

will undoubtedly rely upon the advice of experts before proceeding with any action to vindicate the rights of the Church. These experts may include civil attorneys, the diocesan finance council (whose members are to be "truly expert in financial affairs and civil law" canon 492 §1), the college of consultors, those concerned, etc. Obviously, the competent authority is not the administrator of the public juridic person. Indeed, the administrator would be the person responsible for the invalid alienation; he or she is the person subject to the competent authority. Even if the administrator would seek civil action to rescind an act of alienation, he or she is forbidden "to initiate or contest litigation in a civil forum in the name of a public juridic person" without the prior written permission of his or her own ordinary (canon 1288).

Further, the code requires that an indeterminate penalty be imposed upon an administrator who alienates an ecclesiastical good without the required canonical formalities: "A person who alienates ecclesiastical goods without the prescribed permission is to be punished with a just penalty" (canon 1377). Should a penal trial be initiated against the offender, during the penal trial itself, an injured party is able to bring a contentious action to repair damages incurred personally against one who committed the delict (canon 1729 §1; see also canon 1491).

It can also occur that an act of alienation, recognized as valid by civil law, is held as valid *but illicit* in canon law (see canons 1293-1294). In such a case, the one harmed has the right to bring canonical action (see canon 1400 §2) against the administrator who illicitly but validly alienated the temporal good (but not against the recipient of the good who has received it validly). The administrator illegitimately inflicted damage on another by his or her juridic act, whether out of malice or negligence, and is obliged to repair damages (see canon 128).

This canon not only underscores the importance of carefully following canonical norms in acts of alienation, but also the importance of inserting appropriate aspects of the discipline of the code into civil legal documents which would secure the interests of the Church before the secular society (e.g. the articles of incorporation

and bylaws of corporations). The civil documents may say, for example, that an alienation which is invalid canonically is also invalid civilly.

CORRESPONDING CANON OF THE EASTERN CODE: CANON 1040. The Eastern code changes the term "competent authority" in the Latin code to the phrase "the higher authority of the one who carried out the alienation." Eastern canon 1040 makes no mention of "real or personal" action. It also says that invalid alienation is enacted "against the prescripts of canon law" (rather than "without the required canonical formalities").

LEASING ECCLESIASTICAL GOODS

Can. 1297 – Attentive to local circumstances, it is for the conference of bishops to establish norms for the leasing of Church goods, especially regarding the permission to be obtained from competent ecclesiastical authority.

Canon 1297 requires the conference of bishops to establish norms for the leasing of Church goods. "A lease is a contract by which property, whether movable or immovable, is let to another for his [or her] use for a determined time at a specified price or rent."⁸⁶ A contract involving leasing is *not* a contract involving alienation (see canons 1291-1294). Nor is every contract involving leasing to be treated as a contract involving a transaction which can worsen the patrimonial condition of the lessor (see canon 1295); were the contrary true, there would be no need for separate legislation on leasing.

Canon 1297 is another example of an occasion requiring the action of the conference of bishops concerning temporal goods. The conference is expected to establish norms governing the entire matter of leasing of ecclesiastical goods. The norms are particularly to include reference to the permission to be obtained from competent

⁸⁶ BOUSCAREN-ELLIS-KORTH, p. 844.

ecclesiastical authority when entering a lease agreement.⁸⁷

A lease contract involving a public juridic person must also conform to the appropriate norms of civil law (see canon 1290).⁸⁸ Indeed, during the process of drafting the proposed revised code, consideration was given to require the Church simply to observe civil laws when leasing goods.⁸⁹ In the end, however, the promulgated law requires not only observance of civil law but also observance of the particular ecclesiastical law on leasing promulgated by the conference of bishops.

The 1917 code had contained elaborate legislation on leasing temporal goods (CIC/1917, canons 1541-1543). The 1983 code greatly simplifies the earlier norms, and assigns to the conference of bishops the task of establishing particular law on leases.

PARTICULAR LAW FOR THE UNITED STATES.⁹⁰ On June 8, 2007, the USCCB issued a decree promulgating the particular law for the United States on the leasing of Church goods. The decree follows:

⁸⁷ In 1990 an institute of women religious sought permission from the Congregation for Religious Institutes and Societies of Apostolic Life to enter into an eight and a half year lease with a Catholic university. The university intended to spend significant sums on the property. The religious institute also requested permission to alienate the property to the university upon the expiration of the lease, should both parties agree. Since it would be impossible in 1990 to determine the fair market value of the property in 1998, a formula was mutually agreed upon by the parties: each party would select an appraiser who would determine the fair market value which would be the average of the two appraisals if the lower of the two appraisal was 90% or more of the higher; if the lower was less than 90% of the higher appraisal, a third appraiser, mutually acceptable, would make the final determination. The petition carried the favorable *votum* of the diocesan bishop. The rescript from the Apostolic See granted the requested permissions, said that canons 1292-1294 were to be observed, but did not require the diocesan bishop to serve as executor. In CLSA, *Roman Replies and Advisory Opinions*, Kevin W. Vann and Lynn Jarrell (eds.), Washington, CLSA, 1992, pp. 15-16.

⁸⁸ See NICHOLAS P. CAFARDI, "Leasing Ecclesiastical Goods," in *CFH*, pp. 207-214, esp. pp. 210-212.

⁸⁹ See *Communications*, 12 (1980), p. 427.

⁹⁰ <http://www.usccb.org/norms/1297.htm> (December 1, 2008) See PAPROCKI, "Recent Developments," pp. 275-278; LEGAL RESOURCE CENTER FOR RELIGIOUS, "Commentary on USCCB Complementary Norms Implementing Canon 1297 on Leasing Ecclesiastical Goods," (April 14, 2008), manuscript, 7 pp.

In November, 1985, the NCCB had included two norms for leasing of ecclesiastical goods in the complementary norm on acts of extraordinary administration (canon 1277); these were: (5) To lease church property when the annual lease income ex-

Decree of Promulgation Canon 1297

On November 13, 2002, the members of the United States Conference of Catholic Bishops legitimately approved complementary legislation for the implementation of canon 1297 of the Code of Canon Law for the dioceses of the United States. The action was granted *recognitio* by the Congregation for Bishops in accord with article 82 of the Apostolic Constitution *Pastor Bonus* and issued by Decree N. 778/2005 of the Congregation for Bishops signed by His Eminence Giovanni Battista Cardinal Re, Prefect, and His Excellency Most Reverend Francesco Monterisi, Secretary, and dated May 2, 2007.

Wherefore, and in accord with the prescripts of canon 1297, the United States Conference of Catholic Bishops decrees that the following norms shall govern the leasing of Church property:

1. Prior to leasing of ecclesiastical goods owned by a diocese, the diocesan bishop must hear the finance council and the college of consultors, when the market value of the goods to be leased exceeds \$400,000.
2. Prior to leasing of ecclesiastical goods owned by a diocese, the diocesan bishop must obtain the consent of the finance council and the college of consultors when the market value of the property to be leased exceeds \$1,000,000 or the lease is to be for 3 years or longer.
3. The valid leasing of ecclesiastical goods owned by a parish or other public juridic person subject to the governance of the diocesan bishop requires consent of the diocesan bishop when the market value of the goods to be leased exceeds \$100,000 or the lease is to be for 1 year or longer.
4. The valid leasing of ecclesiastical goods owned by a pontifical institute of consecrated life or society of apostolic life requires, in addition to the consent of the competent major superior and council, the *nihil obstat* of the diocesan bishop when the market

ceeds the minimum limit. (6) To lease church property when the value of the leased property exceeds the minimum and the lease is for more than nine (9) years. The complementary legislation on acts of extraordinary administration never received the *recognitio* of the Apostolic See. NCCB, *Implementation of the 1983 Code of Canon Law: Complementary Norms*, Washington, NCCB, 1991, p. 21.

value of the property to be leased exceeds \$1,000,000 or the lease is to be for 3 years or longer.

5. The valid leasing of ecclesiastical goods by any public juridic person requires the consent of the Holy See when the market value of the goods exceeds \$5,000,000.

As President of the United States Conference of Catholic Bishops, I hereby decree that the effective date of this decree for all the dioceses of the United States Conference of Catholic Bishops will be August 15, 2007.

Given at the offices of the United States Conference of Catholic Bishops in the city of Washington, the District of Columbia, on the 8th day of June, in the year of our Lord 2007.

Most Reverend William S. Skylstad, Bishop of Spokane
President, USCCB

Reverend Monsignor David J. Malloy,
General Secretary, USCCB

The particular law for the United States can be summarized as follows:

OWNER OF THE ECCLESIASTICAL GOOD	MARKET VALUE (AND LENGTH OF LEASE)	COUNSEL, CONSENT, <i>NIHIL OBSTAT</i>
Diocese	\$400,000+	diocesan bishop must receive counsel of diocesan finance council and college of consultors
Diocese	\$1,000,000+ or lease for 3+ years	diocesan bishop must receive consent of diocesan finance council and college of consultors
Parish or other public juridic person subject to the diocesan bishop	\$100,000+ or lease for 1+ year(s)	diocesan bishop must give consent
Pontifical Institute of Consecrated Life or Society of Apostolic Life	\$1,000,000+ or lease for 3+ years	competent major superior and council must give consent; diocesan bishop must give <i>nihil obstat</i>
Any public juridic person	\$5,000,000+	Holy See must give consent

In other cases, permission may be granted by the Ordinary or, if such is within his or her competence according to the institute's legislation, by the appropriate major superior.

Any applicable prescriptions of civil legislation (for instance as found in articles of incorporation, etc.) would also have to be observed.

CORRESPONDING CANON OF THE EASTERN CODE: None.

ALIENATIONS AND LEASES TO CLOSE RELATIVES

Can. 1298 – Unless an asset is of little value, ecclesiastical goods are not to be sold or leased to the administrators of these goods or to their relatives up to the fourth degree of consanguinity or affinity without the special written permission of competent authority.

Canon 1298 requires the special written permission of competent authority (*specialis competentis auctoritatis licentia scripto data*) for the sale or lease of ecclesiastical goods (unless they have little value) to the administrators of these goods or to their relatives up to the fourth degree of consanguinity or affinity. The obvious purpose for this canon is to avoid abuses and even the appearance of impropriety.⁹³

The competent authority will obviously need to determine the value of the ecclesiastical good involved in the alienation or lease. He may rely upon the inventory mentioned in canon 1283, 2° when making this determination. The inventory is to indicate the goods of the public juridic person and the value of each; it would also indicate what ecclesiastical goods constitute stable patrimony. The competent

⁹³ Other canons also intend to avoid abuse and the appearance of impropriety in the matter of ecclesiastical goods: e.g., canon 492 §3 excludes close relatives of the diocesan bishop from being members of the diocesan finance council; canon 1448 forbids tribunal officials from serving in trials involving close relatives; and canon 1456 forbids tribunal officials from accepting any gift on the occasion of a trial. See also canon 478 §2 which forbids the diocesan bishop from appointing as vicars general or episcopal vicars his relatives by consanguinity up to the fourth degree.

authority may also rely upon the appraisal of experts to determine the value of an asset (see canon 1293 §1, 2°).

The permission of the competent ecclesiastical authority is to be written and "special." The emphasis on "special" written permission indicates that the permission is to be for a determined sale or lease. A general permission is not permitted.

Canon 1298 mentions persons related to the administrator of ecclesiastical goods up to the fourth degree of consanguinity or affinity. Consanguinity is a relationship based on common blood, regardless of the marital status of any ancestors. Affinity is a relationship based on a valid marriage, even if not consummated, and existing between a person and the blood relatives of that person's spouse. Relationships are computed through lines (direct or collateral) and degrees (successive generations). The laws about consanguinity and affinity are found in canons 108-109. The prohibition of canon 1298 encompasses those related to the administrator by blood (consanguinity) or marriage (affinity) up to the fourth degree.⁹⁴

If the administrator violates this canon and the alienation is valid in civil law, he or she is subject to the discipline of canon 1296, above.

CORRESPONDING CANON OF THE EASTERN CODE: CANON 1041. This canon requires the "special permission" (but not the "special *written* permission") of the competent authorities mentioned in Eastern canons 1036-1037 to sell or lease ecclesiastical goods to persons related to administrators by consanguinity or affinity up to the fourth degree.

⁹⁴ Canon 1298 excludes relatives "up to" the fourth degree, not "up to, and including" the fourth degree.