for Trustees to meet, request Presbytery's approval and the Finance and Property Team to meet and consider the offer.

The sale committee should have the agreement for sale vetted by its legal advisors prior to giving final agreement or make its agreement conditional on that review unless advised otherwise by that advisor.

ii. **The final agreement for sale will now be presented to the Trustees**, who will meet in a properly constituted meeting (See Manual 271) to pass a resolution requesting the approval of Toronto Southeast Presbytery.

Note that if the offer price is significantly different from that expected some explanation from the sales committee would be helpful and it may be necessary to amend the plan of disposition of the proceeds and this may require further involvement of the Official Board or equivalent body. Consequently **the approval of sale may go forward to Presbytery without a final proposal for disposition of the proceeds** but that proposal must be provided to the Presbytery for approval as expeditiously as possible at a later date.

The form of the resolution is as follows but may need to be customized for the circumstances of the sale:

Whereas the congregation of (pastoral charge) has determined to sell its, (specify manse/church building/other property) and

Whereas the Official Board/ Church Board/ Church Council of (Pastoral Charge) at its meeting of (day/month/year) has directed the Trustees to do so, and

Whereas the property has been offered for sale with consent of Toronto Southeast Presbytery and a suitable offer to purchase has been received,

We the Trustees of the congregation of (pastoral charge), hereby request the consent of Toronto Southeast Presbytery

- (1) **to the sale of the (specify manse/church building/other property), the legal description of which is (lot and plan) and the municipal address of which is (address) to (purchaser) as per the agreement for sale attached and subject to Presbytery approval, the terms of which are as follows: (sale price, closing, other significant conditions, if any), and**
- (2) **to the following disposition of the proceeds arising from the transaction:**

The resolution once adopted should be certified as follows:

Certified to be a true copy of a resolution passed by the Trustees of the congregation of (pastoral charge) the _____ day of _____, 20 ____.

**Chairperson or Secretary,
Board of Trustees
(..... Pastoral Charge).**

- iii. The resolution is forwarded in writing with accompanying supporting documents including rationale and copy of the Purchase and Sale Agreement to:

Secretary,
Toronto Southeast Presbytery,
963 Pharmacy Avenue
Scarborough, ON M1R 2G5

With a cc to:

Chair
Finance & Property Team
Toronto Southeast Presbytery,
963 Pharmacy Avenue
Scarborough, ON M1R 2G5

For expediency transmission may be via email with a follow up hard copy or fax.

- iv. **The Finance & Property (F&P) Team will consider the request and render a decision.**

If the terms of the sale and plan of disposition are virtually the same as presented in the request for approval for listing and sale, this approval should not require extensive additional documentation other than a report of the Sale and a copy of the Agreement of Purchase and Sale. It would be the normal procedure for the Trustees to have time on the agenda of the Finance & Property Team meeting to present their request prior to the Team making a decision. The decision of the Finance and Property Team will be recorded as a formal motion and communicated to the presbytery as a whole.

e. Follow Up and Reporting

- i. The consent by Presbytery will include at minimum **a direction to Trustees to provide a final accounting of the sale** to be provided to Finance & Property Team. This should be forwarded as soon as possible after closing.
- ii. The Finance and Property Team may in its motion of approval **require the Trustees to provide additional information particularly around use of the proceeds and direct that the proceeds be held by the Trustees solicitor** until satisfactory information is received and the funds released.

- iii. In the case of a distribution of proceeds of sale, the Finance and Property Team may direct the Trustees to provide further reports and statements to confirm that the funds were used as approved.

4. LEASES AND OTHER MATTERS RELATED TO REAL PROPERTY

a. Leases and Not Leases

- i. Congregations regularly allow the use of their property and premises by other than their own congregational organizations and charge money for that use. These may be called rents, shared building costs, or something other. The use of space, costs and conditions may be confirmed through a booking/rental agreement or a letter which an authorized congregational representative signs off or both parties sign off or some other documentation. Although such arrangements may continue for a long time, the written agreements are often renewed annually.
- ii. **A lease is a formal legal agreement** between the Church and the User of the Space which sets out what has been agreed as terms of the lease which include premises (space to be used) and exclusive use premises, any fixtures and chattels (equipment & furnishings), rent, start date and term of the lease, responsibility for taxes, insurance, repairs, rights to assign or sublet, dispute resolution and arbitration, early termination, renewals, any special conditions of use and options. In some situations, that lease will be registered on title of the property.
- iii. A lease is a legal encumbrance on the Real Property of the Congregation and as such **requires that Trustees, having received the clear direction of their Congregational Board or Council to enter into a lease, must first seek the consent of Presbytery - Manual 2010 Section)267 and follow procedures set out in Manual 2010 Section 271.**
- iv. Trustees should become aware of the various means by which their congregation “rents” out space and if the formality, exclusivity, term, complexity of the arrangement has the effect of a lease, the Trustees should become involved.
- v. **Insurance:** User groups and/or tenants should carry their own liability insurance and if they are bringing equipment and furnishings into the premises property insurance as well. In making the arrangements, the congregational representatives should request that the congregation be added to the user’s liability policy and should obtain a certificate of insurance confirming this addition and coverage. This requirement may be part of the rental agreement or lease. Certificates of insurance need to be requested annually. For more on insurance and risk management see Trustees Handbook 2004 Page 32.

Note that some national organizations such as Scouts and Guides have national indemnity policies and can provide verification that their members are covered.
- vi. Leases should be vetted by legal counsel representing the congregation.
- vii. In the case of the rental of a manse, a lease agreement should always be used to ensure that the congregational property rights are protected and may, should the Trustees so determine, be a standard template. In all cases the lease should be in the name of the Trustees of ABC United Church and the Trustees signing the lease should do so indicating that they are Trustees.

b. Dealing with Leases Requiring Presbytery Consent

- i. United Church of Canada does not define a lease or provide additional context to leases or space use agreements requiring consent. **For the guidance and direction of Trustees and Congregations in Toronto Southeast Presbytery, consent of Presbytery will be required**
 - Where the use of the Congregational Real Property is subject to a formal lease or other legal executed agreement, and/or
 - Where the use of space is substantial (e.g. CE wings or blocks of rooms), largely exclusive to the renter (i.e., not available for congregational activities or other users at any reasonable time) and for a term of more than a year, and/or

- Where the lease will be registered on title, and/or
 - Where a manse is first rented for a term of more than 2 years on a lease or is expected to be rented (not necessarily to the same tenant) on a continuing basis.
- ii. **For further guidance, in the renewal of a lease or space use agreement for which consent of Presbytery had already been given**, the additional consent of Presbytery will be required
- where said renewal or extension is by virtue of a new lease or agreement, and/or
 - where the terms of the lease or agreement with the exception of the rent and term, are significantly changed, and/or
 - where the amended lease is to be registered on title.
- c. **What are “Other Matters” Affecting Property and Requiring Presbytery Consent**
- i. **Manual 2010 section 267 – Congregational Property – Direction and Consent** lists specific matters and adds the phrase “*or otherwise deal with the Real Property or major Personal Property of any Congregation or erect, enlarge, demolish, rebuild, or effect major renovations to any building held or to be held for any Congregation.*” By virtue of this policy Trustees must consider the need for seeking Presbytery consent in every significant step in dealing with Congregational property except where thresholds are defined for major renovations and major personal property.
- ii. Those matters that are listed include
- Acquisition
 - Sale
 - Mortgage
 - Exchanging property
 - Leasing
 - Erecting, enlarging, demolishing and major renovations
- iii. Other matters could include but are not limited to
- Acquiring Congregational Premises or a building for any purpose by Lease [Manual 2010 Section 391 (b)]
 - **Request For Proposal (RFP) (see following sections)**
 - Development agreements (see following sections)
 - Assignment, transfer and/or sale of property rights such as air rights and zoning or density
 - Zoning changes
 - Easements
 - Severing of a portion of property
 - Hypothecation (using property as surety)
- d. **Approvals and Consent for Leases and Other Matters**
- i. As per other approvals and consents **Trustees require direction of the Official Board, Church Board or Church Council** of the congregation as to the lease and other action regarding property including the disposition of any proceeds or the source of any funds required for acquisition or property improvements. Trustees may or may not be part of the congregational discernment planning process but there are benefits to their involvement.
- ii. In a properly constituted meeting **Trustees will consider and adopt a resolution setting out the request to Presbytery**. The form of this resolution may be adapted from others provided in this guide but needs to provide sufficient detail as to what is being contemplated for the property. It may refer to congregational reports and documents which will be provided to Presbytery. The resolution once adopted is forwarded to Presbytery as per the other processes set out in earlier sections.

iii. **The Finance and Property Team will consider the request and provide for an opportunity for relevant congregational representatives to present the request and provide any necessary clarification and answer questions. The Finance and Property Team will communicate its decision and provide an official response in writing.**

e. **Heritage Listing and Designation**

i. **The consideration and listing of a church property for heritage purposes has a significant consequence for the property** in terms of its potential for future sale, for its “market value” for other than a place of worship, for future renovations and repairs.

ii. **Trustees must advise the Finance and Property Team as soon as possible of any notice** regarding Heritage interest, listing, audit or study of any part the church property and subsequently of any reports, notices and meetings related to the listing and designation and/or audit process.

iii. **As Heritage designation is an encumbrance on Congregational Real Property, should Congregations wish to support such designation, Trustees should be directed to request the consent of Presbytery as a matter affecting Congregational property.**

iv. **Presbytery and Wider Church Engagement with Heritage Issues**

- Presbytery has a duty in respect to heritage as set out in Manual 2010 section 380 (c iii): *To work with the Conference Archives and History Committee (does not exist in current Toronto Conference governance) in the development of criteria and guidelines for the designation of United Church historic sites, and to seek appropriate designation of particular sites within the jurisdiction of the Presbytery.*
- General Council Office of the United Church of Canada is actively engaged with other major denominations holding church property in Ontario in challenging some aspects of the current Heritage legislation and processes.
- Toronto City Council at its final meeting in August 2010 adopted a motion that *“the Planning Department in collaboration with Heritage Toronto undertake a comprehensive audit of all places of worship within the city of Toronto” and, “this audit be based on a dialogue with the faith community.”*
Toronto Southeast Presbytery, Toronto South West Presbytery and Toronto Conference may reasonably expect to be part of this city of Toronto initiative as may General Council as the ultimate owners of the property.

v. As the listed owners of a church property **Trustees will be the ones who receive any notices and information about the heritage listing and designation process or the audit process.**

vi. Finance and Property Team will work with Trustees and Congregations in all aspects of the Heritage designation and city planning audit process.

5. DEALING WITH PERSONAL PROPERTY

a. What is it and Who is Responsible for It

- i. Personal Property of a Congregation is by United Church of Canada definition anything that is not Real Property or attached to Real Property. As such it is everything else and so includes furnishings, decoration, equipment of every description, securities, investments, kitchenware and dishware.
- ii. Trustees hold title to everything but do not manage the use of everything. See the Trustees Handbook for a fuller exposition of the relationship of Trustees to other aspects of Congregational governance.

b. Major Personal Property and Presbytery Consent

- i. *For the Congregations of Toronto Southeast Presbytery, Major Personal Property constitutes any item or group of items under the same consideration contemplated in Manual 2007 section 267 (b) in the accrued amount or valuation of One Hundred Thousand Dollars (\$100,000) or greater.*
- ii. **Trustees require the consent of Presbytery when dealing with major Personal Property** and that dealing may be purchase, sale, gifting, disposal, or anything that affects it. A gift to the congregation of major Personal Property **does not require Presbytery consent.**
- iii. **The process for Presbytery consent** is similar to the processes described in earlier sections of this document. The Trustees having received direction from the Official Board, Church Council or equivalent congregational body, meet and approve an appropriate resolution requesting consent of presbytery. Supporting documentation will likely vary depending on the object but would include a rationale for disposition or acquisition, some confirmation or appraisal of the value and source of funds for a purchase and disposition of proceeds for a sale.

6. REDEVELOPMENT OF CHURCH PROPERTY

Redevelopment of a Church building or site is a lengthy process with profound impact on Church property, both Real and Personal. The congregation and its governing bodies, including the Trustees and all those involved in the planning and approval process need to be aware of the need to engage with Presbytery and seek the necessary consent at certain stages of the process.

a. Redevelopment - Vision and Planning – First Stages

- i. As a congregation moves into a process of visioning for its future, it will likely begin to explore possibilities and options for its existing property and its needs for a future church home.
- ii. At the earliest practical stage when there is some form to a plan, there is value in briefing and consulting
 - Finance and Property in regard to any property matters and concerns that will need to be addressed and to the stages at which consent may be required.
 - Pastoral Oversight in regard to the current and future ministry of the congregation
 - Mission Strategy in regard to the consonance with any overall Presbytery mission goals

An outcome of this early consultation and communication could be a form of approval in principle, a brief good news report to the Presbytery, and encouragement to the congregation. It might also be a reality check which focuses the congregational plan on concerns that can be addressed. **Based on the information provided Finance and Property may indicate the stages or next stage where approval should be sought and where consent will be required.**

- iii. **Request for Proposal (RFP):** Where a congregation may wish to identify a developer or partner to work with them in some form of redevelopment of the congregational property, it would be appropriate to prepare a “Request for Proposal” document or RFP. The document would set out the expectations and conditions of the congregation in any redevelopment, basic information about the property and owner, how the project is to be managed by the congregation, approval processes and any other matters that bear on the process. **Because the RFP is a form of putting the property on the market, Trustees should request the consent of Finance and Property Team. Bringing the RFP forward for consideration and approval would be another way of seeking early approval in principle.**

There are other tools that may be of use to a congregation seeking information or potential development partners. The use of a consultant may be helpful and important at some early stage of the planning process. Talking to other churches that are considering or have undertaken redevelopment discernment would also be helpful.

- iv. **Planning Cost and Consent:** In this process the congregation may engage consultants, commission architectural and engineering studies. **If the estimated accrued costs of planning exceed the \$100,000 threshold, Trustees must obtain presbytery consent,** the more so if it is to be funded by assets held by the Trustees or by means of a loan.
- v. **Loans and Grants and Presbytery Approval: Applications for grants and loans** from Toronto United Church Council, General Council, other United Church organizations and some Foundations **may require the approval and/or endorsement of Presbytery.** In such cases an appropriate resolution from the Official Board or equivalent will be forwarded to Finance and Property with appropriate documentation. Depending on its knowledge of the current state of the redevelopment project, **Finance and Property may request a briefing.** Any approvals given will be recorded by a minuted motion of the Finance and Property Team.

b. Redevelopment Plan Approved by Congregation –Consent re Property Changes:

- i. At some point in the planning the congregation will have to be consulted and decide if they are going to adopt a plan which will include a new vision or focus of ministry and a significant change to their congregational property. When the congregation approves the plan, the Official Board of equivalent should share the plan with Presbytery (Finance & Property Team), perhaps seeking some level of endorsement or support, and direct the Trustees to seek the consent of presbytery for those matters requiring consent which would include

- Potential renovation, demolition, reconstruction, building of a church edifice and/or facilities
- Sale or transfer of property
- Commitment of monies; i.e., budget

Finance and Property would require a full briefing and documentation. Consent of Presbytery would need to acknowledge, that the redevelopment was contingent on a number of factors and may change.

c. Steps Requiring Presbytery (Finance & Property Team) Consent

- i. **Applications for Rezoning:** A rezoning application is a likely consequence of the submission of a redevelopment plan for approval of city planners. Given that this is an irrevocable step with many consequences for the property in terms of use and value, and requires specific actions by the Trustees, **consent should be sought if such action had not been contemplated or referenced in earlier approvals** by the Finance & Property Team

- ii. **Mortgage Application:** Mortgages are specifically referenced in the Manual as requiring consent.

iii. **Final Project Scope and Budget**

At this stage **final project costs and funding sources would be known and it would be appropriate to consult with and update Finance & Property** as to the final scope of the project, costs, funding, partners and arrangements. Such approval based on a complete picture of the project would likely mean that Trustees would not have to come back for approval on specific agreements, contracts and details.

In the event of a redevelopment agreement, the other party may insist on the approval of The United Church of Canada which in our polity means Presbytery or the Congregational Trustees may properly execute their approval as subject to the approval of Toronto Southeast Presbytery. Those approvals would come to the Finance & Property Team.

- iv. **Transfer of Property to another United Church body or sale or change in use or control of property:** The redevelopment may require the transfer of the property to United Church of Canada Corporation established for the purposes of the redevelopment or management of the redeveloped property. **The transfer being in effect a sale even if monies are not exchanged would require the approval or consent of the Presbytery through the Finance & Property Team** unless that step were contemplated and included in the approval of the final project. **Likewise a lease of the land would require the approval or consent of the Presbytery through the Finance & Property Team** unless that step were contemplated and included in the approval of the final project. However, if specific legal documents are executed around the transfer either or both parties may want the assurance of a minuted approval by the Finance and Property Team.

- v. **Progress Reporting and Changes to Redevelopment Plans:** Redevelopment plans and agreements may change as the project progresses and require renegotiation and amended agreements. **Finance & Property Team will expect to be kept informed of the progress of the project. Where there are significant changes and new**

**agreements the further approval and consent of the Finance and Property Team
will be required**

The following are extracts from Manual 2010 that are relevant to the Property Guidelines and should not be taken as complete or taking the place of referral to the full Manual.

- 267 Direction and Consent. The Trustees may acquire, sell, mortgage, exchange, lease, or otherwise deal with the Real Property or major Personal Property of any Congregation, or erect, enlarge, demolish, rebuild, or effect major renovations to any building held or to be held for any Congregation, only with the prior decision of the Presbytery, in writing, consenting to such action. Such consent shall be sought in the first instance at the preliminary planning stage, and at such other times as the Presbytery may direct. The application for such consent shall be in writing. The Trustees shall submit such material as the Presbytery may require, and:
- (a) in the case of any acquisition, major renovation, enlargement, or construction, the application shall state the source from which funds will be made available; and
 - (b) in the case of any sale, mortgage, exchange, lease, or other disposition of Real Property or major Personal Property, the application shall give the Presbytery full information. The Official Board or Church Board or Church Council shall develop, in consultation with the Presbytery, a proposal in respect of the disposition of the proceeds after providing for all costs and payment of indebtedness of the Trustees. The Presbytery shall make a decision in respect of such proposal.
- 271 Procedures. The following procedure shall be followed in carrying out the orders and directions of the Official Board or Church Board or Church Council of the Pastoral Charge or Congregation in connection with any acquisition, sale, mortgage, lease, exchange, construction, enlargement, major renovation, demolition, or rebuilding:
- (a) a meeting of the Board of Trustees shall be called, giving each Trustee at least seven (7) days' notice in writing, specifying the time, place, and purpose of the meeting;
 - (b) the Board of Trustees shall pass a resolution setting out:
 - i. the decision to acquire, sell, mortgage, lease, exchange, construct, enlarge, effect major renovations, demolish, or rebuild;
 - ii. the legal description of the Real Property, or an adequate description of the Personal Property;
 - iii. the price or costs;
 - iv. the terms; and
 - v. the proposed application to be made of the proceeds, or the proposed source of funds;and authorizing application to be made to the Presbytery for its consent;
 - (c) the resolution shall be entered in full in the minutes of the Board of Trustees. A copy of such resolution shall also be made, followed by a certificate which shall be signed by the Chairperson and Secretary of the Board of Trustees;
 - (d) a certified copy of this resolution and application shall be sent at once to the Secretary of the Presbytery, who shall then immediately refer it to the Presbytery Property Committee or its equivalent, so that the Committee can be called together to consider the request and be able to submit its report to the Presbytery;
 - (e)

335 Dealing with Real Property.

- (a) Each Presbytery shall determine what constitutes "major Personal Property" and "major renovations" for the area within its jurisdiction and shall communicate that determination to each Congregation and Pastoral Charge within its jurisdiction.
- (b) The Presbytery shall receive and make a decision with regard to applications to acquire, sell, mortgage, exchange, lease, or otherwise deal with the trust property of Congregations in accordance with the provisions of sections 250 to 262 and 265 to 272. Any five (5) members of the Congregation have the right of appeal to the Conference.
- (c) The Presbytery shall consider and dispose of applications from Congregations for approval of sites for church edifices or manses, building plans, and financial proposals.
- (d) In the case of a separation of the Congregations within a Pastoral Charge, where there are competing claims to church property and the Congregations cannot agree to a settlement, the matter shall be addressed through the policies and procedures approved by the General Council for dealing with resolution of conflicts.

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