

## Section 2

# SALE OF PROPERTY

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### General Guidelines

Ask yourselves how the sale of this property will contribute to the life and growth of the congregation and advance God's mission in your parish, and how it contributes to the community and the mission of the Church in the region. Does it fit into the strategy or vision for the parish?

What is it you want to do? Why are you going to do it?

How are you going to market the property, and when?

Allow sufficient time to prepare your application and to obtain the approval of the congregation, Synod Property Advisory Committee and MCPC.

- Complete the application form Appendix 1.
- Talk early on to your Synod Property Advisory Committee (SPAC) representative about your general plans and time frames. It will help to make early contact to alert them that decisions are underway. Challenging or unusual proposals may take extra time. Your SPAC representative will support and guide you through the process.
- The whole congregation needs to be involved in the decision-making. The asset does not belong to just one small group of the congregation. It is an 'asset' held in trust for the benefit of all parish members.
- Find out from your SPAC representative when MCPC meets, as generally, the committee will consider the application and then make a recommendation to the parish. MCPC normally meets monthly. You should have your application (with all the appropriate documents) to this committee through SPAC at least three weeks before MCPC meets. MCPC usually meet on the 4th Wednesday of each month.
- When SPAC has considered an application and made its decision, the application will be forwarded to MCPC for its decision. MCPC place considerable weight on SPAC's views and recommendations on any proposal to sell a property.
- Please ensure all documents are sent together with your application to SPAC (see checklist). Do not send the application directly to MCPC.

### When can a property be sold?

- It is no longer needed for mission purposes
- You wish to replace it with a property that will better fulfil God's mission – in which case, you need to consider the objectives of both the sale and the purchase and comply with the requirements in both this section and the section on purchasing property
- It has the approval of the Parish Council, the congregation, the Synod and MCPC.

## Further points to consider

Are there any heritage building issues or special trusts attached to bequests or past gifts that may hinder or prevent the sale?

Each Synod and other Connexional entities identify whether there is suitable land in their area that could be made available for social housing.

Before any Methodist-owned land is sold, consideration is given as to whether the land is able to be used for social housing (Synod Property Committees, Missions, and TTMPT in consultation with the Methodist Social Housing Group).

There may be restrictions on what you can do with the property or with the proceeds from the sale. If the property was gifted to the congregation, then any legally documented conditions associated with the original gift must be fulfilled. Any issues must be resolved before the sale goes ahead.

Sometimes the wider local community in which a surplus church is sited (particularly in rural areas) may have strong views about what should happen to it. Consultation with the community can help avoid negative publicity. Remember that Church property is a trust from all the past members of your congregation, going right back to its establishment. The assets have been given with the expectation they will continue to be used for the mission of the Methodist Church.

Mission needs to be viewed in a Churchwide context – not just from a local perspective. In order to sell a property, you must obtain approval from the following:

- Parish Council
- Congregation
- Synod
- MCPC.

You will need to complete an application form (Appendix 1 at the rear of this book). Your SPAC representative will send the application with the necessary documents to the Connexional Office at least two weeks before the next MCPC meeting. Application forms are also available online at <http://www.methodist.org.nz>.

## You must have a registered valuation

You will need to provide a market valuation from a registered valuer with your application. Rating valuations or estimates from real estate firms are not sufficient. A registered valuation provides a professional assessment of the property and allows a realistic selling price to be set.

Valuations must be no more than 90 days old at the time of application. You may need to ask the valuer to provide an update if there is a lengthy period between obtaining MCPC's approval to sell and finding a buyer. A valuer will generally do this with a letter either confirming or amending their earlier valuation.

## Land Story

See Section 8 – 'Kōrero Papatupu Whenua, Land Stories.

All applications require a Land Story.

## What to do once MCPC have given their approval

A letter will be sent from the Connexional Office confirming MCPC's approval for the sale and advising the minimum permitted sale price. The letter may also outline various clause deletions and additions that are required in the Agreement for Sale and Purchase.

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Consult the BOA's lawyer. They can assist with drawing up the Agreement for Sale and Purchase and will be responsible for arranging the property settlement, land transfer and any mortgage repayment and discharge (if applicable). The parish will be asked to sign a letter of engagement. This is appropriate, as the BOA or the Connexional Office do not engage the lawyer.

### A word about Real Estate Agents

- Most agents want a sole agency. It is prudent to invite several proposals from agents for comparison before deciding on an agency and method of sale
- If you do decide to use a sole agency, then your contract (Sole Agency Agreement) with them should be for a short duration, e.g. 60 days. This time limit must be written into the contract
- If you sell a property while there is a sole agency agreement in operation (or you sell privately while any agency is in operation), you will have to pay the agent's fee even if they had nothing to do with the sale
- It is good practice to have the BOA's lawyer approve the proposed agency agreement before you sign it.

### Approval to sell is not indefinite

Approvals automatically expire after 12 months but may be extended at MCPC's discretion. Contact the Connexional Office if your property has not sold within 12 months and you wish to obtain an extension of the approval period.

### Important points about completing an agreement for Sale and Purchase

**The vendor is named as The Board of Administration of the Methodist Church of New Zealand, Mission Board or a Trust.**

- **The Agreement for Sale & Purchase must be signed by a member of the BOA or, in the case of a Trust, by the majority number of Trustees**
- **The Agreement must not be signed by the parish**
- **Include the required clause deletions and additions as advised in the approval letter and noted below.**

### The following changes must be made to the Agreement before it is signed by the Purchaser:

The following clauses are to be included in future sale and purchase, and leasing agreements entered into by the Church:

- **Methamphetamine clause:**

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In respect of methamphetamine (or P) contamination to the property, the Purchaser acknowledges that the Vendor does not;

- a. hold itself out as having expertise nor any knowledge as to methamphetamine contamination to the property;
- b. make any representation in relation to methamphetamine contamination to the property.

The Purchaser acknowledges that in entering into the Agreement the Purchaser has:

- c. made all due enquiry about the property including obtaining expert advice; and
  - d. made direct enquiries of the Vendor and accepts that the Vendor has answered such enquiries to such extent as the Vendor is able to in its best belief but that such answers cannot in any way be construed as warranties or representations by the Vendor, and accordingly the Purchaser shall acquire the property on an "as is where is" basis having conducted its own full due diligence enquiry on all aspects of the property, and has based its decision to purchase the property in reliance solely on its judgement and enquiry, and the Purchaser waives all rights of claim against the Vendor.
- **Limitation of Liability**

Notwithstanding any other clause in this agreement, the liability of The Board of Administration of the Methodist Church of New Zealand as Vendor in this agreement shall be limited to the Property and shall not constitute a debt payable by the Vendor or their successors in office out of any other fund or property.

## Sale and Purchase Agreement

The Agreement for Sale and Purchase must be sent to the Connexional Office for signing.

Clauses cannot be removed, amended or added to the Sale and Purchase Agreement without MCPC approval.

**The Agreement for Sale and Purchase can only be signed by a member of the BOA, unless the property is owned by a Trust.**

## Sale by Auction or Tender

Where a property is offered for sale by tender or auction, the draft tender or auction agreement must be provided to MCPC for approval before the tender or auction process commences.

**The agreement to sell by auction or tender can only be signed by a member of the BOA, unless the property is owned by a Trust. Then it must be signed in accordance with the Trust constitution.**

## What happens when an Agreement for Sale and Purchase becomes unconditional?

The BOA's lawyer will prepare the Land Transfer Authority and Instruction (A&I) form and send it to the Connexional Office for signing by two members of the BOA. Their signatures are witnessed by the appropriate professional person, and the Board seal is affixed to the document, preferably at least a week before the agreed settlement date. The Connexional Office will return the signed A&I to the lawyer together with the bank account details for payment of the sale proceeds.

## What happens on the settlement date?

- The BOA's lawyer will handle the settlement
- The BOA's lawyer will receive payment from the purchaser's solicitor and repay any outstanding mortgages and attend to local council rates adjustments
- The BOA's lawyer will then pay the balance (less their fees and disbursements) to the BOA's bank account. Once received by the Board, the sale proceeds will be held in CB&L in the parish's name. (There are restrictions on what you can use this money for. Refer to the section on Capital Funds for guidelines.)

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- If GST is payable on the sale, the BOA accounting team will account for this in their GST return and pay the amount owed from the sale proceeds held in the CB&L property account.

**Remember to cancel the insurance cover on the property once the sale has been completed and title has been transferred to the new owner.**

### GST

Before you commence marketing the property, you need to carefully consider the GST aspects of the sale, i.e. will the sale price be inclusive or exclusive of GST where applicable?

The BOA is GST registered and (being the legal owner) must include the sale transaction in their GST return. The general rule of thumb is that the sale of a parsonage or other residential property is not subject to the payment of GST, and the sale price may be stated as "inclusive of GST (if any)".

The sale of all other Church property (churches, halls, commercial buildings, land) is subject to GST, and the sale price must be stated as "plus GST (if any)". Often sales in this category are zero-rated for GST purposes depending on the GST status of the purchaser and the intended use of the property.

The GST aspect is not always well understood, and the parish may wish to obtain professional advice in this regard.

### Development Fund Ministries

The Conference decision states that: "15% of the net sale of property proceeds, where exclusions do not apply, are released to the Development Fund Ministries."

Exclusions apply where a parsonage or worship centre is sold for the purpose of its replacement.

The decision means that 15% of the net proceeds of all property sales will be released to the Development Fund Ministries unless the sale meets the exclusion criteria or an exemption is granted by the MCPC.

In the case of a Union Parish or a cooperating venture, the 15% will be allocated to the partner Churches in accordance with the property ratios stated in the Schedule of Record.

The parish may request costs directly related to the sale of the property be reimbursed from the proceeds prior to the calculation of the 15% contribution. Typically, these costs would be valuation fees, legal fees and the repayment of any borrowings against the property. Items such as rates, insurance, lawn mowing etc., are operational expenses and cannot be claimed against the sale proceeds.

## Checklist for Property Sales

- Approval by congregation
- Strategic Plan
- Congregation mission plan prepared, and the property sale proposal is tested against this
- Approval by Parish Council
- Congregation's intentions discussed with Synod
- Approval by Synod
- Registered valuation of the property obtained and is less than 90 days old
- Complete the application for approval to sell the property and forward it together with all other required documents to your Synod to forward with their approval to MCPC (Connexional Office):
  - Market Valuation
  - Parish Strategy
  - Site plan, particularly in relation to other church facilities
  - Kōrero Papatupu Whenua, Land Stories see 1988 Conference Report and Section 8 of this document
  - Parish Council approval
  - Synod approval
  - Parish accounts for the last 12 months – income and expenditure
  - If sale is of a property that is no longer required to maintain parish mission and is not to be replaced for a Methodist parish, 15% of the sale price shall be contributed to Development Fund Ministries.
- Working party set up to oversee the sale, engage BOA's lawyer and investigate any issues that may restrict the sale
- Appoint real estate agent(s) (if required) a sole agency must have a definite end date
- Negotiate and agree to sale price and conditions
- Follow requirements with regard to the Agreement for Sale and Purchase and consider GST aspects of the sale
- The Agreement can only be signed by the BOA (or Trustees, for Trust titleholders)
- not by the parish
- Insurance cover on the property is to be cancelled once the sale has been completed and title has transferred to the new owner
- Asbestos Management Plan is available for purchaser