



Cell Tower Leases - - Do's and Don'ts for Churches

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by John W. Pestle

Churches are frequently approached to lease land for a cell tower, or to lease space on the church building for a cellular antenna. This will continue for the foreseeable future, because the expanded capabilities of new cell phones and wireless devices like the iPhone and iPad strain existing wireless networks. So thousands of new towers will be added each year.

Cellular leases are for long terms -- usually 20 to 35 years. For this reason, and because the initial lease offered a property owner is usually quite one-sided in favor of the wireless company, such leases can significantly affect a church for decades. For example, they can significantly restrict how a church uses its property, or make repairs or alternations to church buildings difficult, more expensive or even impossible.

Here are some basic suggestions, based on much experience, for a church which is approached about leasing space for a cell tower or antenna.

In general:

- To protect your church, have the lease reviewed by a specialist, such as a real estate attorney or a person specializing in assisting property owners on cell tower leases.
- Have this review done at the start of your negotiations, and certainly before you sign the lease -- or an "option to lease." The "option" will have the lease attached to it, so once you sign, you're stuck with it.
- Be aware that the local "lease agent" for a wireless company generally is a subcontractor, with little cellular knowledge. They typically have little authority, and getting a better lease often takes time, patience and perhaps going to the parent cell phone company.
- If you have a mortgage on your church, whoever holds the mortgage probably will have to approve the lease. Contact them right at the start to see if this is the case and make sure you tell the wireless company that such approval is needed.
- If the mortgage holder won't approve the lease, it's probably for a good reason, and a "red flag" against signing the lease in its current form.
- Most importantly, be aware that most leases are not "take it or leave it" arrangements, but are open for negotiation on rents and terms to get improvements significantly benefitting the church.

Many questions center on rents and "what the rent should be":

- Cell tower rents vary greatly by location, just as property values do. In general, rates below \$1,000/month are probably too low. Rents for prime locations can be double that.
- Pay close attention not just to the initial rental, but to how often it escalates (hopefully yearly) and by how much. With compounding, the money a church gets from rents can increase significantly over time.
- On rentals, usually the biggest item is making sure the church gets the additional rent from a second or third provider adding antennas to a proposed tower. Not doing so is the most common and most expensive error property owners make.

Varnum Cell Tower Lease Advisory

- Churches with existing leases should be very skeptical about offers to “guarantee” the lease will not be terminated if the church greatly reduces the rent, with claims that lease termination is likely because there is “another cell tower” nearby which the cell company can switch to. Such claims are often false.

Churches should pay close attention to the “fine print” in the lease. In general, the focus here is on making sure the church gets the lease and rent it expects, with the church not being exposed to liability or restricted in its main operations, use of its property or mission throughout the several decades the lease will last. Although the lease income is nice, it is usually a small addition to overall church income. So fine print in the lease “tail” should not wag the church “dog”. For example:

- The fine print often provides that the wireless company can put up any kind of broadcasting antenna it wants, and allows unlimited changes in the number, size, type and color of antennas. The lease should be rewritten to only allow cell phone antennas of a specified size, often camouflaged to make them less visible.
- Leases to put antennas on an existing building need special terms, such as to make sure that the antennas do not decrease the useful life of the building, roof, steeple, etc; or increase the cost of needed maintenance and repairs.
- Insurance, assignment, bankruptcy and non-interference provisions need to be carefully reviewed, and usually rewritten, so as to adequately protect the church.

By following these principles and pointers churches can get leases that fulfill their expectations, often with a higher rental and fewer downsides which can come back to hurt the church in the future.

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John Pestle is the partner in charge of Varnum’s communications law practice. He is a graduate of Harvard, Yale and the University of Michigan Law School, and represents property owners on cell tower leases. He offers “model leases” drafted to protect the property owner, which incorporate these and other suggestions and can be reached at 616-336-6000 ex 6725 or jwpestle@varnumlaw.com, or see his cell tower leasing web page at www.varnumlaw.com/lease.