

Policy on Permission of Presbytery To Sell, Lease or Acquire Real Property

July 2017

The following procedures shall be followed whenever a church is planning any transaction involving real property. Consideration should be given to the necessary timeline involved as soon as you begin the process of entering into any transaction involving real property. This is important to avoid unnecessary delays due to procedures. All questions should be directed to the Stated Clerk of San Joaquin Presbytery.

1. The Head of Staff and the Clerk of Session and other church leaders involved in the management of the church property should review the *Book of Order 2015/2017, section G-4.02; Church Property*.
2. The Session takes action to purchase, sell or lease the property in question. This action should include a provision for the disposition of proceeds from the sale. It is recommended that the church should use legal counsel to review all sales agreements and contracts before proceeding.
3. The Session should obtain the necessary research which will assist in the development of the recommendation to implement the decision; i.e., title search; survey; an exact legal description of the property; a professional appraisal of the property; a realtor/attorney to consult or use; estimated sale/purchase value; all conditions and contingencies in the action, sources or uses of the funds, etc.

The Session shall refer this action to the church Board of Trustees, if a separate body, or may direct the Finance, Property, or other Session approved body to act on its' behalf.

4. The pastor or the Clerk of Session shall forward the application and supporting documentation to the Stated Clerk of the Presbytery. A Consultation will be conducted with the Presbytery Stated Clerk regarding the proposed action so that there can be a determination on the dates by which all documents must be in the hands of the Presbytery Commission on Finance and Property and the Presbytery Advisory Council for consideration.
5. The Session shall call a special meeting of the congregation to consider the recommendations from the Session or the Trustees. Both the corporate and the ecclesiastical aspects of this transaction can be covered in the same congregational meeting. The Book of Order requires that the call of a special meeting of the congregation be read from the pulpit on two successive Sundays before the date on which the meeting is to be held. The call of a special meeting must state the exact purpose of the meeting.
6. The congregation shall vote on the recommendation of the Session or the Trustees, and the phrase **“contingent upon approval of the presbytery”** shall be included in the action. The decision is made by simple majority vote, a quorum being present. Absentee and proxy votes are not permitted.
7. If the recommendations are adopted by the congregation, the Clerk of Session shall forward the request for purchase/sale/lease/etc. to the Stated Clerk of the Presbytery of San Joaquin. The legal property description, appraisal (if appropriate), proposed disposition of funds and any other pertinent documents must accompany all requests. The Stated Clerk of the presbytery will review the application and supporting documents for completeness and will then forward the documents to the Finance and Property Commission for study. If approved, the documents will then be sent to the Presbytery Advisory Council. If approved, the Presbytery Advisory Council will place their recommendation for approval on the docket at the next scheduled Presbytery meeting for final approval. Additional information or documentation may be requested at any stage of the approval process. Failure to respond to these requests in a timely manner may delay the timeline for the approval process.
8. The Session may wish to be represented at the Presbytery Advisory Council meeting and subsequently at the Presbytery meeting at which the request is to be considered to answer any questions which may arise.

9. Contracts, sales agreements or other legal actions cannot proceed according to the terms approved until after the presbytery has acted favorably.
10. If purchasing a property will require the congregation to encumber or mortgage the property, it is required that you also complete and submit a Request to Encumber or Mortgage application.

Book of Order Requirements

The Permission of Presbytery To Sell, Lease or Acquire Real Property

The Constitution of the Presbyterian Church (U.S.A.), Part II, The Book of Order, Form of Government, **Chapter Four: The Church and Civil Authority**, provides:

G-4.0101 Incorporation and Power - Where permitted by civil law, each congregation shall cause a corporation to be formed and maintained. If incorporation is not permitted, individual trustees shall be elected by the congregation. Any such individual trustees shall be elected from the congregation's members in the same manner as those elected to the ordered ministries of deacon and ruling elder. Terms of service shall be governed by the provisions of G-2.0404.

The corporation so formed, or the individual trustees, shall have the following powers: to receive, hold, encumber, manage, and transfer property, real or personal, for the congregation, provided that in buying, selling, and mortgaging real property, the trustees shall act only after the approval of the congregation, granted in a duly constituted meeting; to accept and execute deeds of title to such property; to hold and defend title to such property; to manage any permanent special funds for the furtherance of the purposes of the congregation, all subject to the authority of the session and under the provisions of the Constitution of the Presbyterian Church (U.S.A.). The powers and duties of the trustees shall not infringe upon the powers and duties of the session or the board of deacons.

G-4.0206 a. Selling, Encumbrance or Leasing Church Property - A congregation shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the congregation.

G-4.0206 b. Leasing Church Property - 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.

Presbytery of San Joaquin Policy

The application and all supporting documents shall be submitted to Stated Clerk for review and recommendation at least one month before the next regularly scheduled meeting of the Presbytery Advisory Council.

Applications and supporting documents shall be mailed to:

Stated Clerk
Presbytery of San Joaquin
438 S. Locust St.
Visalia, CA 93722

**Application For
Permission of Presbytery To
Sell, Lease or Acquire Real Property**

To the Finance and Property Commission of the Presbytery of San Joaquin:

This is to certify that at a duly called **” REGULAR ” SPECIAL** meeting of the Corporation of the

_____ of California,
(name of congregation)

held _____, at which a quorum was present, the Board of Trustees of the said Church was
(date)

authorized to **” SELL ” LEASE ” ACQUIRE** real property for the Church corporation as follows:

StreetAddressorRoads _____

City, Borough, Township _____

Buildings erected thereon _____

Please furnish the complete legal description of the property and/or attach copy of the land survey or county assessment record to the application.

Recorded in Recorder of Deeds Office, Tulare County:

Deed Book # _____ Page # _____ Parcel ID # _____

If to be acquired, subject to an encumbrance, give details including lien holder, amount, interest rate,

Number of payments and due date: _____

If to be **” BOUGHT ” SOLD**, for what price? \$ _____

On what terms? _____

Appraisal Amount \$ _____

If to be *MORTGAGED*, how many years? _____ Total amount? \$ _____

If to be *LEASED*, for how many years? _____ at what amount? \$ _____

Reasons for the action _____

(it is required that you also complete and submit a Request to Encumber or Mortgage application)

If to be *SOLD* or *LEASED* will the proceeds be conserved? **” YES ” NO**

If “Yes” in what manner? _____

If “No” what use is planned? _____

The Board of Trustees of _____ Presbyterian Church Corporation
(name of congregation)

certify that the corporation, at a "**REGULAR**" "**SPECIAL**" "**CALLED**" meeting, which was held on _____, "**APPROVED**" "**DISAPPROVED**" the recommendation of the Session
(date)

or Trustees to engage in the "**SELLING**" "**LEASING**" "**ACQUIRING**" the real property herein described.

This is to further certify that the Board of Trustees knows of no reservation or restriction in connection with the foregoing proposed transaction, except as noted herein:

In accordance with the Form of Government of the Presbyterian Church (U.S.A.), the Board of Trustees of the _____ Church requests the written permission of
(name of congregation)
Presbytery of San Joaquin for the foregoing proposed transaction.

(Signed) _____
President of the Board of Trustees

(Attest) _____
Secretary of the Board of Trustees

The Board of Trustees of _____ Presbyterian Church of
(name of congregation)

_____ California, in transmitting the foregoing request of the Board of
(township, municipality or city)

Trustees, certifies that the Congregation at a "**REGULAR**" "**SPECIAL**" "**CALLED**" meeting held on _____, "**APPROVED**" "**DISAPPROVED**" the foregoing proposed transaction.
(date)

(Signed) _____
(Secretary of the Board of Trustees, Clerk of Session)