

**What to Consider Before Allowing a Third Party to Use
Real Property**

Property Use Checklist

The following is intended to help religious organizations in their review and analysis of the implications of a third party's use of the Church's real property.

A religious organization considering renting or sharing its facility or properties with another organization should consider the following questions as part of the initial analysis. If the parties decide to go forward and enter into an agreement or lease, the services of an experienced attorney should be used to draft the lease or sharing agreement.

Compatibility of the Proposed Use with the Mission and Ministry of the Church

1. ----- What is the third party's business, purpose, and mission?
2. ----- What is the third party's intended use of the property?
3. ----- Are the third party 's business, purpose, and mission and intended use of the property, compatible with the mission, ministry, Social Principles and ecumenical objectives of the Church?
- 4.----- Has the third party filled out an application or submitted a letter of request outlining the general purpose, times, and fees for the proposed use? Do you understand the nature of the third-party organization? Are references party of the application?

³ Although rentals of church property do give rise to un-related business income tax (UBIT), Internal Revenue Code Section 513 specifically exempts rental income from being taxable UBIT in most circumstances. Consult with your own tax or legal advisor for UBIT questions. See also [IRS Publication 1828](#) and specific items in the attached Property Use Checklist.

5. ----- What is the social agenda of the third party? (Consider the Social Principles.)
6. ----- What potential social/political conflicts may arise between the church organization and the third party as a result of its social agenda?
7. ----- Can potential problems be avoided or reduced by careful communication and agreements?
8. ----- Will the sharing of space with this third-party organization adversely affect either party's public image or reputation? (For example, rental to a tobacco shop or a store that sells lotto tickets or weekly meetings of an extreme political group.)
9. ----- Will allowing the third party to use the property cause tension within the church organization?
10. ----- Has the church organization reviewed the political, practical, and social implications of the proposed use in relation to its neighbors and the community? (For example, 7 nights a week homeless shelter operation in a residential area, 4 miles from public transportation.)
11. ----- Is the space-sharing agreement intended to enhance the church's religious, educational, and charitable outreach, or simply to provide income?⁴
12. ----- What precedent will be set by allowing this organization to use church property?
13. ----- Is there a common basis for conflict resolution between the organizations?

Compatibility of the Proposed Use with Existing and Future Uses

14. ----- Does the church organization understand exactly how the third party intends to use the property?
15. ----- Will the parties execute an agreement that clearly identifies what uses are prohibited or limited by the third party ?

⁴ If a sharing arrangement is being discussed with an affiliated start-up church or ministry, consider the appropriateness of United Methodist affiliation .

- 16. ----- During what days and times will the third party use the property?
- 17. ----- Has the church organization analyzed how the proposed use would impact or limit the church's present and/or future ministry, goals, programs, and activities?
- 18. ----- How much of the property does the third party want to use?
- 19. ----- Will the proposed uses interfere with or impact existing meetings or functions? (Consider security concerns, sound problems, washroom facilities, cooking facilities, parking space, etc.)
- 20. ----- What space should be used in common, and what space will be used exclusively by one party or the other?
- 21. ----- For common space sharing, has a schedule (including set-up/take-down time) been developed that will work for joint usage?
- 22. ----- Will the use of space be long term or short term?
- 23. ----- If the use will be long term , has the church organization considered how this may limit its ability to sell, renovate or expand the property?
- 24. ----- How will access to, and locking up of, the building be handled? (Keys, electronic key cards, password codes, etc.)

Financial Impact of the Proposed Use

- 25. ----- How much does it cost now to operate the facility annually? Per square foot?
- 26. ----- How will the proposed use impact the operating, maintenance, and utility costs for the property (e.g., heating, cooling, other utilities, janitorial, supervisory personnel, etc.)?
- 27. ----- Will the third party bear any additional costs generated by the proposed use? If not, how will the costs be apportioned between the parties in the agreement?
- 28. ----- Who will be responsible for cleaning and maintaining the property used by the third party and the common areas? Who will pay for this?

29. ----- What standards will be used in maintaining the property?
30. ----- Will the church receive any rental income from the proposed use of the property? If so, how much?
31. ----- Will the income be used to defray the increased costs of operating the building, or does the church expect to get more income than the increased operating costs?

Insurance, Liability and Legal Issues

32. ----- Has the church organization assessed the risks associated with the proposed use?
33. ----- Has the church organization considered the appropriateness of the proposed use for the property?
34. ----- Have the parties agreed on their respective rights and responsibilities regarding the use of the property?
35. ----- Who will pay to defend against or pay for any claims arising out of the third party's use of the property?
36. ----- What security issues does the proposed use create? (For example, fencing around playground equipment). Who is responsible for addressing such security issues?
37. ----- Does the third party have a risk management plan sufficient to address any risks caused by its use of the property? If so, has the church organization reviewed it?
38. ----- Will the third party be required to defend and indemnify the church organization against claims related to its use of the property?
39. ----- Will the third party be required to have insurance with certain minimum coverages and limits to back up its obligations under any use agreement?
40. ----- Will the third party be required to list the church as an additional insured on its insurance policy and present a certificate of insurance?
41. ----- Does the lease or agreement reflect such insurance requirements?

42. ----- Has the church organization consulted with an attorney and its insurance professional regarding the best way to address risks related to the proposed use?
43. ----- Does the church organization have adequate insurance coverages and limits given the proposed use?
44. ----- What steps should be taken to protect and secure valuable property and equipment belonging to the parties from damage, theft, or misuse?
45. ----- What is the duration of the proposed use?
46. ----- What is the legal status of each organization, e.g., not-for-profit corporation, religious corporation, or unincorporated association?
47. ----- Do you have a standard rental agreement or does a new agreement need to be drafted? Has your legal advisor reviewed the final agreement before signing?
48. ----- What legal authority does each participant need to enter into a legally binding agreement? (Some groups require corporate resolutions to authorize negotiation and execution of a lease.)
49. ----- Have adequate provisions been made for termination of the agreement?
50. ----- Does another United Methodist church in this district or conference have a sample agreement for the uses you are planning that you can supply to your legal counsel for review?
51. ----- Has the church organization consulted with an attorney regarding the proposed use and the drafting of an agreement to memorialize the terms and conditions of the proposed use?

Real Property Tax Issues

52. ----- Will the proposed use affect the church organization ' s real estate tax exemption?
53. ----- Can any adverse real estate tax consequences be minimized?

54. ----- Who will pay any additional real estate taxes incurred?
55. ----- Does the lease provide that the third party is responsible for paying any and all real estate taxes that become due as a result of the proposed use?
56. ----- Will any rental payments include reimbursement of property taxes that may be imposed on the church as a result of the proposed use?
57. ----- Is the third party a nonprofit entity that is recognized as exempt from federal income taxes under the Internal Revenue Code? If so, do the activities of the third party complement or further the church's mission?
58. ----- Does an annual real property tax exemption certificate need to be filed with the state or county to maintain the church 's exemption?
59. ----- Is the church organization required to notify the state or county when it leases or allows its property to be used by a third party?
60. ----- Are careful records required to be kept as to the square footage leased to the lessee and the rental income collected by the church organization?
61. ----- The church organization should prepare and retain minutes of any meeting in which the topic of leasing the church 's property was discussed. The minutes should reflect discussion as to whether or not entering into a lease with a particular lessee would be in furtherance of the church's mission.

Federal Income Tax and Other Tax Issues

62. ----- In many instances, rental of church property is exempt from unrelated business income tax (UBIT). However, consider whether in your case, the rental income received by the church will cause any local, state, or federal tax liabilities.⁵
63. ----- How can any adverse income tax consequences be minimized? Who will pay any additional income taxes incurred?
64. ----- Will there be a written lease which sets forth the terms and conditions of the lease relationship?
65. ----- The relationship between the church organization and the lessee should not be one of a partnership or a joint venture.

⁵ Yom tax or legal advisor should consult with you on specific UBIT issues. See [IRS Publication 1828](#) regarding UBIT issues and analysis.

66. --- ----- The amount of rent charged should not be tied to the income or profits of the lessee but may include either a fixed percentage or percentages of sales.

67. -- ----- If personal property is leased in connection with real property, the portion of the rental payment allocated to the personal property must be "incidental" (not more than 10%) in comparison with the total rental payment.

68. --- ----- If the property leased is subject to a mortgage or is otherwise "debt financed," then the rental income will be subject to UBIT unless one of the following exceptions apply:

- At least 85% of the lessee's use of the property is substantially related to the exercise or performance of the church's mission;
- The property is used by the lessee for research activities; or
- Substantially, all of the lessee's work is performed without compensation, the lessee's business is carried on primarily for the convenience of members, students, patients, officers, or employees, or the lessee's business is the selling of merchandise, substantially all of which was received as gifts or contributions.

69. --- ----- Who will ensure proper payment of any state sales tax on retail sales out of the facility that may be subject to state sales taxes?

Zoning, Access, Permit and Other Regulatory Issues

70. ----- What are the permitted uses under the property's present zoning?

71. ----- Is the proposed use a permitted use? If not, is the third party's use contingent on the third party obtaining a zoning change or variance allowing for the proposed use?

72. --- ----- Is the third party required to be in compliance with all local, state, and federal rules, regulations, and statutes applicable to the proposed use, including any license requirements?

73. ----- Will allowing the third party to use the property require the church organization to comply with local or state handicap access statutes or the

Americans with Disabilities Act? If yes, will modifications be required?
If so, who will pay for them?

74. ----- Is the building structure appropriate for the intended use, or will renovations be required to bring the building into compliance with the local building, safety, and fire codes?
75. ----- If improvements need to be made before the proposed use begins, who pays for them, who makes sure they are up to code, and who benefits from them when the agreement ends?

Adopted by Council - September 2003

The General Council on Finance and Administration is not engaged in providing legal or accounting services. The service of a competent professional should be sought for legal and tax advice.

©2003. The General Council on Finance and Administration of The United Methodist Church. All rights reserved.