

Church Property as an Asset for Mission



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Introductions

Church Properties Initiative

A project of the Fitzgerald Institute for Real Estate at the University of Notre Dame, the Church Properties Initiative empowers proactive stewardship of church property through data-informed research and capacity-building in the areas of sustainable development, land use, finance, management, planning, governance, and more—transforming liabilities into assets for a renewed presence in a changing world.

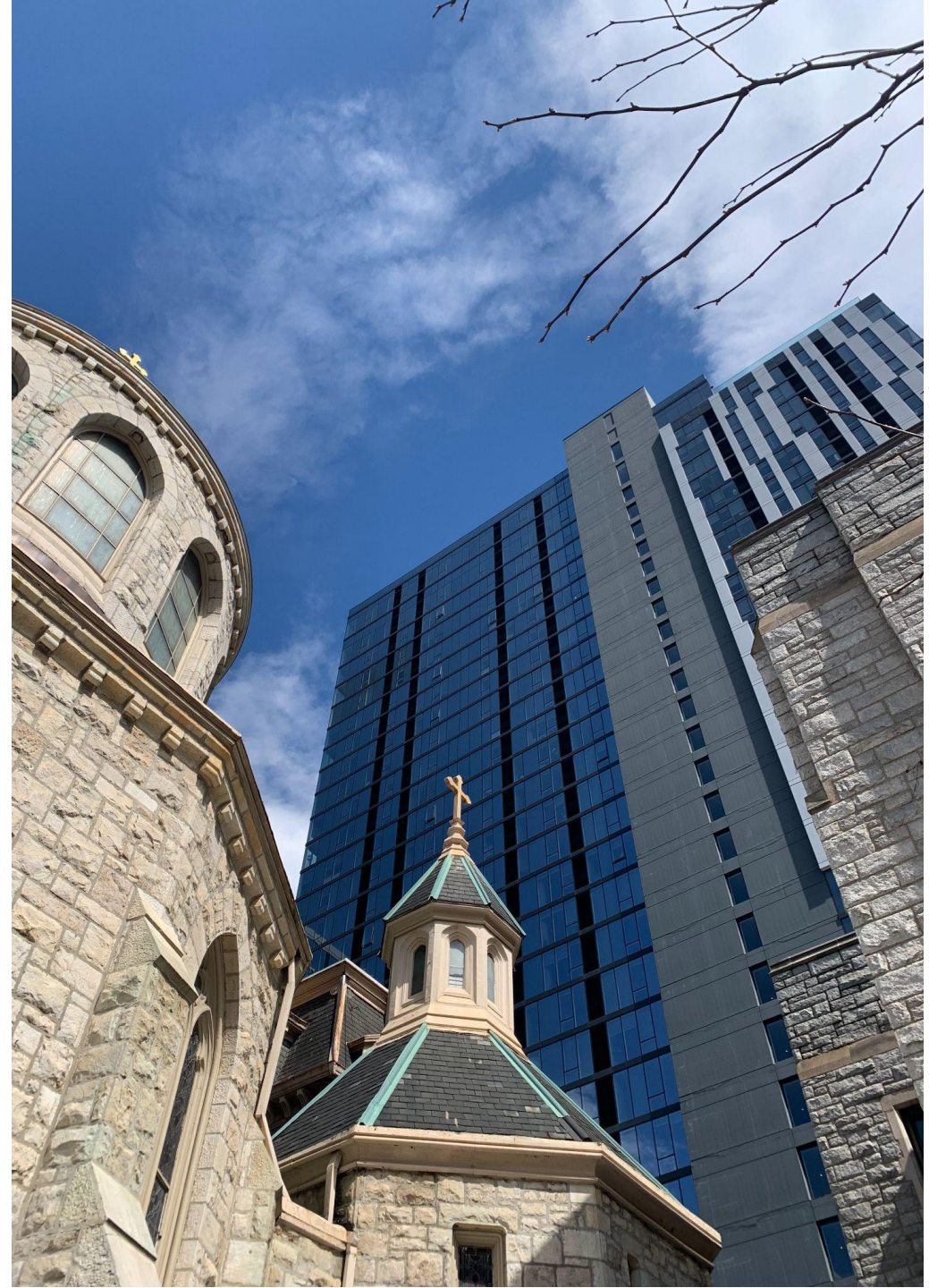
Religious Liberty Initiative

The Religious Liberty Initiative is housed within Notre Dame Law School. Its work is focused on thought leadership, professional formation, and advocacy. As part of professional formation, the Religious Liberty Clinic prepares the rising generation of religious liberty scholars, advocates, and builders to defend the fundamental right to the freedom of religion or belief for all people. The clinic has three practice areas: domestic litigation, transactional advising, and global religious persecution & immigration.

Church land and buildings are tremendous assets for mission.

They also pose serious challenges.

- The Catholic Church owns an estimated **177 million acres** of land globally and stewards **billions of dollars** in assets.
- Changing history and demographic shifts have left many historic church properties **under-maintained and underutilized**.
- The immense value, spiritual and financial, of church-owned property is a lightning rod for **controversy** when things go wrong.
- The Church's local presence through vibrant buildings can be a powerful **evangelizing witness**.



Avoid the Bad: Strategies for Asset Protection

The US Catholic Church spent more than \$300 million on abuse-related costs in 12 months

By Daniel Burke, CNN Religion Editor
3 minute read · Updated 6:39 PM EDT, Tue June 4, 2019



MORE FROM CNN

Reports of sexual assaults in US military drop for first time in nearly a decade

Appeals court sides with Catholic school that fired gay teacher for plans to marry his partner

Opinion: Why are Trump's donors paying for his legal fees?



RELIGION

The Clergy Abuse Crisis Has Cost The Catholic Church \$3 Billion

AUGUST 18, 2018 · 5:00 AM ET

By Tom Gjelten



Pennsylvania Attorney General Josh Shapiro speaks during a news conference at the Pennsylvania Capitol on Tuesday. A Pennsylvania grand jury says its investigation of clergy sexual abuse identified more than 1,000 child victims in records in six Roman Catholic dioceses.

Matt Rourke/AP

Enable the Good: Strategies for Mission-Aligned Property Activation



New café at Baltimore Basilica designed to encounter the poor



April 17, 2024
By George P. Matysek Jr.
Catholic Review

Filed Under: Baltimore Basilica, Feature, Local News, News, Social Justice



Father Brendan Fitzgerald is convinced it's just as important to evangelize people experiencing homelessness as it is any other person.

A big challenge at the Basilica of the National Shrine of the Assumption of the Blessed Virgin Mary, where the priest is rector, has been that there isn't a place people can gather in an informal way to have those kinds of life-changing discussions.

"A number of the homeless will come and spend time inside the church just to get away from the cold or the heat or the rain, but they don't get engaged," he said. "They sit in a pew for several hours and then they'll leave, but no



A Typical Church Property

- 3-story school building
- Asphalt parking lot
- 12-bedroom convent
- 5-bedroom rectory
- 100-year-old church
- Lawn



Property Headaches

Expensive to heat

Stormwater runoff & resurfacing expense

Hazardous materials

Needs upgrades

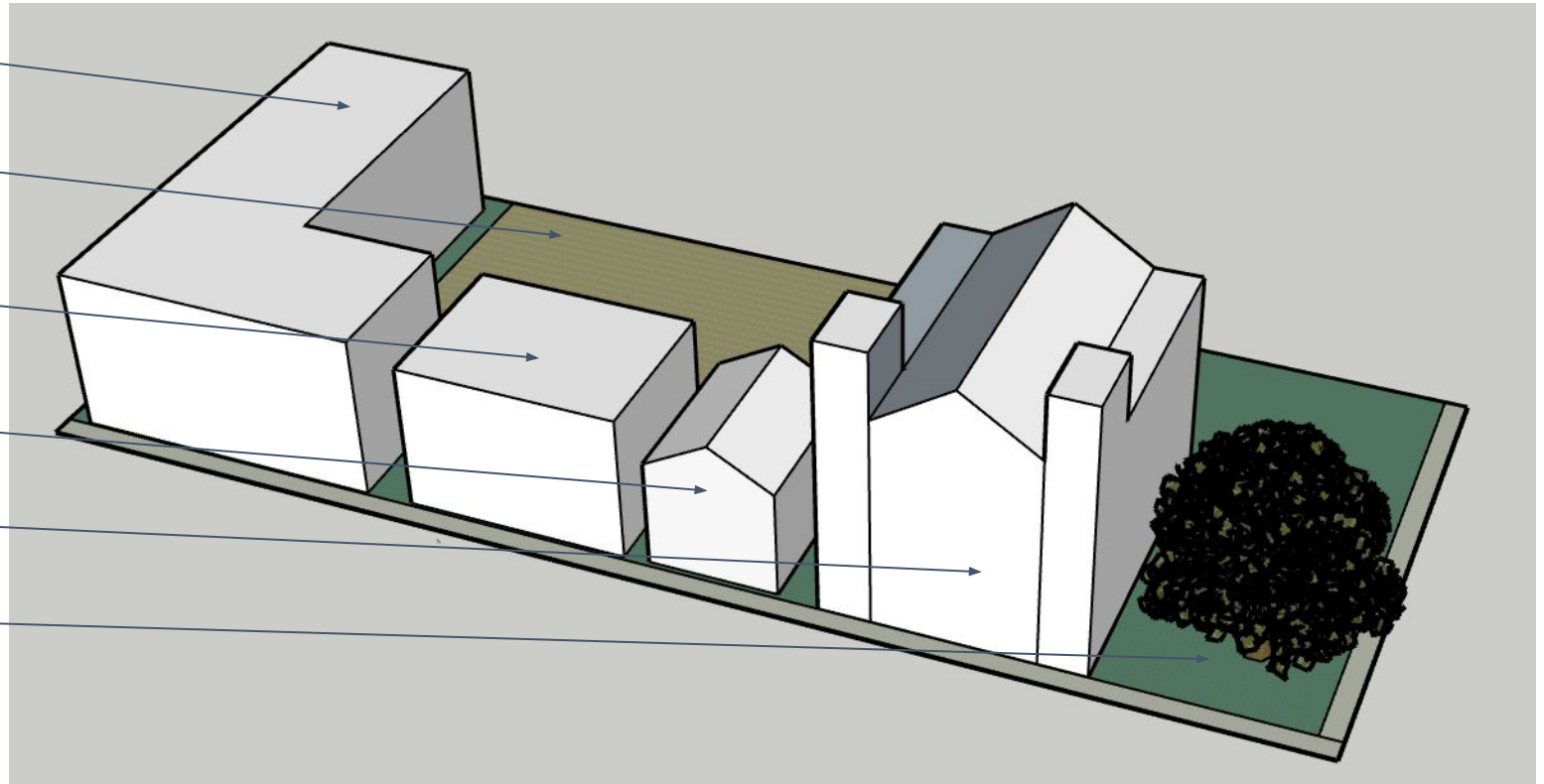
Failing structure

Lawn care expenses

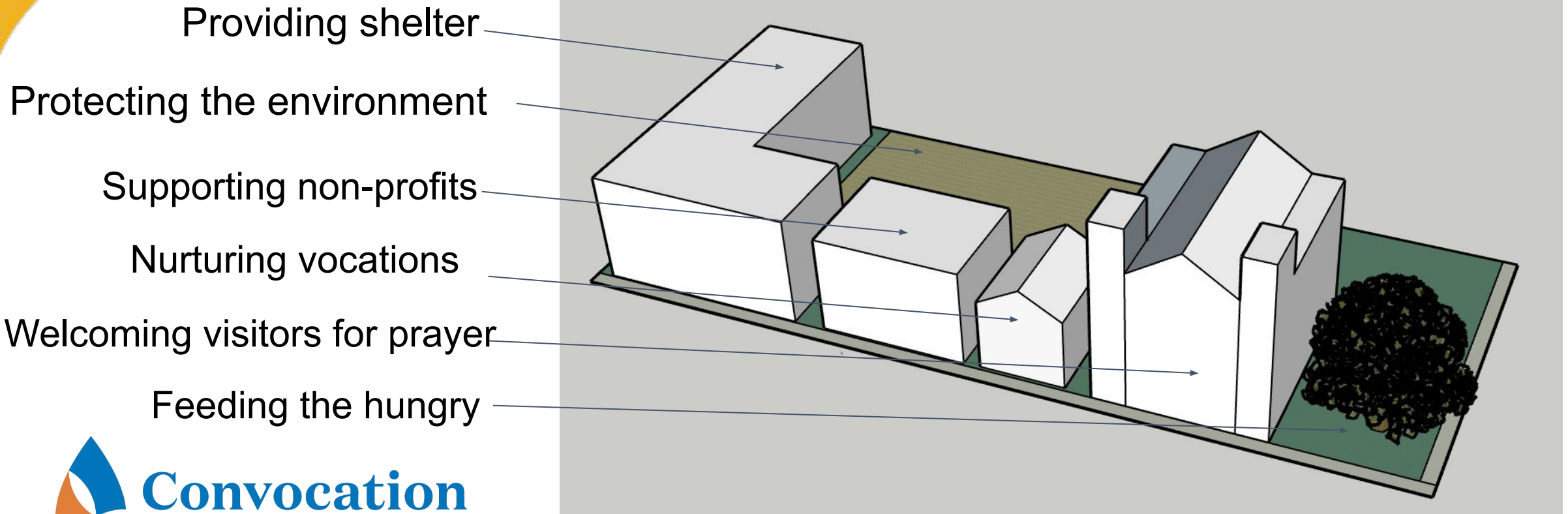


Property Opportunities

- Affordable housing
- Permeable pavers
- Non-profit office space
- Discernment residence
- Place of sacred beauty
- Vegetable Garden



—An asset for mission



—Obstacles for Activating Church Assets

- Existing corporate structures
- Canon law regulating sacred space
- UBIT for revenue-generating activities
- Property taxes when introducing non-exempt uses to a site
- Public accommodation, liabilities arising from bringing in outside users
- Fair Housing Act and tenant protection laws
- Creation of new legal entities

— Corporate Restructuring

- Restructure diocesan properties so that all assets are not in a single entity
- Have a business reason for restructuring
- Place real estate in a separate entity
- Create entity to separate assets from a corporation sole (e.g., Catholic Community Fund)
- Separate legal entities is supported by canon law (parishes are separate juridic persons)
- Create separate corporations for each parish, high school, and other organizations in the diocese
- To maintain control by a bishop, make the bishop the sole member of each corporation with the power to appoint or approve Board members
- Restructuring is not cheap (but less expensive than paying settlements)

– Fraudulent Conveyance

- Move assets when abuse claims are “old and cold”
 - As previously discussed, some states are reopening period to file sexual abuse claims
- Examples of moving assets that triggered lawsuits:
 - Archdiocese of Milwaukee transferred \$55 million into a cemetery trust fund create in 2008
 - 7th Circuit Court of Appeals ruled that bankruptcy creditors could access that trust created for the perpetual care of the church’s cemeteries
 - A 2023 lawsuit alleged that the Diocese of San Diego transferred 291 real estate holdings (valued at over \$450 million) to parishes in 2019, after the diocese formed 93 separate corporations for each of its parishes in 2010.
 - In 2019, the California legislature passed a law that created a special window to bring older sexual abuse claims outside the normal statute of limitation

Canon Law Considerations

- Each parish is a juridic person and the head of the relevant juridic person is the primary administrator of the goods belonging to it; the local Ordinary retains the right to intervene in cases of negligence (Can. 1279, §1)
- Obligation to maintain “cleanliness and beauty” in sacred places (Can. 1220, §1)
- Mixing liturgical and secular activities (even charitable/social) in consecrated space “would require a revision of canon law” (“Guidelines,” 27.c)
- Relegation to profane use is conditionally permissible (Can. 1222)

Sources:

- Books IV and V of the Code of Canon Law
- “Procedural Guidelines for the Modification of Parishes and the Closure, Relegation and Alienation of Churches”
- “Decommissioning and Ecclesial Reuse of Churches: Guidelines”

Guidelines for Reuse

“Procedural Guidelines for the Modification of Parishes and the Closure, Relegation and Alienation of Churches” (Congregation for the Clergy, 2013)

- d) If it becomes necessary to alienate the edifice, various options, listed in decreasing order of preference are:
 - i. for continued use as a place of Catholic worship (non-relegated)
 - ii. for use as a place for the exercise of other Catholic apostolates or ministries
 - iii. for profane but not sordid use in keeping with the dignity of the edifice as a former church
 - iv. demolition of the edifice, recovering the land
- e) Under no circumstances can the edifice be alienated for use inconsistent with its inherent dignity as a former church. Contractual agreements are to be put in place to safeguard this point in civil law as well as canonically.

Guidelines for Reuse

“Decommissioning and Ecclesial Reuse of Churches: Guidelines” (Pontifical Council for Culture, 2018)

7) As far as possible and compatibly with the original intention of the building, it is desirable that when it can no longer be maintained as a religious building as such, an effort be made to ensure a new use, whether religious (for example, entrusting it to other Christian communities), cultural or charitable. Commercial for-profit reuses seem to be excluded, while social enterprise usage may be considered. What should be preferred are reuses with cultural aims (museums, conference halls, bookshops, libraries, archives, artistic workshops etc.), or social aims (meeting places, charity centers, healthcare clinics, foodbanks for the poor etc.). For buildings of lesser architectural value, transformation into private dwellings may be allowed.

Example: Relegation to “Profane But Not Sordid” Use

Fairfield University Bellarmine Campus (Bridgeport, CT)



Unrelated Business Income Tax (UBIT)

Tax-exempt organizations, including churches, may be liable for tax on its unrelated business. Tax-exempt organizations that have \$1,000 or more of gross income from unrelated business must file a Form 990-T. Organizations subject to UBIT, except trusts, are taxed at corporate rates on that income.

- 1. Income derived from a trade or business;
- 2. That trade or business is regularly carried on; and
- 3. That trade or business is not substantially related to the charitable, educational, or other purpose that is the basis of the organization's tax exemption



“Trade or Business”

- Any activity carried on for the production of income from the sale of goods or performance of services
- An activity must be conducted with intent to make a profit to constitute a trade or business
- Each activity of the trade or business will be examined separately when determining whether it qualifies as a trade or business (“fragmentation rule”)
 - This rule means that while one activity may be properly viewed as exempt from tax, income derived from another activity within the organization may be subject to UBIT (e.g., textbooks v. football jerseys in college bookstore)
- Convenience exception (e.g., school cafeteria for students and teachers)

“Regularly Carried On”

- An activity is “regularly carried on” when it is performed with the frequency with which commercial organizations carry on similar activities.
- For example, an activity that occurs only a few weeks out of the year, or on a seasonal basis, may not be subject to UBIT, but the operation of a commercial parking lot one day a week throughout the year qualifies as regularly carried on.

“Substantially Related to the Exempt Purpose”

- If a tax-exempt organization generates income from an activity that does not directly or indirectly accomplish its tax-exempt purpose, then it can be subject to UBIT.
- The causal relationship between the activity and the exempt purpose or function must be substantial in order to be exempt from tax.
- For example, the Department of the Treasury’s regulations explain that a school that trains students in the performing arts (e.g., acting, singing, and dancing) would not be liable for UBIT on the income derived from students’ performances, which were considered an essential part of their training.
- Some eating facilities are not subject to UBIT– a convenient eating location allows a museum’s visitors to devote a greater portion of their time to viewing the museum’s exhibits, which is the exempt purpose of the organization

UBIT Exceptions: Leasing Real Property

- Tax-exempt entity may receive tax-free rental income in two circumstances:
 - (1) Income is “related” to its exempt purpose (e.g. low-income housing rental income)
 - (2) Income is “passive” (e.g., landlord provides no extraordinary services in connection with lease of property)
- In general, tax-exempt entity may be taxed on rental income in the following situations:
 - (1) Income is “unrelated” to exempt purpose
 - (2) Too much personal property leased with real property
 - (3) Real property is debt-financed
- Example
 - IRS Revenue Ruling 64-182 – Valid 501(c)(3) - A corporation derives its income principally from the rental of large commercial office. Uses profits to make grants to other charities. Charitable activities are “commensurate in scope” with its financial resources.
- UBIT Strategies
 - Rule of Thumb
 - No loss of exemption if organization’s UBIT is < 5%
 - Gray zone if UBIT is 5-20% of income
 - If greater than 20%, seek counsel
 - Isolate UBIT activities in a separate entity
 - Check-the-box with LLC to turn it into a separate taxable entity (taxed like a corporation)
 - Can be useful from a liability and tax reporting perspective to separate the taxable activities and charitable activities into different entities

UBIT Example

Opening a Parish Cafe

- **1. Income derived from a trade or business;**
 - Are you selling coffee and baked goods? Are you seeking a profit from these sales?
 - Is the cafe advertised and open to the public or only open to parishioners?
 - Does the existence of the cafe allow parishioners more time to engage with the exempt person of the parish?
 - Is there a separate door to the cafe or do customers enter through the church?
 - Is it intended to be a public eating establishment or a convenient place for parishioners and parish staff to eat?
- **2. That trade or business is regularly carried on; and**
 - How often is it open? Open weekly throughout the year on Sundays is likely sufficient to be “regularly carried on” but may not be “regularly carried on” if it is only opened a couple times each year
- **3. That activity is not substantially related to the charitable, educational, or other purpose that is the basis of the organization’s exemption**
 - What is the entity’s exempt purpose?
 - Operating eating facilities is not a parish’s exempt purpose
 - Are you competing with other cafes in the area?


Property Tax Considerations

- It should not be assumed that property that is held by a religious organization will be automatically exempt.
- Tax-exempt status for income tax purposes is distinct from activities that qualify for property tax exemptions and involve separate applications.
- Property taxes are administered locally (varies by jurisdiction).
- Exemptions are usually restricted to religious, educational, and sometimes charitable uses.
- A non-exempt use may be able to coexist with exempt uses and only incur proportionate property taxes.
- As state budgets become tighter, many local property tax assessors are analyzing property tax exemption application with greater scrutiny.
- In many cases, state law exempts certain specified types of realty from state property tax, such as church buildings, but allows local municipalities to determine whether to grant exemptions for other types of realty, such as parsonages, retreat centers, and convents.

Property Tax Considerations

Applying for Property Tax Exemption in Indiana

[Reset Form](#)



APPLICATION FOR PROPERTY TAX EXEMPTION
State Form 9264 (R10 / 11-15)
Prescribed by Department of Local Government Finance

FORM 136

Assessment date
January 1, 20____

County _____

INSTRUCTIONS:

- Two copies of this form must be filed with the County Assessor of the county where the property is located.
- This application must be filed on or before April 1 of the assessment year and must be re-filed every even year unless the exempt property is owned, occupied, and used for educational, literary, scientific, religious, or charitable purposes and continues to meet the requirements of IC 6-1.1-10-16 or IC 6-1.1-10-21, or is owned by a fraternity or sorority and continues to meet the requirements of IC 6-1.1-10-24. An application should be filed in any year in which an appeal to the Indiana Board of Tax Review or to a court for an exemption determination on the property is pending from any preceding year.
- There is no filing fee.
- All questions on page 1, 2, and 3 must be answered. If the question does not apply, write N/A in the space provided. FAILURE TO PROVIDE THE REQUESTED INFORMATION MAY RESULT IN A DENIAL OF THE APPLICATION FOR EXEMPTION. See page 5 for additional information.

Name of owner claiming exemption _____

Address (number and street, city, state, and ZIP code) _____

Telephone number (____) _____ E-mail address _____

Type of filing:

First-time filing Yes No

Re-filing on same property Yes No

Re-filing with changes Yes No

Describe these changes: _____

Hereby petitions for exemption from taxation of the following described real estate and improvements and / or personal property:

LAND		IMPROVEMENTS (BUILDINGS)	
Legal Description	Assessed Value	Description of Improvements (Name or describe each building)	Assessed Value
	\$	1. _____	\$
Parcel Number _____		2. _____	\$
		3. _____	\$

Personal property assessment \$ _____

Date of assessment January 1, 20____

Township / Taxing District located in _____

DLGF taxing district number _____

Key number _____

Upon what uses or purpose do you base the claim for exemption?

Charitable - pursuant to IC 6-1.1-10-16.

Educational - pursuant to IC 6-1.1-10-16.

Religious - pursuant to IC 6-1.1-10-16.

Other - (cite the specific law(s) under which the exemption is claimed) _____

What percentage do you claim should be exempt on the value of:

Land and lots _____

Improvements (buildings) _____

Personal property _____

NOTE: The taxpayer must present evidence that the property qualifies for exemption under a SPECIFIC statute. Please indicate that the following documentation has been provided:

Articles of incorporation or other organizational documents

Bylaws

Financial statements for the last three years: _____

Balance sheets If "Other" box is checked above - the specific statute under which the exemption is claimed must be cited.

Summary of income and expenditure

FAILURE TO PROVIDE SUCH DOCUMENTATION MAY BE GROUNDS FOR A DENIAL OF THE EXEMPTION SOUGHT.

II. EXEMPT PURPOSE

- State specifically the exempt purpose and activities for which the property is used. (If any publications about the exempt activity are available, please provide a copy.) _____
- State how often such activities occur. _____
- State specifically what rooms or areas are used for the exempt purpose, and what such use is. (Be sure all rooms or areas are discussed.) _____
- Who carries out the exempt activities for which the property is used? _____
- State the qualifications of such individual(s). _____
- State if such individual(s) are certified or licensed by an entity, who has issued such certificate or license, and the qualifications required to obtain such certificate or license. _____
- How many individuals or groups participate in the exempt activities? _____
- State what written materials, if any, are used. _____
- What standards, if any, must individuals or groups benefiting from the exempt activity meet prior to participation in such activities? _____

7. State if the taxpayer is supervised by any entity, group or individual. _____

7b. State the address of the entity. _____

7a. State the name of such entity. _____

7c. State the nature and purpose of such entity. _____

III. OTHER INFORMATION

- Are rooms or areas ever used by individuals or groups for purposes not related to the claimed exempt use? (If "No", skip to 2.) Yes No
- State specifically what rooms or areas are used by such individuals or groups. _____
- Do those benefiting from the exempt activity ever use areas or rooms for activities not directly related to the activity of the taxpayer? (If "No", skip to 3.) Yes No
- State specifically what rooms or areas are so used. _____

1a. Name such individuals or groups. _____

1c. State specifically how often such individuals or groups use such rooms or areas. _____

2a. State who makes such use of rooms or areas. _____

2c. State specifically how often such rooms or areas are so used. _____

Property Tax Example

Urban Agriculture and Ecological Education

Mission of Mary Cooperative in Dayton, OH



Liabilities from Bringing in Outside Users

- Public accommodation- Title II of Civil Rights Act: 42 U.S.C. §2000a - “All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation . . . without discrimination on the ground of race, color, religion, or national origin.”
- Examples
 - (1) any inn, hotel, motel
 - (2) any restaurant, cafeteria, lunchroom
 - (3) theater, concert hall, sports arena, stadium
- Title II generally does not apply to churches and religious organizations unless they are operating stadiums, restaurants, etc. that are open to the public
- Title II Violations - Individuals can file private lawsuits to enforce Title II
 - In a Title II lawsuit, plaintiff cannot receive money damages but can get a court order to stop the place of public accommodation from discriminating
- See *Fulton v. City of Philadelphia* (U.S. Supreme Court, 2020)



Fair Housing Act and Local Tenant Protection Laws

- Fair Housing Act- Federal law that prohibits discrimination in housing because of:
 - Race, Color, National Origin, Religion, Sex (including gender identity and sexual orientation), Familial Status, Disability
 - Exemption:
 - Allows non-commercial housing operated by a religious organization to reserve such housing to people of the same religion (e.g., Catholic organization rents to Catholic school teacher who is Catholic)
- Tenant Protection
 - Have you created a landlord-tenant relationship?
 - Be familiar with federal, state, and local landlord-tenant laws (e.g., notice to enter premises requirements, condition of unit and common places, eviction rules)
 - In Indiana, landlord must provide locks on every outside door that leads to a common area, provide smoke detectors, and return the security deposit within 45 days if tenant leaves rental property to the landlord in good order when the lease ends.

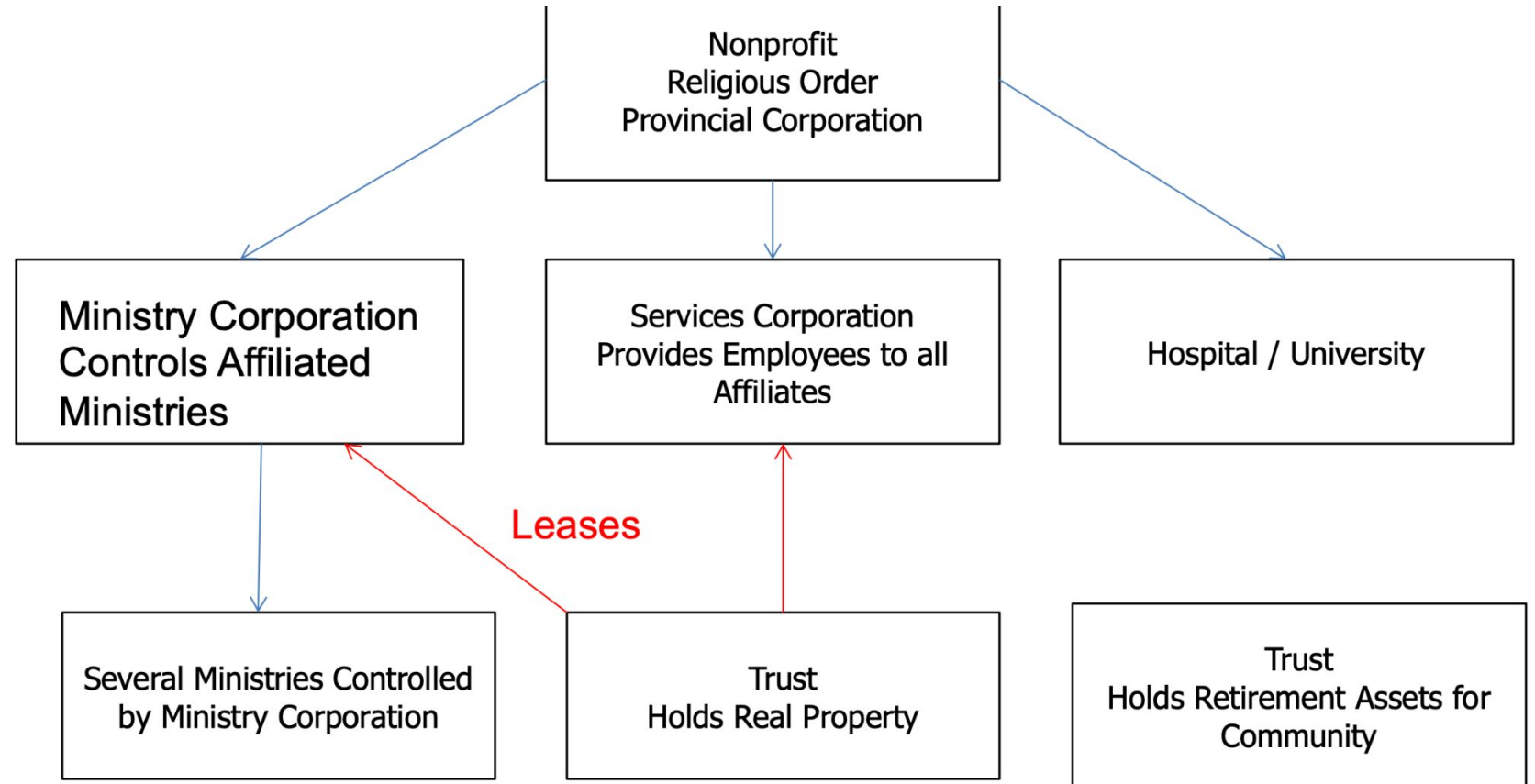
Housing Example

Parish-Based Intentional Community

St. Elizabeth House, Santa Barbara, CA



Entity Creation



Entity Creation Example

Creating new entities to structure new apostolates

Evermode Institute, Springfield, IL



Equipping Local Leaders to Activate Property for Mission

(Without endangering valuable assets or inviting legal trouble)

- Structure prudently to separate assets from liabilities and preserve assets for mission.
- Work out a vision of “profane but not sordid use” that is shared among bishop, clergy, diocesan staff, and laypeople.
- Develop standardized policies and resources (e.g., lease templates, release of liability waivers, permitted reuses for relegated churches) that empower local initiative rather than stifling it.
- Measure the risk of innovation against a realistic “cost of the status quo” (e.g., opportunity cost of vacancy, depreciation due to dereliction) rather than against a void.

DISCUSSION



Thank you.

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