

# A step-by-step guide to selling church property.

By **Jodi Warren, Esq.**

*Partner, Capell Barnett Matalon & Schoenfeld, LLP*



## Do your due diligence before entering a contract.

As the real estate market heats up, some churches are contemplating selling their property to generate income to sustain their mission.

The property or properties being sold might be the church's primary location or additional property that no longer serves the organization's purpose or long-term goals.

Before executing a sale contract — which can be a difficult decision, especially when the property has been owned and used by the organization for decades — the church leadership needs to do its due diligence. These steps will place the church in an advantageous position to successfully negotiate and sell its property.

**CONTINUED ON NEXT PAGE...**

“There are complex laws related to real estate transactions by a religious organization. Such laws vary by state; therefore, it is imperative for the church to work with an attorney who has extensive experience counseling religious organizations and submitting petitions for approval to the attorney general and/or court (if required by law). The attorney should guide the church through the sale process, including explaining the requirements for approval, timeline for closing, applicable tax regulations, and the pertinent language that should be included in the contract.”

**—JODI WARREN**

## Understand the value of the site

Before marketing the property, it is essential for the church to understand the value of its site. The first step in this process is to understand the site feasibility (what can be built on the property), and the economic value of the site. A zoning analysis gives a baseline understanding of what can be built on the site by providing insight into the zoning classification (such as residential, commercial and/or community facility) and the amount of buildable square footage that can be used.

An appraisal from an unbiased appraiser should be obtained to grasp the economic value of the property. An appraisal values the property by using numerous valuation methods and takes into consideration the zoning analysis, current market conditions and the state of the building(s). The appraiser will review and compare the subject property to similar properties in the area.

## Order a title report

Generally, property must be transferred free and clear of encumbrances. The church can review violations, permits and title to the property on the applicable state and county websites, including the department of buildings, department of finance and/or the register system. However, for a more comprehensive examination, a title report should be ordered from a local title company, which outlines the property description, property owner and those with an interest in the property a list of encumbrances (including mortgages, deed restrictions, judgments and outstanding taxes) and violations.

This review will uncover potential challenges to the sale process that might impact the value of the site. For instance, common issues that arise are restrictions on the use of the property, old mortgages that have been satisfied but not properly removed from the title, and deeds with an incorrect name of the owner.



## Form a team

The church leaders should form internal committees to work with real estate experts from the early stages of the sale process. This provides congregants with a way to be involved in the sale process and the future of the church. Additionally, the church should hire outside experts to help navigate the intricacies of the sale process, such as a broker and an attorney with experience working with religious organizations in the area.

## Review governing documents

The church must review its governing documents to understand the organization's requirements for the sale of property, such as the authorized signatory of documents, voting requirement, including the board and members, if applicable, and whether approval from any governing body or denomination is necessary.



## Legal requirements of approval

There are complex laws related to real estate transactions by a religious organization. Such laws vary by state; therefore, it is imperative for the church to work with an attorney who has extensive experience counseling religious organizations and submitting petitions for approval to the attorney general and/or court (if required by law). The attorney should guide the church through the sale process, including explaining the requirements for approval, timeline for closing, applicable tax regulations, and the pertinent language that should be included in the contract.

## Fees and expenses

The church should be aware of the transactional fees upfront so that it can properly budget for such expenses and understand the total funds received at closing (i.e. the purchase price less

any expenses due at closing pursuant to the terms of the contract). Some fees will be due during the sale process, but many can be paid at closing out of the purchase price. The terms of every transaction are different, but generally, the church will be responsible for paying a broker fee, legal fees, title fees and transfer tax.

## Long-term planning

The sale of property should never be a hasty decision, so a large component of the due diligence process must be to prepare for the aftermath, including a plan for the use of the proceeds.

All real estate transactions come with some level of risk; however, these steps provide the necessary guidance for the organization to properly navigate the sale process. Being prepared and ready to face potential challenges will allow the church and its leadership to focus on what is most important: its mission and ministry.

---

**Jodi Warren, Esq.**, is an attorney at **Capell Barnett Matalon & Schoenfeld**. She represents religious and not-for-profit corporations on complex real estate transactions, including long-term leases, purchase and sales of properties, joint ventures and development projects.

She serves as counsel to numerous denominational governing bodies as well as individual congregations and non-profit organizations.