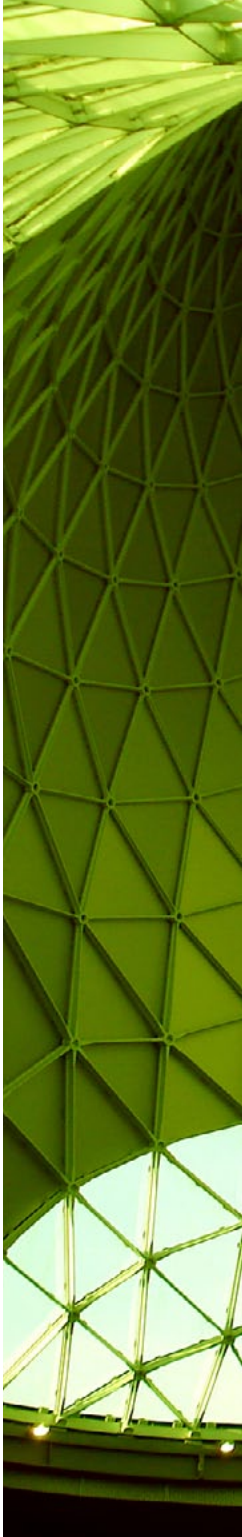


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Uniting Church in Australia
Synod of NSW and the ACT

SECTION 6— LEASES AND LICENCES



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LEASES AND LICENCES

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Leases and Licences

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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 acquire and hold property whether real or personal. Trust property is either vested in or acquired by the Property Trust and is beneficially held for the use of church bodies within the bounds of the Synod.
- 1.2 All leases must be undertaken in accordance with the processes set down by URPS and executed by Property Trust.
- 1.3 All leases and licences must be undertaken in accordance with the Property Approval Delegations under Regulation 4.2 as approved by the Synod Standing Committee October 2010 (see Annexure 2).

2. Leases That Do Not Require Uniting Resources (UR) Approval

- 2.1 Leases for less than three (3) years duration, including all option periods, and no more that \$500,000, may be approved by the relevant presbytery (see Annexure 8).

3. Leases Where A Church Body Is The Lessor Or Landlord

- 3.1 Lease documents may be prepared by the lessor but must conform to the standards set down by URPS.
- 3.2 Where a retail or commercial lease is being contemplated legal and URPS advice should be sought in the first instance.
- 3.3 Where a residential lease is being contemplated it is appropriate to use an industry standard lease that can be obtained from the Real Estate Institute. URPS have additional clauses that must be included in the lease document. These should be annexed to the standard residential lease and signed by both parties.
- 3.4 Where a licence or user agreement is being contemplated copies of the standard agreement can be obtained from URPS.

3.5 Church bodies that enter into leases take on a number of legal obligations such as but not limited to acting as controller of the premises and landlord and tenant requirements. It is therefore imperative that all bodies:

- read and understand their responsibilities and obligations;
- appoint a church representative to oversee and managing the lease;
- appoint a suitably qualified managing agent to manage the lease.

3.6 URPS is the final approver of most lease applications put forward by church bodies. In some circumstances URPS may delegate the right to approve to other church bodies.

NOTE: Where a lease relates to aged care, child care, community care or education prior consent to lease must also be given by the relevant Synod Board

NOTE: Where a church body holds authority to lease in its own right, it must still notify presbytery and/or URPS as applicable of any lease arrangements entered into and forward the relevant lease documentation to URPS for execution by the Property Trust.

3.7 No church owned property can be provided for continuing occupancy to any person or organisation external to the church unless the necessary approvals have been given and a legally competent lease or licence agreement has been completed and duly executed by the Property Trust.

4. Lease Process For A Church Body As The Lessor Or Landlord

Any church body seeking lease property must complete the following steps in sequential order.

Step 1

The body identifies a need to lease a property that falls under the oversight and management of the body;

Step 2

The body undertakes a formal assessment of the proposed lease. 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,

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- A risk assessment on the prospective tenant.

Step 3

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

- 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 the resolution is to proceed with the proposal to lease, then the body will complete a "Lease/Licence Application Form" (see Annexure 9) and attach the proposal, valuation and assessment to it.

- For all bodies oversighted by a presbytery, the Lease Application Form and attachments must be submitted to both the Presbytery and to URPS.
- For leases of no more than 3 years including option periods and no more than \$500,000, the presbytery has the power to approve according to its delegation and will provide details of the approval to URPS.
- For leases of more than 3 years including option periods and over \$500,000, the presbytery needs to formally endorse and recommend approval to URPS who 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.

Step 5

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

Step 6

The body appoints a suitably qualified legal practitioner and managing agent and enters into an agency agreement. Agency agreements must be based upon the URPS standard agreement, incorporate URPS additional requirements and be executed by the Property Trust.

Step 7

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All legal lease documents once signed by the tenant are submitted to URPS along with a Certificate of Correctness which has been completed and executed by the body's legal representative (see Annexure 1) and URPS facilitates the execution of the documentation by the Property Trust.

Step 8

Prior to completion, arrangements must be made with Uniting Resources Risk & Insurance Services to insure the property.

Step 9

Following execution of the lease, all original documents are to be forwarded to URPS for secure retention. Copies of such documents may be retained by the relevant church body for future reference.

Step 10

URPS enters details of the lease into the Synod Property Register and the relevant body assumes ongoing responsibility for the lease and the property being leased.

5. Leases Where A Church Body Is The Lessee Or Tenant

- 5.1 A church body may be a lessee or licensee and where this is proposed the conditions of occupancy must be embodied in a lease or licence document provided by the owner of the property.
- 5.2 Guidance on the suitability of a lease or licence must be taken from URPS in the first instance with any lease or licence being in the name of the Property Trust and executed by the Property Trust.
- 5.3 Where a retail or commercial lease is being contemplated legal and URPS advice should be sought in the first instance.
- 5.4 There are two (2) leasing categories:
 - Leases of less than 3 years duration; and
 - leases of more than 3 years duration
- 5.5 URPS is the final approver of most lease applications put forward by church bodies. In some circumstances URPS may delegate the right to approve to other church bodies.

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- 5.6 Prior to any church body occupying leased or licensed premises it is the responsibility of the church body to notify Uniting Resources Risk & Insurance Services accordingly and arrange the requisite insurance cover for the premises.
- 5.7 There is often at the commencement of a lease or license a requirement for the tenant to provide a bond or bank guarantee to the landlord. This is usually four (4) weeks rent for residential leases and three (3) months gross rent for commercial leases.

6. Lease Process For A Church Body As The Lessee Or Tenant

Any church body seeking to lease a property must complete the following steps in sequential order.

Step 1

The body identifies the need to lease a property from a third party;

Step 2

The body undertakes a formal assessment of the proposed lease. 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 is required and capacity to service those borrowings,
- A risk assessment of the property.

Step 3

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

- 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 the resolution is to proceed with the proposal to lease, then the body will complete a "Lease/Licence Application Form" (see Annexure 9) and attach the proposal, valuation and assessment to it.

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- For all bodies oversighted by a presbytery, the Lease Application Form and attachments must be submitted to both the presbytery and to URPS.
- For leases of no more than 3 years including option periods and no more than \$500,000, the presbytery has the power to approve according to its delegation and will provide details of the approval to URPS.
- For leases of more than 3 years including option periods and over \$500,000, 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.

Step 5

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

Step 6

The body appoints a suitably qualified legal practitioner review the lease agreement. Any lease agreement must also include any additional requirements of URPS and be executed by the Property Trust.

Step 7

All legal lease documents are submitted to URPS along with a Certificate of Correctness which has been completed and executed by the body's legal representative (see Annexure 1) and URPS facilitates the execution of the documentation by the Property Trust.

Step 8

Prior to completion, arrangements must be made with Uniting Resources Risk & Insurance Services to insure the property.

Step 9

Following execution of the lease all original documents are to be returned to the landlord and copies of same forwarded to URPS for secure retention. Copies of such documents may be retained by the relevant church body for future reference.

Step 10

URPS enters details of the lease into the Synod Property Register and the relevant body assumes ongoing responsibility for the lease and the property being leased.

7. Licenses Where A Church Body Is The Licensor Or Landlord

- 7.1 Where a church property is offered for shared occupancy between a church body and an external entity, the sharing of occupancy offered is not a total right of occupancy to the external entity but the granting of a license for the premises or part of, to be used by the external entity at specific times and under specific conditions. This is to enable the church body to continue operating in the normal course of events without relinquishing its usage rights to the property.
- 7.2 A licence as opposed to a lease defines the rights and obligations of occupancy and its use for specified periods of time. The licence may cover all or part of the property under licence. Licence and or user agreements are available from URPS and only licence or user agreements approved by URPS are to be used in these circumstances.
- 7.3 Licences or user agreements for more than twelve (12) months duration are not encouraged.

8. Licence Process For A Church Body As The Licensor Or Landlord

Any church body seeking to offer property occupancy under licence must complete the following steps in sequential order.

Step 1

The body identifies a need to offer a licence in respect to a property that falls under the oversight and management of the body;

Step 2

The body undertakes a formal assessment of the proposed licence. 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,
- A risk assessment.

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Step 3

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

- 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 the resolution is to proceed with the proposal to offer a licence, then the body will complete a "Lease/License Application Form" (see Annexure 9) and attach the proposal, valuation and assessment to it.

- For all bodies oversighted by a presbytery, the Licence Application Form and attachments must be submitted to both the presbytery and to URPS:-
 - For leases of no more than 3 years including option periods and no more than \$500,000, the presbytery has the power to approve according to its delegation and will provide details of the approval to URPS,
 - For leases of more than 3 years including option periods and over \$500,000, 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.

Step 5

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

Step 6

The body appoints a suitably qualified legal practitioner to review the licensing arrangements. Licensing arrangements must be based upon the URPS standard agreement, incorporate URPS additional requirements and executed by the Property Trust.

Step 7

All legal licensing documents once signed by the tenant are submitted to URPS along with a Certificate of Correctness which has been completed and executed by the body's legal representative (see Annexure 1) and URPS facilitates the execution of the documentation by the Property Trust.

Step 8

Following execution of the licensing documents, all original documents are to be forwarded to URPS for secure retention. Copies of such documents may be retained by the relevant church body for future reference.

Step 9

URPS enters details of the licence into the Synod Property Register and the relevant body assumes ongoing responsibility for the property under licence.

9. Licenses Where A Church Body Is The Licensee Or User

- 9.1 Licences that a church body enters into as a licensee are recommended not to be of a duration exceeding twelve (12) months.
- 9.2 It is the responsibility of the church body acting as licensee or user to ensure that requisite insurance cover is available and has application to their activities. For further information contact Uniting Resources Risk & Insurance Services.

10. Hall Hirers

- 10.1 Where a church body contemplates hiring out church property, such as a church hall, on a temporary basis it is the responsibility of the church body to ensure that the hirer has the requisite insurances in place prior to the property being hired.
- 10.2 In such circumstances the parties to the agreement must complete a "Hiring Agreement" which details the terms, conditions and obligations of the parties. The church body in such circumstances will assume the role of controller of the premises and is legally obligated to ensure that the premises being hired are suitable for hiring and comply with the relevant legislation. Copies of the agreement should be forward to URPS for noting.

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11. Joint Use Of Property Between Church Bodies

- 11.1 Church bodies that are contemplating establishing shared usage arrangements between themselves for the use of a particular church property are not permitted to enter into leasing or licensing arrangements.
- 11.2 In such circumstances the church bodies are expected to enter into a Memorandum of Understanding (MOU) which will provide for the joint stewardship of the property and foster the mission and growth of the church. To obtain a copy of the standard MOU approved for use within the bounds of the Synod please contact URPS.
- 11.3 An MOU is not a legally enforceable or binding document, but it does set out the intentions of the parties to the agreement.
- 11.4 An MOU can only be entered into by the church bodies actually sharing the property and must not include reference to the Property Trust as a party because the Property Trust cannot legally treat with itself.
- 11.5 Where two or more church bodies operate from one property base, organisational structures must be put in place to accommodate this sharing including a joint consultative process.
- 11.6 Any Property Committee servicing the property must contain representatives of each church body, generally in equal proportion or in accordance with requirements mutually agreed between the bodies.
- 11.7 Each body that shares usage of the property must share the cost of its maintenance and any other costs associated with the property in proportion to their time usage of the property and any other relevant factors such as but not limited to size of the membership of the individual church body. It is imperative that the MOU between the bodies clearly specifies the financial obligations of each party.
- 11.8 The needs of each body sharing the property must be given equal attention when making decisions relating to the use of the property. While finance and property management issues will always be prime considerations, it is also important to recognise that the property is a resource for mission to be used by each body in their own way.

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12. See Annexure

- Annexure 1 Certificate of Correctness
- Annexure 2 Property Approval Delegations
- Annexure 8 Automatic Application Form for Leases
- Annexure 9 Lease/Licence Application Form