

**Provider: Conference for
Catholic Facility
Management**

G460



**Course Title: Effectiveness of
Morality Clauses when attached to
Purchase Agreements and/or Deed
Restrictions in the Sale or Lease of
Former Religious Properties**

AUS 1801

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Course Description

Is it effective or practical for the Church or Religious Institute to restrict the future usage of former religious properties when sold or in ground leases? Is it reasonable to attempt to prevent certain types of businesses or developments from being established in or on the site of Church-vacated property?

In this session, Counselors of Real Estate® (“CRE” - credentialed, objective real estate advisors who have experience with Church properties and creative real estate counseling through their private practices and the CRE Consulting Corps pro bono initiative) will share examples of successfully implemented restrictive clauses and covenants; and answer questions about when such a strategy is appropriate, how to construct such a clause, how to negotiate with a buyer or leasing agent and communicate with the prospective buyer or tenant to ensure success.

Learning Objectives

At the end of the this course, participants will be able to:

1. Understand what kinds of restrictive clauses and deed covenants are possible to develop for Church-vacated property, with discussion of successful implementation, using examples and case studies.
2. Understand what resources to utilize (or not utilize) in developing realistic restrictive clauses and covenants for properties, using examples and case studies.
3. Develop an effective restrictive clause or covenant, using examples of clauses and covenants they can modify to suit a particular situation.
4. improve communication (and negotiation skills) with a buyer, leasing agent or tenant to ensure Church or religious institute satisfaction, using examples and case studies”.

The Counselors of Real Estate (CRE)

Counselors

- Visionary, yet practical, approaches to real estate and business issues
- Have a Commitment to Excellence and Ethics
- Uncompromising adherence to high standards of professional conduct
- Recognized records of accomplishment

CRE Consulting Corps

- CRE members volunteer their time and skill to provide non-profits with strategic action plans

Observed Standards of Practice

- Use of deed restrictions and other covenants is a common element in transfers of church property, by sale or lease,
- Language varies extensively in its specificity depending upon particular jurisdiction
- Agreements by competent parties generally protected by contract law, unless such contract terms violate a supervening law
- Religious guidance generally as specified by USCCB
- Anecdotal evidence indicates some, relatively minor, degree of negotiating flexibility

Effect on Marketability and Pricing

- Most respondents report little if any negative impact of morality clauses on ability of Church to successfully transact on properties
- Some indication that clauses serve to filter pool of potential buyers
- Some site specific issues arise, especially in uses proximate to continuing religious uses – particularly as to signage, or to relation of future ancillary uses of the transferred property to a prohibited primary use
- Several respondents express concern about enforceability in states like California

Some key issues identified

- Often use restrictions must account for differences in property types:
 - Schools, for instance, often will introduce contraceptive options in health curriculum in middle school/high school
 - Office buildings, and to some degree multifamily, may contemplate leasing of medical suites as part of development
 - As retail configurations become more “services” oriented, rather than simply goods merchandizing, it is important to take care of what services are permitted and/or prohibited
- Some experts believe short-term covenants are more feasible than restrictions in perpetuity (though many such covenants do “attach to the land”)
- A key exposure to challenge is in First Amendment conflicts (exercise of religion; exercise of speech)

Some nuances to consider

- Distinction between properties specifically identified with the Church, versus assets which might be incidentally acquired (e.g. by donation or in an estate)
- Disposition of land assets now considered surplus, which have mixed-use development potential
- Potential conflict in disposition at “highest price” versus “most preferred use”
- In the case of a breach of covenant, what is the Church’s remedy?
- What happens if Church use in adjacent property is itself discontinued?
- Are there concerns in deals with non-Catholic religious organizations?

Open Discussion on the Future of Restrictive Clauses and Evolving Re-Use of Church Property

- Increase in Adaptive Re-use – Both Urban and Suburban – Examples
- How to Balance Stewardship of Doctrine and the Asset
- Legal Challenges to Certain Clauses and Deed Restrictions
- What are you seeing?
- Questions?

This concludes The American Institute of Architects
Continuing Education Systems Course

Questions?



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