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Uniting Church in Australia  
Synod of NSW and the ACT

## SECTION 4— SELLING PROPERTY



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## 1. General Overview

- 1.1 Both Property Trusts are entities incorporated under statute. They are the entities within the bounds of the Synod that can legally sell or dispose of property whether real or personal.
- 1.2 All property sales or disposals must be undertaken in accordance with the processes set down by URPS.
- 1.3 There are three main methods of selling a property and any decision on which method of sale is dependent upon the individual circumstances of the sale including but not limited to type of asset and market conditions.
  - Private Treaty is where a sale price is determined by the vendor and the property is advertised for sale at that price.
  - Sale by Tender is where written tenders with a sale price offer are invited through advertising. This method is only appropriate for the sale of major properties and allows consideration of the range of offers in order that the best opportunity may be selected.
  - Public Auction is where a date for auction is published and, by a process of bidding at that public gathering, the property is sold to the highest bidder conditional upon the reserve price being exceeded.
- 1.4 Guidance on the most appropriate method of sale must be obtained from URPS as soon as a decision to sell has been made so that any special arrangements necessary to facilitate the sale process can be made.
- 1.5 All property sales must be undertaken in accordance with the Property Approval Delegations Regulation 4.2 as approved by the Synod Standing Committee October 2010 (see Annexure 2).

## 2. Consent To Sell

- 2.1 Properties cannot be advertised or listed for sale until Presbytery, Board or responsible body and URPS consent to sell, as applicable, has been obtained.
- 2.2 Notwithstanding the aforementioned, relevant church bodies can discuss the sale of a property with a prospective buyer conditional upon the buyer being advised that consent to sell processes apply and no commitment to sell can be made before consent to sell is obtained.

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- 2.3 Where special circumstances of urgency to sell a property exist, immediate contact should be made with URPS and all possible assistance will be provided under urgency provisions.
- 2.4 Where six (6) months has elapsed since consent to sell was obtained and the sale of the property has not eventuated, the relevant church body must inform presbytery, Board or responsible body as appropriate. If it is deemed appropriate by URPS it will review the consent to sell including the value of the property.
- 2.5 A consent to sell will lapse if the property has not been sold twelve (12) months after the consent has been obtained.

## 3. Sale Limitations

- 3.1 Where a property considered for sale is subject to covenants that could be infringed by its sale, such as a bequest, immediate guidance should be sought from URPS before proceeding further.
- 3.2 Where a property is an institution in receipt of a government subsidy or received a grant at the time of its establishment, the responsible body must ascertain whether the receipt of such funding or grant places any restriction on the sale of the property or commits the institution to providing financial compensation to the government as a consequence of the sale.
- 3.3 Any property offered for sale that has an existing debt charged against it must have that debt discharged at the time of sale. The relevant church body will be responsible for discharging that debt in consultation with the relevant lending body.
- 3.4 Sale contracts entered into by a church body should include any right the body requires for the removal of fixtures and fittings from the property before settlement. The solicitor acting for the church body should also be instructed as to what fixtures and fittings are included in the sale and those that are required for retention by the body and have such requirements incorporated into the contract of sale.
- 3.5 Further to 3.4 above, where the removal of a pipe organ is involved in the sale of a property the Uniting Church Music Committee must be consulted and its advice sought on how best to remove and relocate the pipe organ.

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- 3.6 The sale of church property to other religious denominations is not prohibited, however a full risk assessment should undertaken if there are any perceived risks such as media exposure of impacts on other stakeholders. Guidance can be sought from URPS prior to progressing the sale.

## 4. Selling Process

Any church body seeking to sell or dispose of property must complete the following steps in sequential order.

### Step 1

The body identifies a need to sell or dispose of a property.

### Step 2

The body undertakes a formal assessment of the proposed sale. Factors that need to be considered include:

- Missional and/or strategic impact assessment,
- Impact on any other part of the church and consideration of any relevant regulations, by-laws and policies of the church,
- Financial capacity to meet all associated costs,
- Whether borrowings from within the church need to be acquitted and capacity to acquit those borrowings,
- Whether sales proceeds from the sale of the property are to be used to purchase another property,
- A risk assessment and due diligence process that includes:
  - Legal review and advice
  - Any necessary reports and disclosures that may be required by law
  - Financial risks
  - Any other relevant material risks.

### Step 3

The body obtains appropriate approval within its governance structure by passing a written resolution agreeing or disagreeing with the proposal to sell.

- For a congregation the church council will make this resolution.
- For all other bodies it will depend on their respective governance arrangements.

### Step 4

If no formal valuation has been obtained, then a formal valuation has to be obtained from an independent registered valuer.

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## Step 5

If the resolution is to proceed with the proposal to sell, then the body will complete a “Sales Application Form” (see Annexure 4) and attach the proposal, valuation and assessment to it.

- For all bodies oversighted by a presbytery, the Sales Application Form and attachments must be submitted to both the presbytery and to URPS.
- For sales of \$1 million and under, the presbytery has the power to approve according to its delegation and will provide details of the approval to URPS.
- For sales above \$1 million, the presbytery needs to formally endorse and recommend approval to URPS, which in turn will then submit the proposal to the Uniting Resources Board for approval.
- For all other bodies, the proposal is to be submitted to URPS, which in turn will then submit the proposal to the Uniting Resource Board for approval.
- Where any body has a specific delegation of approval from the Uniting Resources Board, it may approve the proposal in accordance with the delegation and provide details to URPS.

NOTE: If borrowings are being acquitted then the body needs to formally seek to discharge the borrowings and associated documentation with Uniting Financial Services.

## Step 6

The approving body will formally advise the relevant body in writing that its application has been successful or unsuccessful. Where approval to sell is given by a presbytery or the Uniting Resources Board, formal written notification will be provided by URPS.

## Step 7

Upon approval the body will appoint a real estate agent and legal representative to act on its and the Property Trust’s behalf.

## Step 8

If the sale is by auction, the necessary authorities must be sought from URPS to appointed parties to act on behalf of the Property Trust at the auction. This must be obtained prior to auction.

## Step 9

In consultation with URPS the property is sold.

NOTE: For congregations and any entity to which the Sales Proceeds Policy applies, please refer to the Sales Proceeds Policy provisions at clauses 5 and 6 below.

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## Step 10

Prior to the exchange of contracts all legal documents relating to the sale of the property are to be submitted to URPS for execution by the Property Trust. A Certificate of Correctness (see Annexure 1) signed by the appointed legal representative must accompany this documentation.

## Step 11

Undertake settlement of the sale in consultation with URPS and, where applicable, any funding body.

## Step 12

Upon settlement arrangements must be made with Uniting Resources Risk & Insurance Services to cancel insurance of the property.

## Step 13

Following settlement, the legal representative acting for the body will notify the relevant local authorities such as local council and water board that the property has changed hands and make arrangements for meter readings and final utility accounts to be issued. Where the sale involves a church building, arrangements should also be made to have any relevant street signage and notice boards amended.

## Step 14

Determine whether the Sales Proceeds Policy applies by referring to Clause 5 below and, if so, assess any impacts such as tithing etc.

## Step 15

All funds from the sale of property by congregations or any entity to which the Sales Proceeds Policy applies must be sent to URPS, which will retain the funds on the body's behalf and in its name. The costs associated with the sale of the property such as but not limited to legal and real estate agency fees are deducted from sale proceeds and must be taken into consideration when assessing the net financial result of the sale.

## Step 16

URPS enters details of the sale into the Synod Property Register and the body concludes ongoing responsibility for the property sold.

## 5. Sales Proceeds Policy

- 5.1 The Sales Proceeds Policy will apply to all Congregations and their associated activities within the bounds of the Synod of New South Wales and the ACT.
- 5.2 Entities and activities specifically excluded from this policy are:
  - 5.2.1 Synod Boards, entities directly under their oversight and related activities;

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- 5.2.2 Uniting Financial Services;
- 5.2.3 Presbyteries and related activities;
- 5.2.4 Community services activities of parish missions.
- 5.3 All sales proceeds including interest earnings on sales proceeds can only be used for capital works.
- 5.4 “Capital works” is defined as projects which produce, expand or redefine durable resources that will better facilitate the church’s service delivery and mission; resources, which in themselves have a lasting value.

This includes but is not limited to expenditure on land, buildings, construction and major additions or alterations, capital equipment, intellectual property, ministry and leadership, discipleship training, a new mission program developed by a congregation according to its presbytery-approved mission plan, a church-owned business activity, a new community service and research and development.

- 5.5 The following specific uses, in addition to 5.6 and 5.7 below, and subject to approval, will be permissible:
  - 5.5.1 Repairs and maintenance where:
    - a) The repairs and maintenance work is urgent and, if not undertaken, may lead to liability or injury being incurred and may materially devalue the property;
    - b) The church body is experiencing significant long-term economic hardship.
  - 5.5.2 General operational expenses where:
    - a) Major events such as fire, flood or drought have occurred; and
    - b) Significant economic hardship is being experienced as a result of those events
  - 5.5.3 Building Sinking Funds may be established for large costly or heritage listed buildings and should be subject to rigorous assessment of the quantum required and rules for use.
- 5.6 After receiving a recommendation of the relevant presbytery, Board or responsible body, URPS will consider all applications for the use of sales proceeds for the purposes of expenditure on land, buildings, construction and major additions and alterations, expenditure on business activities and for specific uses listed in 5.5 above.

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- 5.7 Conditional upon a recommendation from the relevant presbytery, the Synod Mission Resource Fund Committee (SMRF) will consider all applications for the use of sales proceeds for purposes other than expenditure on land, buildings, construction and major additions and alterations, expenditure on business activities and for specific uses listed in 5.5 above. Application forms and details of the application process are available from SMRF.
- 5.8 Presbyteries are to review any unused sales proceeds held within their bounds at least three yearly. In addition, presbyteries are also expected to review situations within their bounds where it is evident that there is no intended planned use of sales proceeds regardless of whether three years have elapsed or not.
- 5.8.1 A presbytery may formulate proposals for the use of such sales proceeds and make recommendations to URPS. URPS will consult with the presbytery and congregation concerned when assessing the recommendations. Where URPS believes it appropriate to proceed then formal approval will be required in accordance with 5.6 and 5.7 above depending upon the nature of intended use.
- 5.8.2 Presbyteries are encouraged to collectively assess and make recommendations for unused sales proceeds as described in 5.8.
- 5.9 Presbyteries may give the final approval for the use of sales proceeds in respect to:
- Repayment of any borrowings by a church council;
  - The capital cost of real estate transactions (purchases or building constructions) for which presbytery holds the right of final approval.
- 5.10 All other proposals, with the exception of those covered under 5.7 above, require an application to URPS for final approval. Such applications must be supported by a presbytery recommendation.

## 6. Tithing On Sales Proceeds

- 6.1 A ten (10) per cent tithing of the net sales proceeds arising from the sale of real estate is to be transferred to SMRF. SMRF is authorised to use such tithes for mission priorities in accordance with its terms of reference.
- 6.2 The following sales of real estate will not be subject to a tithe:
- 6.2.1 Sales proceeds of real estate originally acquired by specific and/or conditional gift or out of funds to which there are externally imposed legal restrictions on their use. Examples are real estate which is:

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- a) Donated for specific purpose such that the sales proceeds must be retained for a specific purpose.
- b) Purchased from funds to which are attached specific restrictions on its use, including monies from a Deductible Gift Fund.
- c) Financed by government grant or subsidy for which there is an obligation to repay part or all of the grant or subsidy if sold within a specific, pre-determined period. In such circumstances, a tithe would be payable on the net sales proceeds and the repaid grant or subsidy.

6.2.2 Proceeds of a minister's residence to the extent that such proceeds are used for the purchase or building of another residence to replace it within a period of three (3) years after the sale.

6.3 All applications for exemption from tithing are to be submitted to SMRF for consideration once the congregation, church council and presbytery have consented to the application and presbytery has endorsed it.

## 7. See Annexures

- Annexure 1 Certificate of Correctness
- Annexure 2 Property Approval Delegations
- Annexure 4 Sales Application Form
- Annexure 5 Application for Use of Sales Proceeds and Drawdown of Sales Proceeds
- Annexure 7C Checklist for the Approval of a Sale by Presbytery up to \$1,000,000