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**Editor's Note:** Leaders of Catholic health care organizations differ from leaders of other-than-Catholic ones in that their work is bound by both civil law and the canon law of the Catholic Church. Because this is so, leaders of Catholic organizations should know something about canon law.

Toward this end, Health Progress is offering its readers a series of articles on canon law. The series is under the general editorship of a well-known expert in the field, Fr. Francis G. Morrissey, OMI, PhD, JCD, professor of canon law, Saint Paul University, Ottawa, Ontario.

Fr. Morrissey is the author of this article.

# Canon Law and

## *Does Canon Law Speak about Mortgaging Property?*

The Code of Canon Law does not refer explicitly to mortgages. However, canon 1295 speaks in general terms of "acts which could endanger or jeopardize the stable patrimony of a juridic person"—such as, for example, a religious institute or one of its provinces, or a diocese or parish. Although, as such, they are not acts of alienation, these acts require compliance with all the formalities to be observed in cases of alienation of property, such as obtaining permission of the Holy See if the value involved exceeds the maximum threshold set for the region.

Canonists have usually considered that mortgaging church property would constitute an act that risks endangering the stable patrimony, because the church corporate entity in whose name it is registered can no longer freely dispose of it. Likewise, they often refer to other acts that would most likely fall under the general expression of canon 1295, such as transferring the direction of a work to other members or to a board of directors without maintaining sufficient reserved powers. The same could be said for granting a perpetual servitude or right of passage, because doing so might seriously limit the use that could eventually be made of the property. The issuing of bonds—or, in some specific instances (if new debts are contracted, rather than diminishing existing liabilities), the rene-

gotiating of existing loans—could also fall under the norms of canon 1295.

However, not every act relating to mortgages or restructuring falls under the provisions of the canon. For instance, as regards mortgages, two contemporary examples could be helpful:

- It sometimes happens that when a new building or addition is being constructed, and a mortgage is taken out, the only property mortgaged is the new building itself, without placing any lien on existing patrimony. The good name of the sponsoring entity is considered to be a sufficient guarantee. In this sense, the patrimony is not endangered, but rather is being added to. The provisions on alienation would not apply in such instances, although the norms on administration would have to be observed. However, if other property were used as security to guarantee the mortgage, then the norms governing alienation would come into play.


- In the same vein, the norms of canon 1295 would not apply if mortgaged property were given to a church entity on condition that the entity pay the remaining portion of the mortgage. In this case, the juridic person is receiving new property (which presently happens to be mortgaged); it is not contracting a new mortgage.

To understand the reasoning behind these distinctions, we must keep in mind that not everything owned by a public juridic person is part of its *stable patrimony*. Stable patrimony is that which is considered essential for the ongoing life and mission of the entity. It follows that many assets are considered to be free or unrestricted, and are not subject to the



## A Shared Statement of Identity For the Catholic Health Ministry

**W**e are the people of Catholic health care, a ministry of the church continuing Jesus' mission of love and healing today. As provider, employer, advocate, citizen—bringing together people of diverse faiths and backgrounds—our ministry is an enduring sign of health care rooted in our belief that every person is a treasure, every life a sacred gift, every human being a unity of body, mind, and spirit.

We work to bring alive the Gospel vision of justice and peace. We answer God's call to foster healing, act with compassion, and promote wellness for all persons and communities, with special attention to our neighbors who are poor, underserved, and most vulnerable. By our service, we strive to transform hurt into hope. 

As the church's ministry of health care, we commit to:

- Promote and Defend Human Dignity
- Attend to the Whole Person
- Care for Poor and Vulnerable Persons
- Promote the Common Good
- Act on Behalf of Justice
- Steward Resources
- Act in Communion with the Church

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# Mortgages

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norms on alienation, because they are used for day-to-day administration, not for long-term purposes.

Assets become stabilized through what is known as "designation" (see canon 1291). This implies a decision on the part of the competent superior (and council) determining that such and such an asset (for example, land, buildings, special security or retirement fund, foundation, or specialized library) is henceforth to be considered as part of the stable patrimony. Once stabilized, the status of the property cannot be changed again at will. The formalities for alienation could well enter into play if any modification in the asset's status were being considered. In this regard, designation of patrimony as "stable" is a canonical protection against future dilapidation.

So, in the case of a new building or addition covered by a mortgage, once the mortgage is paid off (if not before), then the property could, in all likelihood, be designated as stable.

Yet, some further distinctions are still required. Not every piece of land or every building is necessarily part of

a juridic person's stable patrimony. For example, the canonical stewards could specify that a medical office building was not to be considered stable patrimony even if it was constructed on hospital property. Rather, such a building could be seen simply as a commercial undertaking. So, if it were mortgaged in the way described above (only the new building being subject to the mortgage), it would not be subject to the norms of canon 1295, either initially or in later years.

We should not be surprised to learn that the Code of Canon Law did not foresee the various types of transactions that have to be carried out today. The code is a universal document; its application to particular circumstances is provided through the practice of the Holy See, the interpretation of specialists, the study of jurisprudence, and so forth. The new ways in which business transactions are carried out—especially in the case of health care institutions—often require some form of "creative fidelity" as new situations are faced. This is the challenge facing canonists today. ■