

POLICY PAPER

Regarding churches within the Presbytery of San Jose allowing outside groups to use their facilities

*The Lease forms should be filled out and **sent electronically** at least one month **before** the church enters into an agreement with an outside group. (Meaning: send complete proposed lease to Financial Affairs Com. of Presbytery for their review, they will send it back to the church with approval or suggested changes, then the church will have the tenants sign and the church will sign and **then mail the signed lease back to the Presbytery for signatures.**)*

Send to Diane Case at the Presbytery of San Jose who will forward to the Financial Affairs Committee of Presbytery for their review. (rdtkcase@comcast.net)

Also: remember that any organization that leases your facility on a long lease needs to be mentioned on the church's Welfare Exemption Form filed with the County annually and any organization leasing your facility that is not a 501c(3) qualified organization might increase the church's property tax liability and may incur Unreimbursed Business Income that could require the church to file Form 990 and pay appropriate income taxes.

Why the church needs a Lease Agreement with all Tenants?

A church is exposed to liability potential (accidents, injury, damage, theft, etc.) anytime a third party (vendor, service provider, individual, or organization) comes onto the church's grounds. Whether or not the church created the conditions which resulted in the injury or just neglected to take the steps necessary to mitigate their role in the incident, the church and their insurance company might find themselves in court. Proper steps, including lease agreements can help to alleviate the church's liability in these situations.

Annually, the Session of the church should review all contracts and leases in effect as well as revisit any groups which the church has adopted as adjunct mission programs for the purpose of liability insurance coverage.

Who is a third party?

Vendors and Service Providers – anyone who comes on the premises to help the church maintain the buildings and grounds or to help facilitate the running of church or guest programs. (Including, but not limited to: landscapers, janitorial services, wedding service providers, caterers, photographers, maintenance crews, contractors, etc.) Note: Contractors should be licensed and bonded.

Individuals or Organizations – anyone who uses space for meetings, parties, and events. (Including, but not limited to: schools, pre-schools, tenants, people renting your parking lot, other churches, community and neighborhood organizations, support groups, mission projects, book clubs, ceremonies, receptions, concerts, etc.)

Should we use the Short Term Form or the Long Term Form of the Standard Lease Agreement?

As a rule of thumb, the Financial Affairs Committee of the Presbytery suggests:

**Use the Long Term Form whenever the use will last longer than a weekend or is a recurring use.
Use the Short Term Form for all uses of a weekend's length or less.**

A form is not needed when the user includes a member of the church and they are engaged in normal church related activities; such as weddings, memorial services, parties, etc.

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However, it would still be a good practice if the church would acknowledge these events in their Session Meeting either by the adoption of the future calendar or on an individual basis in the consent docket.

Weddings and Funerals

A wedding or funeral for a church member or their family and/or the service will be performed by one of the pastors of the church does not need to be formalized with a Standard Lease Agreement. However, if the facility is being rented out to non-members for a wedding or funeral with a guest pastor, they should be asked to sign the short form.

Be sure to include in the description of the use of facilities and time of use all time related to decorating, caterer coming early to set up, rehearsal, etc. They will not be using the facility for just the wedding.

Remember that weddings often include outside service providers such as florists, photographers, caterers, etc. These providers should have their own liability insurance, worker's compensation insurance.

Adopting an outside group as a mission project of the church?

Any use out of the Normal should be listed in the Session Minutes and approved. What the Session is doing when they allow a group to use the church facilities without having their own insurance is accepting liability for whatever happens. As long as the Session has reviewed the situation and accepted this liability, they can adopt this use as a mission project of the church, and the insurance of the church should cover all liability.

Each church should verify this with their own insurance company before they proceed to use this as policy.

The kinds of groups you might adopt under your own insurance liability would include AA meetings, mission organizations, community groups, neighborhood groups, parties, other churches, Bible Study Fellowship, Community Bible Study, etc.

“Any time a third party comes onto the church property, it is important for the church to think through the following:

- 1) do we have a written agreement that protects the church from negligence caused or created by this third party,**
- 2) has the church been named as an additional insured on the third party's liability workers compensation, or auto liability policies, and**
- 3) does the church have certificates of insurance from the third party?**

Understandably, churches will be faced with situations where one or more of these controls cannot be obtained from a third part. At that point, the church leadership needs to carefully weigh the risks of the situation and make a wise decision as to whether or not that third party will be allowed to use or provide services within the church, All three of these controls should be sought out and obtained with few, if any exceptions.”

From an informational bulletin by Zurich Services Corporation