

Presbytery of San Jose

FAQ – Use of Church Property by Third Parties

Introduction

These FAQ provide guidelines and procedures for churches in the use of their property by outside groups, organizations, or individuals. These FAQ are intended to apply whether the use is pursuant to a lease, rental agreement, or otherwise, and whether or not rent or other fees are being paid.

Why does the church need 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.

How often should a church review its leases?

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.

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

The Financial Affairs Committee of the Presbytery suggests:

Use the Long Form whenever the use will last longer than a weekend or is a recurring use.

Use the Short Form for all uses of a weekend's length or less.

When do leases need to be approved by the Financial Affairs Committee?

We request all leases that use the Long-Term lease form be submitted to the Financial Affairs Committee for review. Any lease involving a significant proportion of the church facility, exclusive use of a portion of the church property, or a significant portion of a given month needs to be approved by the Financial Affairs Committee to ensure the congregation's and PC(USA)'s interests are protected. ***When in doubt, submit it!***

What are the considerations we should take into account when entering into a lease?

- Market rate for a similar space (We recommend contacting a real estate agent for current rates.)
- Any annual increases for rent
- How often you want to renew the lease
- Space usage (Will the space be exclusively used by the lessee? What will the schedule of usage be? What ministries might need to be adapted or rescheduled? For instance, if the space is leased every Wednesday, will a lease affect Ash Wednesday services?)
- Inclusion of a map, key agreements, storage designations
- The mission and core values of the lessee organization
- If the lessee organization will have worship services

- The non-profit or for-profit status of the lessee organization (Organizations or businesses that are for-profit may result in changes to the church's property tax designation. There is a provision for this to be covered in the Long-Term lease form, but congregations should be aware of the potential administrative challenges that can result)

Will leases affect my church's property tax status?

If a lessee is a qualified 501(c)(3) non-profit organization, the church's tax status will not be affected. 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. Any organization leasing your facility that is not a 501(c)(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. The Long-Term Lease Form accounts for the property tax risk and places the responsibility for such costs on the lessee.

When do leases need to go to a meeting of Presbytery for approval?

As per G-4.0206b - *A congregation shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the congregation.*

Therefore, there are two occasions where leases need approval from the Presbytery.

- 1) When any space of the church is being leased for purposes of worship.
- 2) When the lease is longer than 5 years.

Do we always need to formalize church use with a lease?

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. 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. And a formal lease is needed with third parties.

Who is considered a third party?

Anyone who is not a church member doing church ministry. This includes: vendors and service providers, individuals, and organizations.

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: All 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.)

What questions should we ask third party lessees?

We recommend the following advice from an informational bulletin by Zurich Services Corporation:

“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?
- 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 party. 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.”

What if we would prefer not to have a lease and instead adopt an outside group as a mission project of the church?

Any use outside of the normal operations of the church should be listed in the Session Minutes and approved. In allowing a group to use the church facilities without having their own insurance, the Session 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.

But each church should verify the proposed use with its insurance company before proceeding to adopt the outside group. 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.

How should weddings and funerals use lease agreements?

When a wedding or funeral is for a church member or their family and/or the service will be performed by one of the pastors of the church, there is no need for 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. (See question below regarding leases using a space for worship). In such cases, be sure to include in the description of the use of facilities and time of use all times 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. The church should ask the responsible person from the wedding party to provide reasonable assurance that this is the case.***

What if we want to lease space to another organization or individual for worship?

Such a lease must be sent to Presbytery for approval at a Presbytery meeting per G-4.0206b of the Book of Order (discussed above), including for one time uses such as weddings or funerals.

Is there a way to host such a worship service without a formal lease or Presbytery approval?

The need for a formal lease or Presbytery approval can be avoided if the pastor or elders of the congregation co-lead the service and the service is approved by Session as a joint service of the congregation.

If we have previously had a worshiping organization's lease approved by the Presbytery, do subsequent leases need Presbytery approval?

Yes. Any renewals, extensions, or new leases with the organization need to be approved by Presbytery.

Procedures for getting approval of Leases

*For leases requiring the Financial Affairs Committee approval, the Long Lease forms should be filled out and sent electronically (lease@sanjosephby.org) at least one month **before** the church enters into an agreement with an outside group. Do not substantively change the Long-Term Lease Form as its format has been created to provide the greatest protection for the local church.*