

Guidelines for Pastor's Manse 2020

Section 33 of the Law on Pastors

Section 33 Housing

- (1) An official residence shall be provided, or if that is not available, a similar type building belonging to or rented by the Church.
- (2) The congregation is responsible for the maintenance of the official residence and bears all costs levied against the property.
- (3) If a garden exists, the congregation maintains it.
- (4) The Pastor is obliged to treat the dwelling with due regard to the purpose for which it is intended.
- (5) The official residence shall conform to the needs of the office of the Pastor, whose services consist of preaching, pastoral care and teaching and as these are largely of intellectual nature, they require tranquil surroundings. Apart from this the locality and the family circumstances of the Pastor are to be taken into account.
- (6) The congregation shall equip the official residence with the following basic furnishings:
 - (a) complete furnishing of the office, including computer, internet service and printer;
 - (b) lights, stove and kitchen cupboards.
- (7) If the Pastor has been seconded for a specific period of time, the basic furnishings shall also include appropriate furnishings like a washing machine, refrigerator and curtains.
- (8) The provision of the official residence shall furthermore include:
 - (a) the cost for supply and consumption of water and electricity;
 - (b) a telephone for official calls. The Pastor pays for private calls.

1. General principles and considerations in supplying a manse for its Pastor

1.1 When subsection (5) refers to the "family circumstances" this could potentially be interpreted very broad and could affect the congregation negatively with huge cost implications.

The guidance here is that family is interpreted as the pastors' own family but should not include extended family.

Pastors' family refers to legal spouse, children or step children. It can include a dependent adult/parent. Extended family is for the pastors' account.

When a congregation goes through a process of pastor change and there are any uncertainties in this regard the council / pastor should contact the Church leadership who will act as an arbiter in the case.

1.2. When the pastors' post is shared between congregations, with a school, with any other organisation it is important that cost sharing principles between the parties are agreed, in writing and in advance when the post sharing arrangement is entered into.

2. Ownership principles and basis of congregation supplying a manse for its Pastor

The congregation has to provide accommodation for the pastor. It is, however, at liberty to decide to either own or rent a property as manse. The decision to accept or not to accept the risk of property ownership lies with the congregation.

This section sets out the various scenarios which could exist and the commercial, legal and taxation consequences for the various parties

2.1. When a pastor lives in the manse owned by the congregation.

The congregation:

- a. Pays Rates and Taxes
- b. Pays Water and electricity
- c. Pays building maintenance and insurance
- d. Pays for the upkeep of garden and pool (including chemicals).
- e. Pays for communication (pastor pays for private calls).
- f. Pays for security monitoring services
- g. Pays for general maintenance
- h. Pays for larger maintenance when needed, and when pastor change takes place.
- i. The congregation has the risk and benefits of interest rates and property market rise and falls, and no income from the property

The pastor pays:

- a. Fringe benefit tax based on Paragraph 9,7 the Schedule of the Income Tax Act.

It is clear that in this case the congregation carries and accepts the full risk and benefits of property ownership.

The pastor is an employee who, as part of his employment resides in a house free of charge.

2.2. When a congregation does NOT own a manse but rents one from a third party and lets the pastor stay in it.

The congregation:

- a. Pays the agreed rental to the owner. A rental agreement exists, stating whether and how rental increases are due.
- b. Pays Water and Electricity
- c. Pays for the upkeep of garden and pool (including chemicals).
- d. Pays for communication (pastor pays for private calls).
- e. Pays for security monitoring services
- f. It is clear that in this case the congregation [lessee] does NOT carry and accept the full risk and benefits of property ownership. These are for the account of the lessor.

The pastor:

- a. Whether a pastor stays in a congregation owned manse or a rented manse does not influence the employment contract between NELCSA and the pastor.
- b. Tax regime therefor does not change and fringe benefit tax based on Paragraph 9,7 the Schedule of the Income Tax Act is paid.

The Lessor [Property owner]

- a. Pays Rates and Taxes
- b. Pays building maintenance and insurance
- c. Pays for general maintenance
- d. Pays for larger maintenance which often happens when lessees vacate.
- e. Will have to take into consideration that his property could be vacant for times or that the rental and other costs do not get paid.
- f. Has the risk and benefits of interest rates and property market rise and falls.

2.3. When a congregation owns a manse [Manse 1]. The pastor stays in a leased manse [Manse 2] as described in 1.2 and the owned manse is rented out.

The congregation for Manse 1 –owned property now rented out to a third party:

- a. Pays Rates and Taxes
- b. Pays building maintenance and insurance
- c. Pays for general maintenance
- d. Pays for larger maintenance when lessees change
The congregation has the risk and benefits of interest rates and property market rise and falls, and receives rental income from the property. The risks of non-payment or property being empty vests with the congregation.

The congregation for Manse 2 –leased property now rented from a third party as manse for the pastor:

- a. Pays the agreed rental to the owner. A rental agreement exists, stating whether and how rental increases are due.
- b. Pays Water and Electricity
- c. Pays for the upkeep of garden and pool (including chemicals).
- d. Pays for communication (pastor pays for private calls).
- e. Pays for security monitoring services
- f. The congregation is free to decide to either own or rent a property as manse. This means the decision to accept or to not accept the risk of property ownership lies with the congregation.

It is clear that in this case the congregation [lessee] does NOT carry and accept the full risk and benefits of property ownership. These are for the account of the property owner.

The pastor:

- a. Whether a pastor stays in a congregation owned manse or a rented manse does not influence the employment contract between NELCSA and the pastor.
- b. Tax regime therefor does not change and fringe benefit tax based on Paragraph 9,7 the Schedule of the Income Tax Act is paid.

3. Principles to be considered / applied if a pastor wants to purchase own property instead of living in the manse.

*(Manse refers to the manse owned by the congregation.
Residence is the actual house the pastor resides in.)*

This scenario has the effect that the pastor and the congregation take on various roles / parties in the commercial / legal situations described in paragraph 1 above.

This could lead to confusion and misunderstanding and must be cleared and documented when the arrangement is agreed upon.

- a. The arrangement should not cost the congregation more nor should the congregation be enriched by the arrangement at the cost of the pastor.
- b. The basis should as far as possibly follow the commercial principles described in 1.3 above.
- c. Clear division of contract parties should be established.
 - Employer-NELCSA
 - Lessor-The property owner [The pastor or a combination of pastor and spouse or legal entity attached to the pastor]
 - Lessee-The congregation
 - The pastor as employee living in the house rented by the congregation
- d. Contractual agreement between the Lessor and the Lessee should be entered into following the principles discussed in 1.2 above.
- e. The rental amount [fixed or conditional], will probably be the most controversial and important matter to agree upon and to be included in the lease agreement. When this is negotiated and agreed upon by the two parties [Lessor-property owner / pastor and Lessee-congregation] the following must be taken into account:
 - i. The total cost to the congregation should not exceed what the *manse* cost the congregation, had the pastor stayed there.
 - ii. The pastor must clearly differentiate between being an employee and a property owner / lessor. The pastor must be clear that he / she accepts the risks of property ownership.
 - iii. **Option 1**-Rental for the pastors' *residence* can either be agreed on a fixed incremental amount in which case the risk of the *manse* being rented out remains with the congregation.
This would be the least complicated option, but could lead to the congregation not receiving rental and then ending up with higher costs.
It therefor is argued that the rental of the *residence* should be less than the market related rental for the *manse* as the congregation has market risks it has to absorb.
 - iv. **Option 2**-If a rental amount is agreed upon a condition based on the NET rental of the *manse* [which is now going to be leased on the open market] the pastor should be clear that the pastor does accept the risk of the own *residence* and the imposed risk of the *manse* rented out.
Since the pastor now has accepted the market risks the rental should then be the actual amount [net] of rental received on the *manse* being rented out.
This means during vacancies the pastor receives no rental and will have to pay legal fees for unpaid rental.
During times that a lessor DOES NOT pay rent the municipal accounts [water and electricity] are often also not paid. The practise in South Africa is that the municipality recovers this from the property owner [in this case the congregation bears any legal costs] (Legal costs arising from unpaid municipal accounts, should not be the responsibility of the pastor, since the pastor does not monitor these, nor receive the municipal bills.)
The congregation as lessor remains responsible for the *manse* and ensuring that it is rented out and the due payments received. The pastor has the right to assist in finding a lessee, decide on the action to be taken on non-paying lessee, since the financial loss of a vacant manse is for the pastors' account.
Legal costs arising due to disputes between lessor and lessee are of the pastors' account.

- v. Normal maintenance of the *manse* is of the account of the congregation, as it would have been in normal circumstances and the pastor [as lessee] is responsible for the maintenance of the own *residence*, for which the risk of ownership was accepted.
- vi. The distance of the leased *residence* is a factor to be considered as the congregation also pays for the traveling cost of the pastor.

Element /Consideration	Fixed incremental Rental agreed between congregation [Lessee] and Pastor [Lessor]-Option 1	Conditional rental [based on rental income of manse] agreed between congregation [Lessee] and Pastor ["Lessor"] Option 2
Vacancy risk of manse rented out	Congregation	Pastor ["Lessor"]
Rental amount	Lower as congregation has vacancy risk	Actual receipts* as Pastor has vacancy risk
Responsibility of renting out	Congregation	Congregation and pastor and the risk is with pastor
Legal collection costs iro manse	Congregation	Pastor [Lessor] / Congregation This risk technically belongs to the Lessor [Pastor] and but there could be some crossover to the property owner [congregation]. A joint working arrangement should be defined and agreed in advance.
Maintenance iro manse	Congregation	Congregation with the proviso* that it should be taken into account that frequent change in occupants could have a higher maintenance bill. This should be dealt with in an agreement.

* Should there be a frequent change of lessees in the manse, there are higher resultant costs to the congregation. In order to ensure that the cost to the congregation is not higher than when the pastor stays in the manse (2a) the contract between congregation and lessor i.r.o the *residence* rental amount might stipulate a percentage of the rental amount for the *manse* to be placed in the manse reserve, to cover for these eventualities and possible legal costs.

f. Taxation

For taxation purposes the pastor will have TWO taxation implications, one as an employee and one as a Lessor.

- i. Whether a pastor stays in a congregation owned manse or a rented manse does not influence the employment contract between NELCSA and the pastor.
- ii. Tax regime therefor does not change and fringe benefit tax based on Paragraph 9,7 the Schedule of the Income Tax Act is paid.
- iii. As a lessor the pastor has to declare the rental income he received from the congregation, deduct expenses like bond interest, rates and taxes, repairs and maintenance leaving a Profit or Loss which will then be taxed.