

Catholic Diocese of Bunbury Guidelines and Procedures for the Hire and Rental of Parish Property

BACKGROUND

Ownership

In the civil law of Western Australia, all property (both real property and personal property) of the Church owned by the diocese or its parishes is held under the title of the “The Roman Catholic Bishop of Bunbury”, registered as a “Corporation sole” under the Roman Catholic Bunbury Church Property Act No. 28 of 1955. Titles to real property are held at the Diocesan Offices.

Diocesan Financial Administrator

The Bishop is ultimately responsible for the supervision of parishes in administration of parish property.

The Bishop has delegated his duty of supervising the administration of property belonging to the parishes to the Diocesan Financial Administrator. The Diocesan Financial Administrator who is chairman of the Diocesan Resources Committee administers the property and finances of the Diocese in the name of the Bishop.

Diocesan Resources Committee

The Diocesan Resources Committee is a consultative body appointed by the Bishop to assist him, the Diocesan Financial Administrator and parishes on the best use of parish property, and to advise the Bishop, Diocesan Financial Administrator and parish on such matters. The Diocesan Resources Committee does this by attending to the implementation of policies approved by the Bishop. The Chairman of this Committee is the Diocesan Financial Administrator.

Parishes

Parishes derive their property as a legacy from the past, and as a result of current initiatives. This property offers the parish the means to resource its apostolates in the present era, and is also a heritage to be held in trust for future generations.

Accordingly a parish has a responsibility to be diligent in the stewardship of its property as well as seeking out new property that will assist the future work of the Parish.

The Diocesan Resources Committee supervises the rental and hire of property by parishes. It does this in accordance with these guidelines.

GUIDELINES

The granting of non exclusive use of property to another party for a specified period of time, for a single occasion, or perhaps for repeated occasions, occurs regularly in parishes. In such circumstances, the party using the church property should be required to enter into a rental or hire agreement. Such an agreement is simply permission from the parish on behalf of the Bishop to another party to use the property for a limited period of time, without any exclusive possessory interest being granted to the user. Church property includes both real estate and personal property.

Canonical Principles

The rent or hire of property is a contract and therefore is required to conform to Civil Law in contractual matters.¹

Civil Law Issues

All rental or hire agreements bind the Parish contractually to the terms of the agreement on behalf of the Bishop. Therefore every rental or hire agreement, whether for real estate or personal property, shall be documented in the form of a written rental or hire agreement executed and by the Parish Administrator on behalf of the Bishop in accordance with civil laws.

PROCEDURES

Negotiation of the rental or hire

The negotiation of the rental or hire shall be the responsibility of the Parish Administrator. Negotiations can be undertaken by the Parish Administrator, or if delegated by the Parish Administrator, a parish employee or parishioner(s).

Agreement documentation

While rental or hire agreements may be oral, and very often are the prudent stewardship of church property requires all agreements be put in writing signed by both parties. An example of a rental or hire agreement is attached

Perhaps the most important part of any rental or hire agreement involving church property is the insurance provisions, in particular public liability insurance. The parish must take steps to protect the Bishop from unintentional loss through potential liability from rental and hire activities. The best way to do this is by requiring insurance cover as part of the rental or hire agreement no matter whether the agreement covers a single use or a repeated use. Adequate proof of insurance should also be a condition of the agreement.

It is recommended that legal advice be obtained in drafting a non standard rental or hire agreement and in particular the wording of any insurance clauses.

A rental or hire agreement should include, but not be limited to, the following:

1. a clear statement of the period and frequency if any of the rental or hire
2. clear identification of the parties
3. a clear description of the rented or hired property
4. a clear statement of what the rental or hire payment is, and where, when and how this will be paid.
5. a clear statement of how the property will be used by the renter or hirer.
6. how and by whom it will be cared for and looked after
7. in the case of rental or hire of real property, any liquor licensing requirements
8. where the risk of loss and duty to insure lie for a partial or total loss of the property
9. which party is responsible for the repair or cleaning of the property
10. a tax clause placing the burden of taxes arising from the rental or hire on the renter or hirer.
11. what remedies are available if the other side fails to perform.

¹ Canon 1290

It is also prudent to include a specific purpose clause in the rental or hire agreement making clear that a material breach of the agreement has occurred if the property is used for any illegal or immoral purpose or any other purpose inconsistent with the ethos of the Catholic Church. This clause should be specific, should be brought to the attention of the lessee as part of the negotiation process, and should be non-negotiable.

Rental or Hire Agreement

This agreement sets out the terms and conditions on which we (the owners) agree to rent or hire the property described below to you (the renter/hirer) for the rental or hire payments and on the terms set out below and overleaf.

The Owners: The Catholic Parish of _____
on behalf of the Roman Catholic Bishop of Bunbury

Address: _____

The Renter/Hirer:

Name/Organisation: _____

Address: _____

_____ Post Code: _____

Phone:(w) _____ (h) _____ Fax: _____

Details of property being rented/hired: _____

Purpose of rental/hire: _____

Specific conditions of rental/hire: _____

Period of rental/hire: From: _____ To: _____

Consideration/Donation for use and maintenance: \$ _____

Payable by: _____

Declaration by Renter/Hirer:

I acknowledge that I read and agree with the conditions of hire, and that the property was received in good order and condition, and agree to return said property on or before the date specified on this agreement.

Signature of renter/hirer: _____

Name: _____

Date: _____

Signature of (or on behalf of) the Owner: _____

Name: _____

Date: (Date of Agreement) _____

Terms and Conditions

1. Ownership of the property

The property will remain the property of the owner at all times and must not be sold or disposed of in any way.

2. Period of rent/hire

The renter/hirer agrees to rent/hire the property for the periods specified above or until the expiry of notice given under Clause 11, whichever is the later.

3. Consideration/Donation

Before signing this agreement the renter/hirer must have paid the agreed consideration/donation for the use and maintenance as shown above.

4. Variation of hire/rental consideration/donation

The owner has the right to vary the rental/hire consideration/donation at any time in the future by giving you notice in writing.

5. Use of Property

The hirer at all times shall, use the property in accordance with all laws and Government Regulations pertaining to the use of the property, and in a proper manner. A material breach of the agreement has occurred if the property is used for any illegal or immoral purpose or any other purpose inconsistent with the ethos of the Catholic Church.

6. Place where property is kept

The renter/hirer must keep the property safe and secure and all or any part of them shall not be remove without the prior written authority of the owner.

7. Care of the property

The renter/hirer shall be responsible for any loss or damage, to the property irrespective of how the loss or damage has occurred. (Fair wear and tear only accepted).

8. Insurance against loss or damage

The renter/hirer is responsible for all loss or damage to the property (except fair wear and tear) even if caused by acts or events outside their control. In addition the renter/hirer shall take out appropriate public liability insurance cover for the period of rental/hire and produce a certificate of currency from your insurance company as proof of this cover

9. Maintenance

The owner shall maintain the property in good working order. The renter/hirer must notify the owner if the property requires maintenance or repair.

If at any time the owner decides that it is no longer practicable to keep the property in working order the owner may either:

- (a) replace the property or
- (b) end this agreement by giving one months notice in writing.

10. Right to end the agreement

The renter/hirer or the owner may end this agreement by giving one months notice in writing. The property must then be returned or made available for collection by the owner.

The owner may end this agreement and take back the property, after giving the renter-hirer written notice, if at any time:

- (a) the renter/hirer breaches any of their obligations under this agreement;
- (b) the renter/hirer has given false information in connection with your entry into this agreement;
- (c) the property is destroyed or the insurers treat a claim under the policy for the property on a total loss basis.

12. Renter/hirer liability if the owner ends the agreement

If the owner ends this agreement the renter/hirer must pay the owner all consideration up to the date when this agreement comes to an end.

13. Expenses

The renter/hirer must repay on demand all the owners expenses and legal costs for taking steps, including court action, to recover the property or to obtain payment for the renter/hirer.

14. General provisions

- (a) The word 'property' includes movable and immovable goods and items including buildings and facilities, any replacements, renewals or additions made to them by the owner or by the renter/hirer with the owners prior written consent.
- (b) No relaxation or indulgence which the owner may grant to the renter/hirer shall affect the rights of the owner under this agreement.
- (c) Where two or more individuals are named as the renter/hirer, the individuals so named jointly and severally accept the obligations under this agreement. This means that each of the individuals so named can be held fully responsible under this agreement.
- (d) The renter/hirer shall be liable for all taxes or charges arising out of the rental/hire of the property.

15. When this agreement takes effect

This agreement will only take effect if and when it is signed by the owner or an authorised representative of the owner.

16. Indemnity

The hirer shall indemnify, and keep indemnified, the owner and the owner's agents from and against all claims, demands damages and actions what so ever caused by or arising directly or indirectly in connection with the use operation or maintenance of the property rented/hired irrespective of any negligence of the owner or its agents.