

BAPTIST CHURCHES OF NEW SOUTH WALES PROPERTY TRUST

Guidelines for Letting a Manse

These notes are offered as guidelines by Baptist Churches of New South Wales Property Trust to provide guidance to Baptist churches. Please note that the church is the lessor, the Property Trust is only liable to the extent of the assets of the church and that the Property Trust is not responsible for the drafting of the lease. These notes can never be a substitute for detailed professional advice but we hope you will find them helpful.

General

For Church Property that is held in the name of the “Baptist Churches of New South Wales Property Trust”, leases should be drawn up in the name of “Baptist Churches of New South Wales Property Trust as Trustee for xxx Baptist Church”.

For expediency some churches have been tempted to simply sign a lease agreement in the name of the church. While convenient, this may make enforcement of the terms of the lease very difficult, if not impossible, and extremely costly, with no certainty as to the outcome. It is illegal to have a residential tenancy without a proper lease. In accordance with Residential Tenancies Act, the residential tenancy agreement may be express or implied and may be oral or in writing, or partly oral and partly in writing.

For administrative ease we would suggest that a Church meeting be held “to approve the leasing of the Church Manse” and the meeting should authorise 2 people to conduct negotiations and authorise the Property Trust to sign the documents. *(It is probably better to describe the people by way of their office)* This will save time once the tenant/s is/are found, unless they are already known.

Please refer to the “Property” page of the denominational website (nswactbaptists.org.au/) for the following documents:

- Convening a Church Meeting to instruct the Property Trust
- Statutory Declaration (advising the Property Trust of resolutions of the church)

Where an Estate Agent is engaged

The agent will prepare an agency agreement, which sets out the terms of the Lease, description of the property, etc. This should be in the name of the Baptist Churches of New South Wales Property Trust as trustee for xxx Baptist Church, and sent to the property trust for execution. This agreement provides for the estate agent to prepare, and execute, a Lease in the terms previously agreed with the church.

Where an Estate Agent is not engaged

Where a church wishes to lease out a manse, the Church should go through the process of having a formal lease prepared and executed by the Property Trust.

The Property Trust is not responsible for the drafting of the lease. This is appropriately and properly the responsibility of the church. The Lease can be drawn up by our solicitors, the Solicitors for the Baptist Association or the Church's Solicitors.

The lease should be forwarded to the Solicitors for the Property Trust, for execution. Please contact the secretary of the Property Trust for advice on which firm will act for the church in this matter.

Further matters that should be considered when dealing with the leasing of a manse:

1. The Landlord should be described as the "Baptist Churches of New South Wales Property Trust as Trustee for the xxx Baptist Church"

2. Notification to the church's Insurer.

3. There is a standard form of lease which can be purchased from some stationery stores and Australia Post shops which includes a standard form Residential Tenancy Agreement and a Renting Guide which the church must provide to the tenant at the beginning of the tenancy. There is also a standard form which can be filled out on the Fair Trading Website.

https://www.fairtrading.nsw.gov.au/_data/assets/pdf_file/0019/910180/Standard-Residential-Tenancy-Agreement-2020.pdf

4. Detailed information can be found on the Office of Fair Trading website <http://www.fairtrading.nsw.gov.au>. This also includes information about the Bond/Security. Please note that any Bond/Security by law must be paid to the NSW Rental Bond Board. It is preferable that the Rental Bond Form be signed by the persons authorised to negotiate the lease so when the tenant leaves those persons can ensure that the bond is returned to the tenant as quickly as possible. Please note there are time limits placed on this procedure.

5. The same would apply for any agency agreement where the Church appoints an agent to manage the property. However, we recommend that any clauses in the agency agreement which permit the agent to extend a lease on the owner's behalf be deleted and the deletion initialed by both parties.

Please ensure that the agent forwards the duplicate originals of the completed lease agreement (not photocopies) for execution by the Property Trust.

6. Churches should note the renting out of a manse may lead to the property becoming subject to local council rates (i.e. the exemption may be lost during the term of the tenancy).

7. Before entering into negotiations with a tenant it is important to have a good understanding of what a fair charge is for the use of the property e.g. sources include the internet or agents.

DISCLAIMER

These guidelines have been carefully prepared, but they are not a substitute for legal advice. They cannot cover the entire field, nor every set of facts. Any liability for any loss of any kind, however sustained, is expressly excluded no matter how it may be caused, even if it might be the result of any act or omission of the Baptist Churches of New South Wales Property Trust or its advisers, members, servants or agents, whether negligent or otherwise.

Each church should obtain its own legal advice.

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