

# LEGAL RESOURCE CENTER FOR RELIGIOUS

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## **COMMENTARY ON USCCB COMPLEMENTARY NORMS** **IMPLEMENTING CANON 1297** **ON LEASING ECCLESIASTICAL GOODS**

by  
The Legal Resource Center for Religious

### **Introduction**

In 2002, the United States Conference of Catholic Bishops (USCCB) adopted canonical Complementary Norms governing the leasing of ecclesiastical goods. The Complementary Norms implemented canon 1297 of the Code of Canon Law. The USCCB submitted the Complementary Norms to the Congregation for Bishops for the required *recognitio*, that is, approval. Prior to giving the *recognitio*, the Congregation for Bishops requested comments from the Conference of Major Superiors of Men (CMSM), the Leadership Conference of Women Religious (LCWR), and the Council of Major Superiors of Women Religious (CMSWR) since the Complementary Norms would be applicable to religious institutes and societies of apostolic life. Subsequently, consultations between representatives of the USCCB Committee on Canonical Affairs and the three religious organizations were held in Washington, D.C. After receiving the results of the consultation and then consulting with the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life, the Congregation for Bishops gave its *recognitio* on May 2, 2007. The President of the USCCB, Bishop William Skylstad, promulgated the Complementary Norms with an effective date of August 15, 2007.

Bishop J. Terry Steib, S.V.D., chair of the USCCB Committee on Consecrated Life, transmitted the Complementary Norms on leasing ecclesiastical goods to CMSM, LCWR, and CMSWR for notification to their members.

Prior to the Complementary Norms, there had not been general canonical legislation governing the leasing of ecclesiastical goods by an institute or a society.<sup>1</sup> Leasing of ecclesiastical goods was governed by the proper law of the institute or the society. Therefore, in order to assist religious institutes and societies of apostolic life in implementing the Complementary Norms on the leasing of ecclesiastical goods, CMSM

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<sup>1</sup> Canon 1541 of the 1917 Code of Canon Law governed the leasing of ecclesiastical goods which were a benefice or subject to the local ordinary. The 1917 Code did not have norms governing the leasing of temporal goods of institutes and societies.

and LCWR requested the Legal Resource Center for Religious (LRCR) to write this commentary on the Complementary Norms. This commentary discusses only the Complementary Norms that apply to a religious institute and a society of apostolic life.

### **Principles for Interpreting the Complementary Norms**

Since a canonical norm or law is usually written in succinct language and its applicability varies according to the particular circumstances, the canonical norm or law requires interpretation in its application. Canonical tradition and the Code of Canon Law provide principles for interpreting and applying a norm or law. In this commentary, the primary interpretative principles used to apply the Complementary Norms to leasing ecclesiastical goods within the United States are:

1. Canon 17 of the Code of Canon Laws states: Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context...If the meaning remains doubtful and obscure, recourse must be made to...the mind of the legislator.” The context of the Complementary Norms is present day leasing of real and personal property within the United States. Such leasing is varied and often times involves highly complex legal terms and conditions.

In “Observations on LCWR/CMSM/CMSWR Comments on Complementary Norms for Canon 1262 and Canon 1297,” by the USCCB Committee on Canonical Affairs, the Committee, which drafted the Norms, describes the intent of the Complementary Norms as indicated below.

2. Canon 14 states: “Laws, even invalidating and disqualifying ones, do not oblige when there is a doubt of law.” The doubt of law may pertain to the meaning or the extent of the application of the law.
3. Canon 18 of the Code of Canon Law states: “Laws which...restrict the free exercise of rights are subject to strict interpretation.” Because the Complementary Norms restrict the rights of an institute or a society to use its property freely, the Complementary Norms must be interpreted in a restrictive manner, that is, in such a way as to have the least affect on the rights of an institute or a society.

### **Applicability of the Complementary Norms**

The Complementary Norms apply to a religious institute or a society of apostolic life whether of diocesan right or pontifical right. An institute or a society of diocesan right is governed by Norm 3 of the Complementary Norms while an institute or a society of pontifical right is governed by Norm 4 of the Complementary Norms. The

Complementary Norms apply to all leasing of ecclesiastical goods which includes both real and personal property.

When the Complementary Norms were submitted to LCWR, CMSM and CMSWR for comment, the issue arose on the applicability of the Norms to ministerial works and organizations of institutes and societies. In the Observations by the USCCB Committee on Canonical Affairs mentioned above, it seems clear that the Complementary Norms on leasing are meant to apply only to institutes and societies, not to their ministerial works and organizations.

The Observations state:

In this connection, it should be noted that the submitted materials<sup>2</sup>, in commenting on the complementary norms for canon 1297, states...”Number 4 [of the norms for canon 1297] applies only to institutes of consecrated life, societies of apostolic life and their *ministerial works and organizations* of pontifical right.” The fact, however, is that there is no reference in Number 4 of the complementary norms for canon 1297, or anywhere else in those complementary norms, or anywhere in the complementary norms for canon 1262<sup>3</sup>, to “*their ministerial works and organizations.*”

This is consistent with the Complementary Norms on fundraising appeals which were promulgated at the same time as the Complementary Norms on leasing. The Norms on fundraising appeals apply only to an institute or a society, not to its ministerial works and organizations. This is true whether or not an institute or a society is of diocesan or pontifical right since the Observations note that no where in the Norms is mention made of the ministerial works or organizations of an institute or a society.<sup>4</sup>

Therefore, based on the Observations from the USCCB Committee on Canonical Affairs, the Complementary Norms on Canon 1297 governing leasing do not apply to such ministerial works and organizations as hospitals, institutions of higher learning, schools, and social service organizations. Only an institute or a society is obliged to the Complementary Norms on leasing.

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<sup>2</sup> The materials refer to comments made by LCWR and CMSM.

<sup>3</sup> The canon concerns fundraising appeals.

<sup>4</sup> While the Complementary Norms may not oblige an institute or a society of diocesan right to obtain the consent of the diocesan bishop when its ministerial works and organization lease property, its proper law may have such a requirement.

## Commentary on the Complementary Norms

Norm 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 the consent of the diocesan bishop if the market value of the goods to be leased exceeds \$100,000 or the lease is to be for 1 year or longer.*

Comment:

1.      This Norm applies to an institute or a society of diocesan right since it is subject to the governance of the diocesan bishop. It does not apply to an institute or a society of pontifical right.
2.      “*Ecclesiastical goods*” refers to both real and personal property.
3.      “*Owned*” refers to canonical ownership and includes any ecclesiastical goods owned by the institute or society.
4.      The Norm requires the diocesan institute or society to obtain the consent of the diocesan bishop. This is different from the requirement of Norm 4 which requires an institute or a society of pontifical right to obtain only the “*nihil obstat*” of the diocesan bishop.
5.      If one of two threshold factors occurs, the consent of the diocesan bishop must be obtained. The first is if the market value of the goods to be leased exceeds \$100,000. The second is if the lease itself is for a period of one year or longer. Keeping in mind these two threshold factors, see the commentary for Norm 4.

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

Comment:

1.      The Norm applies to an institute or a society of pontifical right.
2.      “*Ecclesiastical goods*” refers to both real and personal property.
3.      “*Owned*” refers to canonical ownership and includes any ecclesiastical goods owned by an institute or a society.

4. “*Competent major superior*” is determined in the proper law of the institute or society. The Norm requires the consent of the council of the competent major superior even if the proper law does not require such consent. However, in certain institutes such as a monastic institute, the consent of the chapter would be required.
5. “*Diocesan bishop*” is the bishop of the diocese in which the ecclesiastical good is located.
6. The Norm requires obtaining the “nihil obstat” from the diocesan bishop. This is different from obtaining his approval. A “nihil obstat” means “nothing stands in the way,” that is, nothing in the lease is contrary to the law or teachings of the Roman Catholic Church. For example, the diocesan bishop would have a legal reason to deny the “nihil obstat” if a portion of real property were to be leased to health care agency that provides medical services which violate the teachings of the Church. On the other hand, the diocesan bishop probably would not have a legal reason to deny a “nihil obstat” if his only reason were to pressure the institute or society into leasing the property to the diocese or another entity. A denial must be in writing and include the reasons for the denial (canon 51). Administrative recourse may be taken against the denial according to the norms of canon law (canons 1732-1739).<sup>5</sup> It would be advisable to retain the services of a canon lawyer to assist in the recourse process. If the property were leased without the “nihil obstat”, the lease would be valid civilly even though it violates the canonical Norm unless the terms of the lease required receiving proper ecclesiastical authorizations.
7. If one of two threshold factors occurs, the “nihil obstat” must be obtained. The first is if the market value of the property<sup>6</sup> to be leased exceeds \$1,000,000.<sup>7</sup> Assuming that no appraisal is done for establishing the market value of the property at the time of leasing and an entire piece of property is leased, there would be at least three available options for

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<sup>5</sup> If the diocesan bishop gives a written denial to an initial request for the “nihil obstat,” the competent major superior has 10 days from receipt of the written denial to request the diocesan bishop to change his response. If the diocesan bishop refuses to change his response within 30 days or does not answer, the competent major superior has 15 days to make recourse to CICLSAL.

If after three months the diocesan bishop has not responded to an initial request for the “nihil obstat,” the competent major superior has 15 days to make recourse to CICLSAL.

<sup>6</sup> Norms 2 and 4 use the phrase “market value of the property” while Norms 1, 3, and 5 use the phrase “market value of the goods.” It is presumed that the lawgiver intended “property” and “goods” to have the same meaning.

<sup>7</sup> Canon 1541 of the 1917 Code of Canon Law required approval for leases of benefices and certain ecclesiastical goods subject to the local ordinary. The threshold amount for requiring the approval was based on the *value of the lease* not on the value of the property as in the Complementary Norms. Commentators held that the value of the lease was the total rent charged for one year. See Woywood, revised by Smith, A Practical Commentary on the Code of Canon Law, NY: Joseph F. Wagner (1952) p. 216.

determining the market value. The first is the market value established in a recent appraisal if available. The second is the tax value of the property adjusted if the tax value is based on a percentage of the actual market value.<sup>8</sup> The third is the depreciated value of the property as given in the latest financial audit. Since the Norms do not establish any method of determining the market value, the market value most favorable to the institute or the society.

If only a portion of real property is being leased such as a suite of offices in a large complex, the determination of the market value of the property may be difficult. The rental price of commercial property is often times based on the market price per square foot in a given area. However, this is the lease price not the market value of the property because the market price includes such factors as maintenance, taxes, insurance coverage, and a profit margin. Normally, the threshold of \$1,000,000 for a partial lease will not be reached.

If the lease includes both real and personal property, the combined value of the property is be used to determine if the threshold of \$1,000,000 is met. If it seems that the value of the property to be leased may reach the threshold, advice should be sought from a canonist and a financial expert.

8. The second threshold factor that triggers obtaining the “nihil obstat” of the diocesan bishop is if a lease is to be for three years or longer. Presumably, the length of the lease is on the face of the lease. For example, the lease states that the term of the lease is four years but it may be terminated earlier with the agreement of both parties. The lease would be subject to the Norm. However, a lease would not be subject to the Norm if it states, for example, that it is for a term of two years but unless notice of termination is given by one party to the other at least 30 days prior to the termination of the lease, the lease is automatically renewed for an additional two years. The lease is for a *fixed* period less than three years but that period is continuously and automatically renewed. The extension is a new lease period. Similarly a lease would not be subject to the Norm if it states, for example, that it is for a term of two years and is automatically terminated unless notice of renewal is given by the lessee at least 30 days prior to the termination date. Again, the lease, a tenancy for a term, is for a *fixed* period.

However, a problem arises if a lease is for an indefinite term. On the face of the lease, it cannot be established if the lease is to be for three years or longer since the lease period is indefinite. Perhaps the term of the lease could be decided by the intent of the parties. However, one or both of the parties may not wish to indicate an actual intent or the parties may differ

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<sup>8</sup> In some jurisdiction, a property valuation for tax purposes is recorded and updated even if the real property is tax exempt.

on the intended length of the lease. The Norm could have solved this issue if the Norm had stated “to be for 3 years or longer or for an indefinite period of time.” Canon 18 states that if a law restricts rights, the law is subject to strict interpretation. The Norm does restrict the right of an institute or a society from using its property in the manner it wishes. Canon 14 states that a law does not oblige when there is a doubt of law. The Norm interpreted strictly obliges only if the lease is to be for three years or longer; the Norm creates a doubt of law as to whether or not it was intended to apply to indefinite term leases.. Therefore, the Norm does not apply in the case of indefinite lease.

9. When negotiating a lease that may be subject to the Complementary Norms, notice should be given in the initial agreement or the lease itself that the lease is subject to obtaining the required ecclesiastical authorizations.

Norm 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.*

Comment:

If under either Norm 3 or Norm 4, the market value of the goods (property) to be leased exceeds \$5,000,000, the institute or the society must obtain the consent of CICALSAL. This consent is in addition to the consent of the competent major superior and council and the consent or “nihil obstat” of the diocesan bishop, depending upon whether the institute or the society is of diocesan or pontifical right. An institute or society seeks the approval from the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. The competent major superior submits a petition requesting the consent along with letter of consent or “nihil obstat” of the diocesan bishop. The petition should include the name of the lessee, the duration and value of the property to be leased. Since there is no requirement in the Complementary Norms for submitting appraisals or valuations to establish the market value of the property to be leased, no such valuation needs to be done or included in the petition as is required when real property is alienated (canon 1293.1.2). The petition should indicate that the consent is being requested because of the Complementary Norms promulgated by the Conference of Catholic Bishops of the United States for the leasing of ecclesiastical goods in implementation of canon 1297.

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