

Land Title Transfer Checklist

for EMCC Churches



Church Property
Resource

Evangelical Missionary
Church of Canada
Following Jesus Together
emcc.ca

This checklist is for EMCC churches requesting title of their property from EMCC. The steps outline the process. All documentation is to be sent to the office of the Evangelical Missionary Church of Canada, 214 Highland Road E, Kitchener, ON N2M 3W2, or scanned to the EMCC Director of Operations or designate. Contact information at www.emcc.ca.

Prerequisite for Receiving Land Title

Prior to receiving land title, qualifying EMCC churches must be incorporated (either federally or provincially) and be a Full Member congregation in good standing. EMCC is glad to help congregations through the bylaw and incorporation process; please contact the office. Churches requesting title transfer must inform their Regional Minister, who in turn must endorse the transfer.

Title Transfer Process

Step 1: Submit Documents to EMCC

- To initiate the process the local church board must send a formal written letter requesting the transfer of title from EMCC to the local church. The letter should evidence that the request to receive title was approved by motion at a meeting of the governing board of the church. This letter should also identify the primary church contact person for this matter.

Submit the following list of documents (some items may already be on file at EMCC):

- A copy of current bylaws (approved by EMCC).
- A copy of Certificate of Incorporation.
- A copy of any Certificates of Title (Deeds) the church may have on file.
- A copy of the last year-end financial report.
- A copy of recent municipal property tax assessment of the property or properties
- A list of all outstanding church loans, mortgages and lines of credit, with lenders and balance owing.
- A real estate opinion of fair market value of the property or properties. This can be done through a qualified real estate agent. Services of an appraiser are not necessary.

Step 2: Review Documents from EMCC

- EMCC will prepare a Right of First Refusal Agreement (ROFR) for the church board to review and sign. The ROFR agreement will be kept on file at EMCC and used by the lawyer to place a caveat on the transferred title. The ROFR speaks to the notice given to EMCC should the church choose to sell, dispose of, lease or mortgage the property.
- The church board will review the excerpt from the EMCC Property Management Policy (Appendix A) and two board members will sign indicating that that board has read and will comply with the requirements laid out in the policy.

Step 3: EMCC Approval

EMCC will review and approve the title transfer and instruct the appropriate provincial lawyer to execute the transfer. EMCC will inform the church contact person that the transfer is proceeding with the lawyer. The local church will incur all the legal and administrative costs related to the transfer of land title. EMCC and the local church contact person will work with the lawyer to complete the transfer process. This length of this process varies in accordance with the schedule of a particular law office.

APPENDIX A

Excerpt from EMCC Property Management Policy – Sections C & D

C. 1. Beneficial Ownership

In cases where legal ownership of the property purchased by a local congregation or related entity resides with EMCC (or its predecessors) beneficial ownership of the property is maintained by the entity that purchased or received the property. The beneficial owner is responsible for day-to-day management, maintenance, and operation of the property, including the right to use the property for its intended purpose, and shall at all times have the responsibility to properly occupy, operate, maintain and insure the property. The EMCC shall have an ongoing, limited additional role as an advisor to the beneficial owners in providing information and guidance from time to time regarding insurance, risk and other management recommendations. Additionally EMCC may provide information and guidance in connection with capital financing, construction or similar projects proposed for such lands by a congregation or related entity.

C.2. RISK MANAGEMENT

EMCC has an interest, on behalf of all its churches and related entities in seeking to preserve property, which has served as a base for operation and ministry, and continues to provide service wherever reasonably possible. To this end, the EMCC shall seek, but shall not be legally responsible, to undertake the following, and instructs EMCC Operations to manage and mitigate risk regarding Repository Lands by ensuring that:

- a. a record of titles and mortgages or other encumbrances against properties for which EMCC (or its predecessors) holds title is maintained.
- b. a record of incorporation and/or Bylaws for all EMCC churches and related entities is maintained.
- c. insurance coverage of at least 90% building replacement value and general liability coverage of \$2 million is maintained for all properties to which EMCC (or its predecessors) holds title. Where the local church or other related entity fails to provide adequate insurance, coverage will be purchased by Operations through the EMCC Building Development Fund, with reimbursement sought from the local church.
- d. property and facilities for which EMCC, EMCCED or EMCCWD holds title are under the oversight of a responsible ministry group or EMCC.
- e. property held by EMCC (or its predecessors) which includes a cemetery shall be maintained according to government regulations.
- f. all property title transactions with member churches must include the EMCC Consent Clause and/or "Right of First Refusal Agreement."

D. 1. CONSENT CLAUSE AND RIGHT OF FIRST REFUSAL AGREEMENT

EMCC interest in church properties is maintained by registering a Consent Clause and/or a Right of First Refusal (ROFR) Agreement as a caveat on all property titles held by member congregations and related ministry entities. The overall intent for EMCC involvement shall be to provide "sober second-thought" for issues regarding property management, financial risks and development opportunities. The main objectives of the Consent Clause or ROFR Agreement are:

- a. To protect the congregation from misuse or liquidation of property during shifts or changes of leadership that may not be in the best interest of the local body or the EMCC.
- b. To protect the use of property for EMCC ministry during church splits or closure.
- c. To ensure that fair market value has been received from the sale of property for current or future ministry use.
- d. To ensure that sufficient assets are retained for the local body, and if applicable, EMCC, where EMCC's opinion is that risk of liabilities against a local body or EMCC is high.
- e. To ensure that an EMCC 'footprint' is maintained in urban areas or rural regions deemed by EMCC to be well suited for current or future ministry.

The Consent Clause shall be as follows:

"The said lands shall be held for the use and benefit of the said congregation or other entity as part of the Evangelical Missionary Church of Canada. Save as otherwise herein provided, the said lands may be sold, conveyed, mortgaged, leased or exchanged, or otherwise dealt with only with the consent of the local congregation of the church and the consent of the Evangelical Missionary Church of Canada, which latter consent may be given by the Board of Directors thereof."

In jurisdictions where the Consent Clause cannot be registered on title EMCC interest is maintained by registering a ROFR Agreement as a caveat on property titles. (See "Right of First Refusal Agreement" for terms and conditions of the agreement.)

Where EMCC does not have either a Consent Clause or ROFR on title, EMCC shall request the congregation to amend title by registering the appropriate caveat as may be permitted by the Land Title Regulations of the local jurisdiction. The EMCC Building Development Fund will cover legal costs in such situations.

D.2. EMCC CONSENT

In addition to the approval by the local congregation or organization in accordance with its bylaws or other applicable governance documents, the written consent of the EMCC to any proposed transfer or mortgage or other charging or disposition of Repository Lands, as well as any other lands which are subject to the Consent Clause or a ROFR Agreement in favour of EMCC, is to be sought and obtained by the local congregation or other organization prior to undertaking or implementing any such arrangement. No such disposition shall be undertaken without consent of EMCC.

Evaluation and any consent shall be undertaken by the President or delegate on behalf of EMCC. In evaluating a request for such consent, the President or delegate shall apply the Consent Evaluation Criteria described below. Requests will be acted upon promptly; cases of urgency will be dealt with accordingly.

Where a Consent Clause or ROFR Agreement is registered against a property in favour of the EMCC, upon consent or approval by EMCC of a proposed transaction, the Consent Clause or ROFR Agreement registration shall be postponed or discharged by EMCC, as applicable.

D.3 CONSENT EVALUATION CRITERIA

The granting/refusal of consent or postponing/discharging the ROFR Agreement, as applicable, shall be discretionary, but it shall not be unreasonably withheld. Decisions will be made in accordance with the objectives of EMCC's involvement.

The criteria outlined below are intended as a non-inclusive listing of considerations for consent.

Mortgage or Charge: The basic criteria for evaluation by EMCC of a request for consent to the granting by the local congregation or other organization of a mortgage or charge against its property is that the local body must have a reasonable prospect of being able to service the debt so that the availability of the property for ministry within the EMCC context is not unduly jeopardized.

Transfer or Sale: The following shall be the basic criteria for evaluation by EMCC of a request for transfer or sale by the local body of its property:

- a. The transfer or sale of property should continue and/or enhance EMCC ministry on said location or within the local region.
- b. If the property is sold, the local body must have a viable plan to reinvest the proceeds of sale to continue and enhance ministry within a reasonable timeframe.
- c. The local body must provide evidence of market analysis to support and substantiate property value.
- d. The local body must demonstrate sound financial management of property and resources, and where applicable provide plans for future development including initial conception, additional capital investment required, decision making process, risk evaluation, site/building acquisition, planning, design and construction, and future maintenance and ministry considerations.
- e. Alternatives for EMCC support may be considered where suitable and available.

We, the governing board of (church name) _____
have read and will comply with the requirements of the EMCC Property Management Policy.

Date _____ Signature _____

Date _____ Signature _____

Please sign and return to the EMCC National Office.