I. Overview and Purpose

The use of church facilities for the purpose of providing community organizations or other groups a place to hold their functions is encouraged by the diocese. This is a valuable opportunity for the church to become more visible to the community they serve and to provide meaningful outreach. However, it is imperative that this ministry be performed under well-defined guidelines to ensure that adequate protections are in place and expectations are clearly understood. To avoid any misunderstandings, all agreements must be documented in writing before any occupancy is initiated, whether it be for a short-term or long-term duration.

II. Diocesan and Episcopal Church Canons

Diocesan approval is required for legal agreements related to real property:

Diocesan Canon V, Section 10: The prior written consent and approval of the Bishop and Diocesan Council are required prior to the conveyance, transfer or encumbrance, in whole or in part, of any interest in any real property owned or controlled by the Diocese, a Congregation, or a Related Organization.

Diocesan Canon IV, Section 6, Paragraph 3: The prior written consent and approval of the Bishop and the Standing Committee are required prior to the conveyance, transfer or encumbrance, in whole or in part, of any interest in any real property that has been designed or used for regular services of worship, whether or not consecrated, and that is owned or controlled by the Diocese, or a Congregation, or a Related Organization.

Furthermore, the canons of the national church underscore the requirement for approval:

The Episcopal Church Canon Title I. Canon 7. Sec. 3: No Vestry, Trustee, or other Body, authorized by Civil or Canon law to hold, manage, or administer real property for any Parish, Mission, Congregation, or Institution, shall encumber or alienate the same or any part thereof without the written consent of the Bishop and Standing Committee of the Diocese of which the Parish, Mission, Congregation, or Institution is a part, except under such regulations as may be prescribed by Canon of the Diocese.
III. Tax Considerations

All churches are covered under the group tax exemption of the *Domestic & Foreign Missionary Society of the Protestant Episcopal Church in the United States of America*. All dioceses, congregations, and institutions of the Episcopal Church must have their own Employer Identification Number. It should be noted that Federal tax exemption does not extend to exemption from state sales taxes, which must be applied for separately.

A. Unrelated Business Income Tax (UBIC)

Per IRS Publication 598 (01/2017): Tax on Unrelated Business Income of Exempt Organizations, rents from real property are excluded in computing unrelated business income.

B. Florida State Sales Taxes

Per Florida Sales Tax Statute 212.031, rental payments are subject to Florida sales tax only. If the tenant is a non-profit and exempt from sales tax, then there is no need to collect and remit sales tax. Contact the Diocesan Office / Director of Congregation Support for more details on this process.

IV. Types of Uses

There are three general types of uses and the documentation varies in complexity by the type of use.

A. Exclusive Use

In the event that a church wishes to lease its facilities, or part thereof, to an independent entity on an exclusive basis, the church must first consult with the diocese to ensure that the lease arrangement will not jeopardize the church’s tax exempt status, that the lease is in the long-term benefit of the goals of the church, and that all contractual and legal ramifications are covered. An example of this would be a teaching institution such as a Pre-School/Day School, which would lease an entire section of the church (M-F, 6:00 am – 6:00 pm) for a multi-year period. Legal counsel to draft and negotiate an appropriate legal contract/lease is required. Diocesan Chancellors will review the draft legal documentation and comment as a part of the diocesan approval process.

B. Shared Use

There are occasions when a church provides the use of its currently-utilized facilities to another religious or educational organization. Details of this shared use depend on the circumstances but need to be documented in a detailed contract defining the particular expectations of both parties, use of the facilities on a non-interference basis to the operation of the church, joint indemnification
requirements, and liability issues to name but a few. Legal counsel to draft and negotiate an appropriate legal contract is recommended. Diocesan Chancellors will review the draft legal documentation and comment as a part of the diocesan approval process.

C. General Recurring Facility Use (AA, Boy Scouts, Etc.)

Many churches lease their facilities to non-profit 501(c)3 organizations such as Alcoholics Anonymous, Boy Scouts, etc. for a donation or no fee. In these cases, a Facility Use Agreement is encouraged to set expectations and accountability. This document should be comprehensive and in sufficient detail to define all expectations regarding the use of the facilities and should deal, at a minimum, with the following items:

- The Church reserves the right to limit use of the facilities to those compatible with the established purpose of the Church.
- Prohibition of using the Church for any activities other than as defined in the contract for use.
- Liability and indemnity issues regarding damage to property and injury to individuals.
- Users and vendors to provide written proof of liability, workers’ compensation, and other applicable insurance in the required amounts, naming the church and the diocese as additional insured, and provide copies of current licenses to conduct business.
- Adherence to all security procedures, and Safeguarding God’s People policies.
- No use of tobacco or alcohol unless specifically approved.
- Conditions for using utensils, appliances, cutlery, musical instruments, multi-media and any other equipment provided.
- Clean up of the facilities and items used and returned to their proper storage or configuration at the conclusion of the activities.
- Lock up and turning off all pertinent utilities upon vacating the Church.

V. Procedures for Diocesan Approval of Lease/License/Shared Use Agreement

The first step in the process is to contact the diocese. The Office of the Bishop will provide instructions as to the policies and procedures and the information or documentation required for the Bishop’s and Council’s approval. The Finance Committee will conduct due diligence on the agreement and supporting documentation. In addition, the Diocesan Chancellors will comment on the legal documentation.

The following clauses should be included in the legal agreement:

- **Attorneys Fees:** In the event it becomes necessary for either party to engage an attorney to enforce the terms thereof, the prevailing party shall be entitled, in addition to all other damages or release granted, to recover reasonable attorney’s fees and costs including same on appeal.
• **The Certificate of insurance** should include the Church and the Episcopal Diocese as additional insured

• **Safeguarding God’s People.** It is strongly suggested that any organization or group using church facilities be informed of the Safeguarding God’s People program of the Episcopal Church. The organization or group should be provided the church’s Safeguarding policy and procedures. The organization or group should sign a statement indicating that they have received this information, understand its implications and agree to abide by said guidelines.

The request should contain the following:

- □ A letter that includes a narrative on the action the church is proposing and how this lease will impact on the ministry of the church.

- □ Relevant documents (lease proposal, loan documents, listing agreement, conditioned upon the approval of the Bishop and the Council, Facilities Use Application, Safeguarding God’s People acknowledgement form, etc.).

- □ Financial statements for the prior year and year to date financials for the current year.

- □ Pro forma (projected) financials for the congregation that includes the proposed sale, lease or encumbrance.

- □ Resolution of the Vestry approving the lease or other encumbrance of the property.

- □ Any other documentation or information deemed relevant to the proposed transaction.

Once the Finance Committee approves the request, the request will be forwarded to the Diocesan Council for final approval.

**VII. Procedures for Approval of Short-Term Use Agreements (one (1) year or less)**

For single-use or for periodic use for a duration of one year or less, including renewals and extensions, please contact the Diocesan Office for guidance. At a minimum, the Facilities Use Agreement in Exhibit A should be utilized and forwarded to the Diocesan Office when executed by both parties.
Appendix A
Sample Forms and Agreements

Included in the following pages are some typical examples of facilities usage documentation selected from some churches in our Diocese. Most churches have very specific requirements which they wish to emphasize in the use of their facilities.

The templates included are intended to provide a guideline as to layout, format and content. It is not intended that these templates are unique in any respect but are guidelines for Church use.

1. SAMPLE Facilities Use Agreement
2. SAMPLE Program and Facility License Agreement
3. SAMPLE Release of Liability and Assumption of Risk

Please contact Martha Goodwill, Director of Congregation Support for the latest sample forms and agreements. mgoodwill@episcopalswfl.org