

MORTGAGES OF CHURCH PROPERTY

(Canon 14)

The Canons require the Vestry to approve any proposed sale or mortgage of Church property and to obtain the consent of the Bishop and of the Diocesan Council of the Diocese to such action.

All Real Property in the Diocese is registered in the name of the Incorporated Synod of the Diocese of Huron, which holds the property as Trustee for the Parish concerned.

Once the approval of the Vestry, the Bishop and the Diocesan Council have been obtained, the mortgage document should be prepared for signature by the Rector, the Churchwardens, the Bishop and the Director, Administrative Services of the Diocese. The Rector and Churchwardens sign the mortgage to evidence the approval of the Vestry to the borrowing, and they should sign the document before it is sent to the Synod Office for signature by the Bishop and the Director, Administrative Services. While it is not legally necessary to have the Rector sign the document because of the wording of the 1874 Act of Incorporation of the Diocese of Huron, many dioceses need the Rector's signature to legal documents such as deeds or mortgages and there is no objection to preparing the document to include the signature of the Rector. However, in every case the signature of the Rector's Warden and the People's Warden are both required.

The mortgage document itself must make it abundantly clear that the Synod is not assuming any legal liability under the mortgage whatsoever.

It is suggested that the solicitor acting for the parish in the mortgage loan be advised as follows:

1. The Mortgagor should be the Rector and Churchwardens of the Parish as such and not in their personal capacity.
2. The Synod should be the party of the third part. It is normally described in legal documents as:

"The Incorporated Synod of the Diocese of Huron, a corporation incorporated by Special Act of the Province of Ontario, 38 Victoria, Chapter 74 (1874)."

3. The following clauses should be inserted into the mortgage document:

"**WHEREAS** it is represented that the legal estate of the lands herein described is vested in The Incorporated Synod of the Diocese of Huron as Trustee for (name of Church - e.g. St. George's Anglican Church, London, Ontario) and that the said Synod at the request of the Rector and Churchwardens of the said Church has agreed to execute this mortgage for the purpose of conveying to the said Mortgagee the legal estate in fee simple of the said Real Property insofar as the same may be in the Synod, it being expressly understood that no liability to repay the mortgage monies hereby secured, or any part thereof, nor to perform any covenants herein contained, nor any liability whatsoever on the part of the said Synod shall be created hereby.

PROVIDED always, and it is hereby agreed by and between the parties hereto and their respective successors and assigns, that no debt or liability is or shall be created by virtue of these presents on the part of the said Synod for principal, interest or costs or otherwise, and that in the event of any proceedings being taken upon this mortgage wherein it shall be deemed necessary to join the Synod or its successors or assigns, the Synod shall not be held liable for any costs of or incidental to such proceedings by reason of its execution of these presents."

4. The normal mortgage documents contain various covenants on the part of the borrower. Since the borrower is the Parish and not the Diocese, it must take full responsibility.

If further information is desired, please contact the Director, Administrative Services at the Synod Office, who will contact the Chancellor or the Synod Solicitor for advice if necessary.

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