

**APBA Notes on Presentation  
Leasing or Fleecing  
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**Panel:**

Chuck Bichler - legal  
Meier, Kennedy & Quinn  
445 Minnesota Street  
Bremer Tower Suite 2200  
St. Paul MN 55101  
(651) 228-1911

Tom Mertens - Archdiocese  
Archdiocese of St. Paul and Minneapolis  
328 West Kellogg Boulevard  
St. Paul, MN 55102  
(651) 291-4404

Paul Donovan - leasing  
Cushman & Wakefield  
801 Nicollet Mall, Suite #325  
Minneapolis MN 55402  
(612) 305-2113

Dave Waller – risk management  
Catholic Mutual  
267 8<sup>th</sup> Street East  
St. Paul MN 55101  
(651) 290-1605

Alan Erickson - finance  
Catholic Finance Corporation  
5826 Blackshire Path  
Inver Grove Heights MN 55076  
(651) 389-1073

The following is a brief description of the questions and answers at the panel discussion regarding leasing. Specific questions may be digested to the panelists named above.

**What is the Archdiocese position on leasing property?**

There needs to be a discussion between the pastor, trustees and finance council when deciding to sell or lease property. There are 3 areas to consider:

1. Do you want to sell or lease the property? Do you want to be a landlord? There are necessary skills necessary along with time required to be a landlord.
2. Is the property marketable? Some property is not conducive to dividing.
3. What will be the use of the income and how does this affect the financial position of the parish. If the parish becomes heavily reliant on the leasing income, it is disastrous when the tenant leaves.

If the property is sold, it is important to find a good buyer with a fair market price. It is recommended to set aside proceeds for capital needs and improvements and proceeds should not be used for operations.

### **Are there Archdiocesan restrictions regarding to whom a parish may lease or sell property?**

Yes, the parish needs to request approval from the Archdiocese so that the buyer or tenant does not conflict with church teaching. Contact Susan Mulheron, Chancellor of Canonical Affairs to discuss further.

### **How is the assessment calculation affected by leasing income?**

Rental income is assessed at the parish rate of either 8 or 9%. The rental income received for operating expense reimbursement is not assessed.

### **Can a parish rent to a for-profit organization?**

Part of this analysis includes the possibility of creating Unrelated Business Income Tax or subjecting the property to real estate taxes by renting to a for profit organization. In addition, the parish is exempt from certain provisions of the Human Rights Acts, but may lose this exemption if the parish allows the space to be used for secular business purposes.

If tenants are allowed by the lease to sub-let to other tenants, this may prove to be a problem for the parish. It is recommended to include in the lease a clause to only allow subleasing with specific written permission of the parish.

### **Does the parish want to be a landlord?**

This is a parish specific decision. If you are a landlord, know that you are in the customer service business. In this Archdiocese, the Catholic Church is the largest landlord to charter schools. There are 15 charter schools producing \$5 million in net rent annually. These parishes have created a brand and is a reflection of the larger Archdiocese as a landlord. This is a customer and personal relationship reflecting a spectrum of difficult to easy tenants and landlords. It is recommended to adhere to the lease agreement and have active communication between the parties. Leasing can be financially advantageous, but does require a time commitment. Parishes may outsource to a property manager, but this still requires time and involvement. It is a challenge and an opportunity. It may detract from other parish ministries and sharing space creates issues in and of itself. These issues are complicated when the parish or tenant grows.

Sharing space creates many issues. Leases can be for 5 or 10 year terms and the parish use needs may increase and if they have a charter school tenant, the school may grow substantially. Scheduling conflict of space can arise and having a larger long-term tenant can eventually begin to disrupt the parish's ability to effectively carry out its mission. Also shared use creates everyday annoyances, which can affect the parish tenant relationship over time. With shared usage of space, items go missing, property is damaged or the shared space is not properly cleaned or returned to its prior condition. These tend to be minor occurrence, generally immaterial, but they also create friction, over-time, between the parties. However, these annoyances should not overshadow the fact that the average lease in this Archdiocese, is roughly \$250,000-\$300,000 in rental income per year.

### **Are there required building improvements when you are leasing to a tenant?**

As the building codes change over time, this should be addressed. There should be a significant financial analysis including calculating cash flows, capital improvement costs and expected return on investment. Note that parish owned property is exempt from the access requirements of the Americans with Disabilities Act (ADA). However, if a parish is renting to a charter school, that is a

public school and is subject to the ADA, requiring the leased space to be improved in order to qualify for State lease aid. This generally requires ADA improvements to the parish property, and there are ways to address this in the lease and the parish may be able to pass these expenses on to the tenant. These items are decided during the lease negotiation. This is unique for each lease and for each building.

### **What are the insurance requirements for leasing?**

1. Have a good lease. This often should address insurance requirements. You get what you pay for so it is worth paying for good advice.
2. Obtain a Certificate of Insurance listing the parish as an additional insured. The limits depend on the activities of the tenant but range from \$1.0 to \$5.0 million for general liability. Contact Catholic Mutual for questions on limits needed for your situation.

There may be other licensing requirements. Local communities often have license requirements for the use of a building. This may apply to your tenant depending on the activity/activities for which they are using your building. Example of possible licensing requirements include but are not limited to:

- Commercial kitchen license
- Daycare/latchkey/childcare licensing
- Others...

If you have any questions about special licensing requirements for your tenant, contact your local city government licensing department.

### **Who is responsible for ongoing building inspections and maintenance?**

In general, it is preferable for the landlord to take responsibility to arrange the required inspections of the facility systems including fire suppression, elevators, and kitchen equipment, etc. The cost is minimal compared to the cost of repairs if an accident occurs. It is recommended to maintain a list of required inspections such as electrical, kitchen equipment and fire suppression and retain documentation of dates of inspections.

General facility maintenance is negotiable and is addressed in the lease. Some parishes prefer to be in control of maintaining its property, while passing on a portion of the cost to the tenant. Other parishes prefer the tenant to complete and pay for maintenance. Generally, the parish will be responsible for structural repairs and improvements (i.e. roof, walls and foundation) and the tenant responsible for at least a portion of the cost of day-to-day and general maintenance.

### **Are there civil legal implications for leasing?**

For example, what if an estranged parent picks up a child at a daycare? This is a great example of why a well written lease agreement is important. In the lease, the tenant assumes responsibility and agrees to indemnify the parish for any and all claims.

In addition, it is important to know your building. Check everything in the building before the lease begins. The landlord should control any improvements to the building. It is the responsibility of the parish to conduct inspections on a regular and ongoing basis. There is no insurance for tenants ruining church property.

In addition, if the parish has financing, particularly tax-exempt financing, it will need to adhere to requirements and limits on the usage of the space and as provided in the loan documentation.

### **Is there a formula for replacing capital items within the building?**

This really depends on the building and the condition of the building. Some capital improvement costs may be passed on to the tenant. This should be analyzed before any projects are initiated. It may not make financial sense to incur the additional expense and the parish incurs a larger financial burden.

### **What are the implications for renting the parking lot?**

There may be common usage issues with a big charter school. There may also be real estate or Unrelated Business Income Tax related to directly leasing parking spaces. You may outsource management to an independent company. Risk management issues related to parking lot rental include:

- Possible increase in vandalism
- May be a nuisance
- May create additional work for maintenance staff
- Be sure the tenant is responsible to clean up any trash, debris, etc. that is left in the lot as a result of their use

To reduce complications for this activity, ensure there is a well written lease, obtain copy of certificate of insurance naming the parish as an additional insured with general liability limits not less than \$1 million and install security cameras. In addition, maintain proper signage.

### **What is the proxy process for leasing?**

The proxy process is required on leases where property lease value is at \$100K or more or if the lease is for one year or longer. If the lease includes property previously used for worship, the sacred items must be properly removed. Leases are considered alienation of property which requires approval from the Archdiocese Finance Council and the College of Consultors. If the lease is for property valued at greater than \$3.5 million, the lease needs to be approved by the Holy See.

### **What is the process to determine if the tenant will be a good fit for the parish?**

It is important to look at the management of the organization, the reputation, the track record, the leadership and the day to day manager. When considering a lease, it is important to have professional advisors help assess the tenant, the financial viability of a proposed lease arrangement that may include required improvements, the potential financing of such improvements and finally to help draft the lease and related documents and obtain necessary Archdiocese approvals.

For charter school tenants, someone should attend the school's board meetings to get a feel for the climate of the organization, learn about the tenant and determine its future plans and current financial condition. Charter schools are subject to the Minnesota Open Meeting Law and therefore the public may attend. This is an opportunity for a volunteer.

## LEASING OF REAL PROPERTY

### Process for leasing real property owned by parishes or institutions within the Archdiocese of St. Paul and Minneapolis

Updated October 2015

All parishes within the Archdiocese of St. Paul and Minneapolis must follow these steps prior to leasing parish property:

1. The parish should secure an opinion of value from a real estate professional familiar with the market and property type to assist in determining the market value of the lease.
2. If the property to be leased is a church or another space that has been used for worship, an inventory of liturgical items formerly in the building, including an account of how they will be distributed, is required. Donor intentions should be honored whenever possible.
3. If the property to be leased is a church or another space that has been used for worship, you must contact the Chancellor for Canonical Affairs.

When a parish has received an offer to lease:

1. All alienations of parish property must be approved by College of Consultors and Archdiocesan Finance Council before a proxy will be issued permitting the parish to enter into a lease agreement if the value of the property is \$100,000 or more or the lease is for a period of one year or more.
2. When requesting the proxy, parishes should send the lease agreement to the Chancery along with any available information regarding the lessee and its intended use of the building.
3. Execution of a lease requires pastor's signature after board approval is received (trustees' approval as well as the Archbishop's and Vicar General's approval via a proxy).
4. If the value of the property to be leased is over \$3,500,000, the Holy See's approval is required before the transaction can be completed.

## SALE OF REAL PROPERTY

### Process for selling real property owned by parishes or institutions within the Archdiocese of St. Paul and Minneapolis

Updated October 2015

All parishes within the Archdiocese of St. Paul and Minneapolis must follow these steps prior to listing parish property for sale:

1. The parish should secure an opinion of value from a real estate professional familiar with the market and property type.
2. The parish should work with a real estate professional to draft a listing agreement.
3. The opinion of value, and the draft listing agreement\_ along with a letter explaining the reason for the sale and the intended use of any funds resulting from the sale, should be sent to the Chief Financial Officer along with the request for a proxy to enter into a listing agreement. If the Parish has located a buyer without the need to list the property with a realtor, no proxy to enter into a listing agreement is required.
4. If the property to be sold is a church or another space that has been used for worship, you must contact the Chancellor for Canonical Affairs.
5. Sacred items such as altars, tabernacles, sacred vessels, vestments, liturgical books or other sacred furnishings which have been blessed or used in the celebration of divine worship must be removed from the property prior to closing on the property.

Once a proxy is received:

1. Market property for sale, following any conditions that were set at the time that the proxy was granted. When a serious buyer has been identified, it is advisable to contact the Chancellor for Canonical Affairs to determine if buyer and use of building do not conflict with any teachings of the Catholic Church.

When a parish has received an offer for purchase:

1. All alienations of parish property must be approved by College of Consultors and Archdiocesan Finance Council before a proxy will be issued permitting the parish to enter into the final agreement to sell.
2. When requesting the proxy, parishes should send the purchase agreement to the Chancery along with any available information regarding the purchaser and its intended use of the building.
3. Execution of a purchase agreement requires pastor's signature after board approval is received (trustees' approval as well as the Archbishop's and Vicar General's approval via a proxy).
4. If the value of the property to be sold is over \$3,500,000, the Holy See's approval is required before the transaction can be completed.