REAL ESTATE CONSIDERATIONS FOR RELIGIOUS AND NOT-FOR-PROFIT ORGANIZATIONS

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In the past, religious organizations acquired a significant amount of real property for use in connection with their ministries: churches, schools, residences for religious and cemeteries. As the population has changed, the need for those properties has diminished and over time the costs of maintenance and repair have increased significantly. As a result, many religious organizations have excess real property that is underutilized and/ or has become a financial burden due to the cost of upkeep, insurance and the like.

BWMS has represented many religious organizations in the disposition or leasing of underutilized real estate assets. These transactions can provide a much-needed financial benefit through increased revenues or relief from the expenses related to those properties. There are a number of legal issues that may be faced by a religious organization when selling or leasing excess real property some of which are addressed below.

To Lease or Sell? Leasing real property allows for continued control and a revenue stream over the term of the lease. The risk is whether the tenant can meet its obligations to pay rent and to maintain the building. Some leases will require the owner/ landlord to retain certain obligations for maintenance and repair that could be substantial given the age and condition of the building. To the extent the owner is concerned about the future use of the building for something antithetical to its teaching or that might have an adverse impact on other property it owns in the vicinity, the ability to control future uses is greater than if it were to sell the property. In some cases, the need for substantial and costly repairs will prevent a lease transaction as the potential user will need to borrow funds for repairs and renovation.
**Do you have the necessary approvals?** In order to alienate a property that has been owned and operated for religious purposes, the organization may need to obtain certain approvals or follow certain protocols before it can sell or lease the property. The ability to obtain and the timing of obtaining such approvals can create issues for the transaction by delaying the closing or commencement of the lease term and causing buyers or tenants to be hesitant to spend the time and money evaluating the property with the uncertainty of the transaction.

In order to have the title insured by a title insurance company, the religious organization will need to provide evidence of its existence and authority to sell the property and that the person signing the deed conveying the property was authorized. This may require documentation.

**Is the property exempt from real estate taxes?** Under Illinois law, taxation is the rule. Tax exemption is the exception. All property is subject to taxation, unless exempt by statute, in conformity with the constitutional provisions relating thereto.

In order for leased property to be exempt, the landlord must be an exempt organization and the tenant must use the property for religious, educational or charitable purposes. Illinois exempts property used for schools, property used for religious purposes, and property used for burials. Illinois also exempts property of charitable organizations, old people's homes, facilities for persons with developmental disabilities, certain not-for-profit health maintenance organizations, free public libraries, and historical societies that are charitable institutions. The Illinois Supreme Court has held that property owned by an exempt entity but leased to another exempt entity for exempt purposes retains its property tax exemption. Therefore, when leasing real property, the religious organization must take care that the tenant is using the leased property for exempt purposes or the property may lose its tax exemption.

When selling exempt property, care should be taken that the parcel being sold constitutes its own tax parcel or that the property is divided for tax purposes to accomplish that. Many times, a property such as a convent, rectory or closed school is split off from a parish campus that is a single tax parcel. Filing for new tax parcel is imperative. In order to make sure that each party is paying taxes for its respective parcel after conveying a parcel, the buyer should acknowledge that it is responsible for all taxes assessed from the day it acquires the property.

**Are there zoning or subdivision issues which may need to be addressed?** In some instances, the property being sold or leased may be for a use not permitted by the applicable zoning district. In the instance of a sale the buyer may want some period of time to obtain the necessary permits for its intended use. If the parcel is part of a larger piece of property, the religious organization should provide for review and approval of any applications for land use approvals to make sure that there isn't a potential adverse impact on the remaining property. If possible, the effectiveness of any zoning changes should be conditioned upon the transfer of the property to the buyer.

If the property is being leased for a use not consistent with the prior use, i.e. a former school building being leased for non-school use, then prior to entering into the Lease the landlord should review the zoning ordinance or inquire of the appropriate municipal department with respect to the permitted uses.
Before selling a parcel that is part of a larger property, it should be determined whether the property needs to go through a formal subdivision process. That process can be time consuming and may wind up imposing certain obligations on the retained property. Again, the right of prior review and approval should be reserved to the seller.

**Does the property being sold rely on utilities or other facilities that may serve other parcels?** When built many older religious properties contained a single heating plant and utility service for multiple buildings that may have been routed through a single building. When one of the buildings, such as a convent or rectory, is being sold, an agreement between the buyer and seller will be necessary to create easements and allow for the continuation of utility service.