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INSTRUCTIONS FOR PAROCHIAL TEMPORAL ADMINISTRATION

SR. MARY JUDITH O'BIEN, R.S.M.*

The purpose of this article is to study parishes from the discipline of canon law as well as civil law. To that end, the article proposes a legal framework for a parish from the canonical perspective with implementation within civil law. Initially there is an overview of the role of the pastor in administration of ecclesiastical goods, with consideration of an episcopal supervisory responsibility. In this context there are tentative descriptions of the complementary responsibilities of pastors and of diocesan bishops in administration of parish temporal goods. This is followed by consideration of the roles of parish councils and of additional terminology for instructions provided to pastors for the administration of parishes. Subsequently, this article interfaces the instructions and the civil law entity with proposed areas of civil law research. Coupled with this is the admonition that instructions should be compatible with the particular law of a diocese. Excluded from these considerations are parishes owned and operated by religious institutes and in-depth concentration on civil law requirements, which would vary among jurisdictions.

This article investigates the parish as a legal entity and proposes the formulation of instructions from the local ordinary to pastors. These instructions delineate the administration of tem-

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poral goods in the parishes. Although the challenges are significant, instructions offer a way to ensure cohesion between the operations of the parish and the appropriate authority of pastors articulated in *The Code of Canon Law.* Any later adjustments in the obligations of the pastors in operations of the parish would occur through additional instructions; therefore redrafting of articles and/or bylaws can typically be avoided. The description of instructions is provided in canon 34, section 1:

Instructions clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them. They are given for the use of those whose duty it is to see that laws are executed and oblige them in the execution of the laws. Those who possess executive power legitimately issue such instructions within the limits of their competence.

The premise of this article is that it is beneficial for civil lawyers to work in association with canonists in devising the civil structure of parishes. The methodology of this article includes proposed paragraphs of parish instructions. These paragraphs are inset. These passages are offered as an example; each canonist would modify the suggestions made in order to fit the needs of a particular diocese and parish. The content of the instructions would then be replicated in articles of incorporation and/or bylaws for each parish.

Although many dioceses have considered the civil structure of parishes, specification of the role of a pastor in ordinary administration appears to be a rarity in the United States. Why is this the case? Four reasons are suggested: 1) Canons 1174, 12805

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1. *See New Commentary on the Code of Canon Law* 100 (John P. Beal et al. eds. 2000) [hereinafter *New Commentary*] (synthesizing the use of instructions). Initial drafts of this work were in the form of *statutes,* but the merits of *instructions* became apparent. *Instructions* provide a less formal and austere document than *statutes;* this is especially beneficial given the communication occurring directly between the diocesan bishop and priests. An added benefit is that *instructions* are provided at one time; *statutes* are more cumbersome as these would be replicated for each parish. The flexibility and convenience of *instructions* are especially noteworthy for revisions which may occur in the future.

2. *Codex Iuris Canonici* (Canon Law Society of America trans., 1998) [hereinafter *CIC-1983*]. "In all juridic affairs the pastor represents the parish according to the norm of law. He is to take care that the goods of the parish are administered according to the norm of cann. 1281–1288." CIC-1983 c.532.

3. CIC-1983 c.34, § 1.

4. CIC-1983 c.117. "No aggregate of persons (*universitas personarum*) or of things (*universitas rerum*), intending to obtain juridic personality, is able to acquire it unless competent authority has approved its *statutes.*" *Id.* c.117.
and 12815 presuppose the existence of statutes for organizations which are established by decree of competent authority. In contrast, parishes are established as juridical persons by the provision of law itself.7 The Code of Canon Law does not require a parish to have statutes nor any descriptive document outlining the authority of pastors in parish administration.8 2) Essential terminology, such as ordinary administration and supervision, describing the obligations of pastors in the management of parishes and of each diocesan bishop, has been left undefined in The Code of Canon Law.9 Since a necessary component of designating administrative responsibilities of pastors entails specification of language, this imposing task must be done in a cohesive manner compatible with diocesan particular law. 3) The benefit of clearly describing the administrative responsibilities of a pastor is not always understood. One tends to concentrate on the civil organization of the parish. Parochial temporal administrative obligations of pastors should clearly be compatible with the requirements of The Code of Canon Law.10 The civil entity, with variances from one jurisdiction to another, should be brought into compliance with the canonical structure.11 4) There may also be

5 CIC-1983 c.1280. “Each juridic person is to have its own finance council or at least two counselors who, according to the norm of the statutes, are to assist the administrator in fulfilling his or her function.” Id.
6 CIC-1983 c.1281, § 1. “Without prejudice to the prescripts of the statutes, administrators invalidly place acts which exceed the limits and manner of ordinary administration unless they have first obtained a written faculty from the ordinary.” Id.
7 See CIC-1983 c.515, § 3. “A legitimately erected parish possesses juridic personality by the law itself.” Id.
8 See NEW COMMENTARY, supra note 1, at 163 (noting that many parishes do not have statutes because most dioceses and parishes were established under the 1917 code which did not require statutes).
9 See NEW COMMENTARY, supra note 1, at 1478 (explaining, “[d]espite requests during the revision process for precise determination of what is meant by acts of ordinary administration of greater importance, the canon . . . offers no specification of the term. . .”).
10 See CIC-1983 c.34, § 2 (explaining “[t]he ordinances of instructions do not derogate from laws. If these ordinances cannot be reconciled with the prescripts of laws, they lack all force.”); see also NEW COMMENTARY, supra note 1, at 1477.
11 See CIC-1983 c.1284, § 3. Consider, the dilemma of the proposed sale of a non-profit Catholic hospital by the hospital’s board of trustees, which 30 years pre-
apprehension that regimenting the juridical structure of parishes in accord with that which is required canonically introduces an unwieldy relationship between a parish and a diocese. This apprehension is heightened given recent publications which have highlighted the right of existence for parishes. The right of existence entails, in the minds of some authors, a rather ominous suggestion of consultation of a parish community prior to the selection of a pastor and other proposed tangential rights, including autonomy of apostolic works, which should not be constrained by “the diocese or national authorities.” The canonical structure must carefully avoid introducing false independence of, or occasioning antagonism by, a parish toward a diocese. Stated

viously civily separated the hospital’s control from the Society of Jesus. Independently of approval by the Holy See, the Archbishop of St. Louis, and the superior general of the Society of Jesus, the board of trustees approved the sale of the hospital to a for-profit hospital organization. Quoting a decision rendered by Cardinal Eduardo Martinez Somalo, the prefect of the Congregation for Institutes of Consecrated Life, and Cardinal Pio Laghi, the prefect of the Congregation for Catholic Education, the following is especially pertinent in recognizing that the canonical structure supercedes the previous civilly-recognized change in the governance structure:

The authorization of the Holy See is necessary for the sale of St. Louis University Hospital since the provisions of 1967 of appointing a self-perpetuating board of trustees, a majority of whom were not members of the Missouri province of the Society of Jesus, did not constitute an alienation of ecclesiastical goods, whose owner, canonically considered, remains the Missouri province of the Society of Jesus as public juridical person of the church, and therefore the properties pertaining to St. Louis University are still to be considered ecclesiastical goods.

Most Reverend J. Rigali, Saint Louis University Hospital Sold to For-Profit Corporation, 27 ORIGINS 631 (1998).

12 See CIC-1983 c.515, § 1 (declaring that the pastor is under the authority of the diocesan bishop, therefore, any formal instruction would have to comport with this canonical structure); NEW COMMENTARY, supra note 1, at 676 (noting that canon 515, §1 gives the diocese authority over the pastor and parish); see also supra note 10 and accompanying text.

13 See James A. Coriden, The Rights of Parishes, 28 STUDIA CANONICA 293, 302 (1994) (stating that while it is not strictly required, the community should be consulted when its pastor is being selected).

14 Id. at 303.

15 The possibility of independence from dioceses is demonstrated in the following passage:

Parishes constitute the church’s first level of reality, and dioceses are administrative units. The bishop, who is an overseer, a superintendent and a spokesperson, is to guide, assist and support these local congregations. The diocesan bishop and those who work with him at the diocesan level of the church are to serve and coordinate the parishes and other local communities within their territory. Dioceses ex-
positively, flexibility should be provided through which the relationship between the parish and diocese may evolve.

I. THE ROLE OF THE PASTOR IN ADMINISTRATION OF ECCLESIASTICAL GOODS

This section of the article concentrates on the role of the pastor in the temporal administration of a parish. First considered is the pastor's relationship with the diocesan bishop, followed by a proposed description of parochial administrative duties. Subsequently, collaborative efforts with parish councils are reviewed.

A. The Role of Pastor in Administration in Relationship With Diocesan Bishop:

The parish is defined in canon 515, section 1 in the following manner, “A parish is a certain community of the Christian faithful stably constituted in a particular church, whose pastoral care is entrusted to a pastor (parochus) as its proper pastor (pastor) under the authority of the diocesan bishop.”

The community of the Christian faithful is constituted within the particular church; the relationship of a community of faithful to a particular church is preserved as the pastor is entrusted with administration under the authority of the diocesan bishop. Thus, the pastoral care committed to a pastor is in relation to the bishop himself and the particular church. An area for further research could well include juridical consideration of the precise meaning of the parish priest as the proper pastor in relation to the diocesan bishop's ordinary, proper, and immediate power required for the exercise of his episcopal office. Proper may be translated as “per se” or “in his own person.” Some would erroneously interpret this word more expansively, providing broad autonomous or independent power in administration to the pastor. Given the supervisory nature of the bishop's responsibility toward a parish and the establishment of a parish within the particular church, The Code of Canon Law does not allow this autonomy by a pastor.\(^\text{16}\)

\(^{16}\) J. Périsset, La Paroisse 38 (Éditions Tardy, 1989); see also Francesco Coccopalmerio, De Paroecia 62 (Editrice Pontificia Università Gregoriana,
The instructions may be prefaced with a description of the collaborative relationship between pastor and bishop regarding care of a parish. The description given stands incomplete; for example, excluded from the description is any reference to the pastor’s obligations for celebration of sacraments or to each diocesan priest’s promise of obedience to a diocesan bishop and to his successors.

In accord with canon 532, the pastor acts in the person of the parish in all juridical matters. He is entrusted with the pastoral care of the parish by the diocesan bishop, pursuant to that described in the Decree on the Pastoral Office of Bishops in the Church, Christus Dominus, paragraph 30:

Parish priests are, in a special sense, collaborators with the bishop. They are given, in a specific section of the diocese, and under the authority of the bishop, the care of souls as their particular shepherd.

This introductory paragraph sets the tone of the instructions, expressing the cooperative relationship between a parish priest and the diocesan bishop. There are, of course, alternative ways to express the cooperation to be accented within the instructions. Administration of goods pertains to the pastor with direct power of governance over the parish to whom ecclesiastical goods belong unless the law or legitimate custom states otherwise. This administrative authority is without prejudice to the right of the ordinary to intervene. The ordinary is obliged to su-

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17 See CIC-1983 c.532.
18 See Christus Dominus, Decree on the Pastoral Office of Bishops in the Church, 30 (1967).
19 See Id. at 31; see also CIC-1983 c.1276, § 2.
supervise the administration of goods belonging to each public juridical person subject to him pursuant to canon 1276.\textsuperscript{20}

Instructions should state the manner and limits of ordinary administration.\textsuperscript{21} Nothing can be stated in the instructions which is contrary to the universal law of the Church. The instructions detail the responsibilities of pastors in accord with The Code of Canon Law and the particular law of the diocese. The instructions also set forth the obligations of the diocesan bishop in supervision of parochial administration of ecclesiastical goods. Thus, the instructions denote a two-tiered administrative responsibility. The first tier, ordinary administration, may be understood as the day-to-day operations of a parish entrusted to a pastor.\textsuperscript{22} The second tier, extraordinary administration, may be entrusted to the pastor if the diocesan bishop has given written approbation.\textsuperscript{23} This approbation may be curtailed or withheld from the pastor. Thus, the second tier of administrative responsibilities reflects the supervisory obligations of a bishop in the operations of a parish, with monitoring of extraordinary acts of administration and the ability to intervene as delineated in the instructions.

B. Proposed Description of a Pastor’s Duties in Parish Administration:

The instructions can describe the administrative responsibilities of a pastor in the following manner:

The pastor is to have the obligation and authority to engage in acts necessary for the ordinary administration of the parish.\textsuperscript{24} The pastor has no authority to engage in any act of extraordinary administration without prior written

\textsuperscript{20} CIC-1983 c.1276, § 1 “It is for the ordinary to exercise careful vigilance over the administration of all the goods which belong to public juridic persons subject to him, without prejudice to legitimate titles which attribute more significant rights to him.” Id.

\textsuperscript{21} See CIC-1983 c.1276, § 2.

\textsuperscript{22} See CIC-1983 c.527–530.

\textsuperscript{23} See CIC-1983 c.1281, § 1.

\textsuperscript{24} See CIC-1983 c.527–530.
consent given by the bishop. 25

Acts of ordinary administration are to be in accord with an annual parish budget and are necessary for the routine or day-to-day operation of the parish, including the payment of outstanding indebtedness in the ordinary course of business; 26 the hiring, payment of reasonable compensation to, and termination of employees necessary or desirable for the orderly operation of the parish in agreement with the policies of the diocese; 27 and entering into contracts and agreements regarding routine maintenance, provided that no contract or agreement will commit or oblige the parish for any expenditure in excess of an amount determined by the bishop from time to time without the prior review of such expenditure by the Parish Finance Council. 28

The pastor is to prepare an annual budget in cooperation with the Parish Finance Council. The pastor is to perform his obligations in administration in accord with canon 1284; 29 all acts of administration are to be undertaken in a manner compatible with the Magisterial teachings of the Church and the proper governance of the diocese. The pastor is to ensure that goods are administered in accord with canons 1281–1288. 30 He is obligated to maintain the property and to assure the proper management of the parish. He is to render a just and accurate accounting to the faithful of the administration of the parish in concert with canon 1287, section 2. 31

Before leaving office and not less frequently than five years from the date of his appointment as the pastor, the pastor will prepare and certify an accurate and detailed inventory. Within 30 days from its completion, the Inventory will be submitted to and reviewed by the Parish Financial Council, and, within 10 days from the date the Parish Finance Council has completed its review, the pastor will deliver a copy of the inventory to the bishop. A copy of the inventory will be retained in a secure manner in the books and records of the parish. The inventory will be submitted in a

27 See CIC-1983 c.1286.
28 See CIC-1983 c.1290.
29 See CIC-1983 c.1284.
31 See CIC-1983 c.1287, § 2.
timely manner to the subsequently appointed pastor or parish administrator for his review, updating, correction, and signed approval.  

C. **Ordinary and Extraordinary Administrative responsibilities:**

*Ordinary Administration* consists in the day-to-day direction of a parish by the pastor. Anything which is not within the category of *ordinary administration* or the day-to-day administrative responsibilities is, by default, *extraordinary administration.* Each person's concept of day-to-day administration may vary; for example, it may be a pastor's perception that all improvements of the physical plant would fall within the day-to-day administrative responsibilities. Others may disagree especially if the cost, necessity, and the quality of renovations are questioned. In order to eliminate uncertainty, a thorough description of *extraordinary administration* is helpful. Acts fitting within *extraordinary administration* are delineated in order to provide a mechanism by which the bishop's written authorization is required. The following description is proposed:

*Extraordinary Administration* includes all actions affecting or relating to the administration of the parish other than those specifically within the scope of *Ordinary Administration.* *Extraordinary Administration* includes, but is not limited to, the following:

1. Any act of alienation within the definition described below;
2. The acceptance or transfer of any right, title, or interest in real property;
3. The establishment of any partnerships, joint ventures, mergers or legal alliances with any entity or person, the ownership or operation of a business, or the creation of any corporate entity including endowments or foundations;
4. The acceptance of bequests given as a result of vows;
5. The establishment of or any substantial change in the purposes or operation of schools or other charitable works

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32 See CIC-1983 c.1283.
33 See supra note 22 and accompanying text.
34 See supra note 23 and accompanying text.
associated with the parish;

6. All actions which substantially affect the marketability or accessibility of ecclesiastical goods, property, or other items listed on the inventory, with particular regard to the stable patrimony of the parish;

7. The expenditure of any amount for the maintenance of the fixed assets of the parish in excess of an amount determined by the diocesan bishop from time to time;

8. The implementation of all building projects and renovations having an aggregate cost in excess of an amount determined by the diocesan bishop from time to time;

9. The renovation or remodeling involving structural changes or changes of design or building of churches and chapels;

10. The undertaking or defense of any civil litigation on behalf of the parish;

11. Any decision concerning the regulation by appropriate governmental authorities of the use of real estate, including preliminary and final plat approval, planned unit development, zoning, and substantial changes in compliance with all applicable building codes; and

12. Any other act that may be deemed an act of extraordinary administration within the meaning of The Code of Canon Law.\(^{35}\)

For the Alienation of ecclesiastical goods and property valued above the amount set by the United States Conference of Catholic Bishops, permission of the Apostolic See is necessary prior to and as a requisite for the permission granted by the bishop.\(^{36}\)

Those familiar with parish administration may realize the relative merit of each of the areas listed above. For example, the acceptance or transfer of any rights, title or interest in real property restricts the receipt of property, which may contain ecological contaminants, be encumbered by liens or contain unsafe

\(^{35}\) See CIC-1983 c.527–530 (setting forth ordinary administrative duties related to the welfare of the members of the congregation but not listing duties regarding contracting or duties that would cost a large sum of money).

\(^{36}\) CIC-1983 c.1292, § 1–2.
buildings. Typically, professional opinions guaranteeing clear title to and physical inspection of property should occur prior to transfer of title. Classifying structural changes or changes of design and/or building of churches and chapels as an act of extraordinary administration would secure the inspection and approval of blueprints by the diocesan bishop or by suitable staff members. The rationale for each item and additions to the list may be judged based upon the conditions of each diocese and parish. Caution, however, must be exercised to avoid overly restricting the pastor's administrative authority, as this could result in "micro-management" by the diocesan bishop and would defeat the appropriate administrative authority entrusted to the pastor.

The bishop has been imperfectly described as an "indirect administrator." Although there is truth to the phrase, the bishop actively and directly approves actions in many circumstances. The critical Latin verb, *advigilare*, is poorly translated as "to supervise." Better translations include: to watch, to keep guard over, to be vigilant toward. These translations describe the watchful authority of a diocesan bishop in the administration of ecclesiastical goods. The description of supervision is com-

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37 Thomas J. Green, *Shepherding the Patrimony of the Poor: Diocesan and Parish Structures of Financial Administration*, 56 THE JURIST 706, 707–08 (1997). The bishop is the indirect administrator or supervisor of the administration of ecclesiastical goods in the diocese belonging to public juridical persons subject to his authority, e.g., parishes. The rationale for this administrative role is to ensure that such goods are used for distinctly church purposes. The bishop exercises this role especially through visitation and inspection of juridical persons and the requirement of periodic reports on such administration. He may also issue pertinent instructions for lower level administrators in keeping with universal and particular law. Id.

38 *A LATIN DICTIONARY* 50 (1980).


Local Ordinaries have three general responsibilities in financial administration: first, they should issue special instructions within the limits of canon law governing financial administration in the diocese; second, they should appoint administrators for each juridical person; and third, they should carefully supervise the administration of goods belonging to all subsidiary public juridical persons in the diocese. ... Neither the Ordinary nor the financial officer should intervene in ordinary administration except in cases of negligence or abuse. It is the right of the bishop to define limits and procedures of ordinary administration....
Supervision of the parish is specified in the Code of Canon Law, the particular law of the diocese, and these instructions which may be modified from time to time. This supervision may occur at the time the diocesan bishop visits the parish, however this occurs more often through the diocesan personnel. Specifically within the vigilant care of the bishop are all goods in trust, pious foundations and dispositions of which the bishop is the executor in accord with canon 1301.40 Pursuant to canon 515, section 2, after suitable consultation, the bishop has the sole authority to establish, suppress, or alter parishes.41

The pastor’s continued cooperation is requested with the diocesan personnel who are appointed to assist the parish operations in a variety of ways. Various offices of the diocese assist pastors in the fulfillment of their duties and assist the bishop with responsibilities relative to each parish. Pastors and parish councils are to ensure participation in programs offered by the diocese for the benefit of parishes, their employees, and those whom they serve.

The effect of acting outside of the pastor’s authority in administration is severe. For the validity of extraordinary acts, written permission by the diocesan bishop is mandated in canon 1281.42 While canon 1281 refers to statutes, the alternative format of instructions is acceptable for parishes. Typically one would want to avoid silence in the instructions in order to escape ambiguity in decision-making and to reduce the possibilities of generating ill will or misunderstanding. Nevertheless, should there be an omission in the instructions, canon 1281, section 2 provides a mechanism for the diocesan bishop, with consultation,

Id.

40 CIC-1983 c.1301.
41 CIC-1983 c.515, § 2.
42 CIC-1983 c.1281, § 1. “Without prejudice to the prescripts of the statutes, administrators act invalidly when they go beyond the limits and manner of ordinary administration, unless they have first received, in writing from the Ordinary, the faculty to do so.” Id.; see also CIC-1983 c.1281, § 2. “The statutes are to define the acts which exceed the limit and manner of ordinary administration; if the statutes are silent in this regard, however, the diocesan bishop is competent to determine such acts for the persons subject to him, after having heard the finance council” Id.
to determine appropriate action. Unfortunately, if the instructions are not sufficiently specific, the bishop may be acting “after the fact” or in situations in which provisional measures have already been taken by the parish. It is always better to assure clarity in the instructions to avoid this situation.

The instructions could also specify the means by which the situation may be handled should an invalid act occur. A proposed paragraph is:

Pursuant to canon 1281, section 1, an action deemed to be invalid must be brought to the attention of the diocesan bishop at the soonest possible occasion. Any negligent action or action of extraordinary administration without the written authority of the diocesan bishop is invalid. Sanction of the action or actions is in the sole discretion of the bishop. Upon the passage of 60 days subsequent to written presentation to the diocesan bishop of the invalid act, should no action be taken by the diocesan bishop, it is to be inferred that the act or actions will not be ratified. Any action taken to remedy the invalid act is to be in conformity with Canons 1295 and 1296.

This paragraph does not restrict the person who may bring an invalid act to the attention of the diocesan bishop. The determination for appropriate remedial action would be within the discretion of the bishop. Canon 1296 refers to acts, which are not valid canonically, but are valid in civil law. In that situation, the bishop is to carefully examine the circumstances and to determine appropriate recourse in order to vindicate the rights of the Church.

D. Administration of Temporal Goods in Cooperation with Parish Councils:

As provided in canon 537, each parish is to have a finance council to help a pastor with administration of goods. The finance council is ruled in accord with universal law and the particular law of the diocese. The finance council is to receive norms

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43 CIC-1983 c.1281, § 2.
44 CIC-1983 c.1281, § 1.
45 CIC-1983 c.537.
from the diocesan bishop. Some would grant a greater power than was intended by the Parish Finance and Parish Pastoral Councils, however, Eight Vatican Offices have clarified that these councils are only to have a consultative vote.\footnote{Eight Vatican Offices, \textit{Some Questions Regarding Collaboration of Nonordained Faithful in Priests' Sacred Ministry}, 27 \textit{Origins} 405 (1997).} A proposed description of the parish finance council for the parish instructions is as follows:

\textit{Parish Finance Council}: The Council has a consultative role in the financial operations of the parish, including the review of the annual budget prior to submission to the diocesan bishop. Only in the case of urgent necessity is the pastor authorized to expend funds beyond the scope of the budget prior to consultation with the Parish Finance Council; in that circumstance he must inform the Council in a timely manner. The pastor is typically to consult the Council in all building and renovation projects on parish property prior to requesting permission from the diocesan bishop for the project(s). He is also to consult the Council prior to the sale, mortgaging or pledging of real property, or the transfer or liquidation of assets. The Parish Finance Council is to render advice and review for the benefit of the pastor in a consultative manner; the pastor is to preside at all meetings of the Council and is to be solicitous of the advice rendered. Minutes for the Parish Finance Council meetings are to be kept in accord with the guidelines issued by the Diocese, and are open to inspection by the diocesan bishop or his delegate.\footnote{\textit{New Commentary}, \textit{supra} note 1, at 710 (stating that the parish finance committee must assist the pastor in the administration of parochial goods).}

Also the instructions should contain a reference to the Parish Pastoral Council, erected by the bishop in accord with canon 536. The suggested paragraph is as follows:

\textit{Some Questions Regarding Collaboration of Nonordained Faithful in Priests' Sacred Ministry}, 27 \textit{Origins} 405 (1997). "Diocesan and parochial pastoral councils and parochial finance councils, of which nonordained faithful are members, enjoy a consultative vote only and cannot in any way become deliberative structures... It is for the parish priest to preside at parochial councils. They are to be considered invalid, and hence null and void, any deliberations entered into (or decisions taken) by a parochial council which has not been presided over by the parish priest or which has assembled contrary to his wishes." \textit{Id.}
Parish Pastoral Council: In accord with the Parish Pastoral Council Norms of the Diocese, the pastor will be assisted in fostering the pastoral activity of the parish by a Parish Pastoral Council. This Council will assist with the short-range and long-range planning and development of the parish and with coordination of pastoral ministries offered within the parish. The pastor will consult the Parish Pastoral Council in those areas of major importance, which concern the unity of the parish community and in other matters as defined by the Norms.48

There should be a procedure for approbation in order to coordinate the operation of the parochial councils with the obligations of a pastor to seek permission for acts of extraordinary administration. A suggested form is:

If appropriate for the proposed action, the pastor is to consult with the proper Council(s) in the parish. The pastor may then submit written requests to the diocesan bishop for permission to engage in an act of Extraordinary Administration. The request is to be accompanied by the pastor's recommendation as well as all useful documentation and explanations. The pastor may choose to submit the resolution of the Council(s) consulted, giving the specific vote in support of, or in opposition to the request of the pastor.

The pastor may enter into agreements for the acceptance, purchase, sale, mortgage, transfer, trade, and lease of land and buildings and/or for alienation of the stable patrimony of the parish only after consulting the Parish Finance Council, and upon receiving prior written permission from the bishop. Leasing and other forms of alienation of church goods, including those items listed on the parish Inventory, are to be in compliance with Canon 1297.

II. ADDITIONAL TERMINOLOGY:

In order to articulate the responsibilities stated above more precisely, instructions should utilize, to the degree possible, the

48 See Id. at 708–10.
same terminology as in *The Code of Canon Law*. Various words may be defined within the instructions, but these definitions may change or be adapted for use in other circumstances. When drafting instructions for the operations of a hospital owned by a religious institute, for example, one may define *inventory* or *ordinary administration* differently. The descriptions presented are solely to provide guidance for those drafting parish instructions; a future contribution to the field of canon law would be further research delineating more precisely the words described or offering alternative terminology.

A. Alienation:

Typically, one thinks of alienation as the donation, sale, or abandonment of property in whole or in part. The definition of alienation varies from this typical connotation of the word. Alienation applies to all transactions which would render property or an asset less secure, or which would diminish control of the property owned. As a general guideline, the following definition is offered:

*Alienation* is defined as any act or failure to act that diminishes or jeopardizes the assets of the parish, or that renders goods or property less available to the financial operations of the parish. Alienation includes the actions of selling, leasing, encumbering—including the granting or obtaining of mortgages and loans—exchanging, trading, or otherwise disposing of property or any interest in property. It also includes granting easements, pledging property as security

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50 See Rev. James K. Mallett, S.T.L., M.Ch.A., *Book V: Temporalities under the Revised Code of Canon Law* 29 CATH. LAW. 187, 188 (1984). "The canonical understanding of ownership, or dominium, does not admit of fragmentation or division between legal and equitable estates or owners. Dominium is indivisible and, in the original understanding, also absolute." Id. Therefore, anything which diminishes this concept of dominium is treated as alienation by the author. Other authors would define the term differently, but an alternative definition of "alienation" would hamper or defeat the supervisory authority of the bishop.
or converting or allowing property to be converted to personal use or to a use which is not of assistance to the parish.\textsuperscript{51}

Pastors will need to be alerted to the broad definition of \textit{alienation} in order to avoid inadvertently acting in a manner that is outside of ordinary administration.

\textbf{B. Inventory:}

The inventory lists the property of the parish, with an appraisal or valuation of the items or property.\textsuperscript{52} Included within the inventory are certain items designated in order to prevent alienation without proper approbation. Further specification of the \textit{Inventory} may be necessary in order to safeguard the property of a particular parish, especially a parish which has outstanding items of historical or artistic value.

\textit{Inventory} includes an accurate listing of real property, investments, tangible and intangible personal property, and other goods of significant monetary, artistic, historic, religious, or cultural value belonging to the parish, along with their description and an appraisal of their value. Those items which are given pursuant to a vow or which are precious by reason of their artistic or historical significance are to be designated, and may not be alienated except in accord with procedure specified in Canon 1292. In like manner, the stable patrimony is to be specified on the inventory and is not to be alienated without written permission of the bishop. Alienation of the stable patrimony must be in accord with \textit{The Code of Canon Law} and the guidelines published by the United States Conference of Catholic Bishops.\textsuperscript{53}

\textsuperscript{51} NEW COMMENTARY, \textit{supra} note 1, at 1493–94 (describing alienation as the transfer of ownership, either total or partial, of temporal goods, usually effected by sale, gift or exchange); see also JAMES A. CORIDEN, \textit{AN INTRODUCTION TO CANON LAW} 168 (1991).


\textsuperscript{53} CIC-1983 c.1283, § 2. “[Administrators] are to prepare and sign an accurate and clear inventory of immovable property, movable objects, whether precious or of some cultural value, or other goods, with their description and appraisal; any inventory already done is to be reviewed. . . .” \textit{Id.}; see also NEW COMMENTARY, \textit{supra} note 1, at 1495–96 (describing “stable patrimony” as inventory destined to remain with its owner to afford financial security and that
This description is quite broad. Included in the *inventory* is the stable patrimony referred to in canon 1291.\(^{54}\) Canon 1293 gives the criteria by which that permission for alienation of patrimony should be given, i.e., just cause with a written estimate from experts of the value of objects alienated.\(^{55}\) A parish may have items of relatively little monetary value, but which are associated with the founding of the parish. These items should be designated in such a way that it would be an act of *extraordinary administration* to transfer ownership or otherwise dispose of the items.\(^{56}\) The obligation of the pastor in ordinary administration of the parish provides for periodic updating of the inventory. The breadth of the term *inventory* relates to canon 1257, section 1, which states “[a]ll temporal goods which belong to the universal Church, the Apostolic See, or other public juridic persons in the Church are ecclesiastical goods and are governed by the following canons and their own statutes.”\(^{57}\)

In summary, the preceding sections of this article provide a proposed description of the role of a pastor in the *ordinary administration* of a parish. Further described is the responsibility of a diocesan bishop in acts of *extraordinary administration* and in the vigilant watchfulness of the operations of a parish. The term *supervision* was defined and the obligations for supervision in accord with *The Code of Canon Law* were reviewed. A description of the pastoral administration of temporal goods in cooperation with the responsibilities of parish councils was proposed. Finally, essential terminology was defined for the drafting of instructions.

\(^{54}\) CIC-1983 c.1291. “The permission of the authority competent according to the norm of law is required for the valid alienation of goods which constitute by legitimate designation the stable patrimony of a public juridic person and whose value exceeds the sum defined by law.” *Id*.

\(^{55}\) CIC-1983 c.1293, § 1. “The alienation of goods whose value exceeds the defined minimum amount also requires the following: 1) a just cause, such as urgent necessity, evident advantage, piety, charity, or some other grave pastoral reason; 2) a written appraisal by experts of the asset to be alienated.” *Id*.

\(^{56}\) See *New Commentary*, supra note 1, at 1499 (explaining that canon 1292, § 2 requires the permission of the Holy See for the alienation of goods considered precious for artistic or historical reasons).

\(^{57}\) CIC-1983 c.1257, § 1.
Drafting parish instructions is only one aspect of considering the juridical status of a parish. Mirroring the instructions should be the civil law entity, typically reflected in articles of incorporation and bylaws or a trust agreement. The final component of a project of aligning the canonical responsibilities in administration of temporal goods in accord with *The Code of Canon Law* involves consideration of the civil entity, with implementation of the pastor’s proper authority and education at the parish and diocesan levels.\(^{58}\) At the phase of implementation, the particular law or norms of the diocese relative to parish operations should be examined to ensure that there is no inconsistency.

The instructions need to be compatible with the operative state or country’s civil legal system, as required by canon 1284, section 2(3), providing that administrators are to: “observe the prescripts of both canon and civil law or those imposed by a founder, a donor, or legitimate authority, and especially be on guard so that no damage comes to the Church from the non-observance of civil laws. . . .”\(^{59}\)

Just as there is no one canonical approach, there is no pre-established civil law arrangement, which will match all situations. It is imperative that canon lawyers and attorneys, especially those who specialize in nonprofit corporations or trusts, consult in order to coordinate the parish civil entity with the requirements of *The Code of Canon Law*. This portion of the article discusses the civil entity with particular reference to the United States civil law. Initially treated is the establishment of a corporation or trust. The section then proposes ways to limit exposure in civil proceedings, and finally suggests additional provisions in the civil law entity. Colleagues are invited to add to these con-

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\(^{58}\) See CIC-1983 c.1290.

The general and particular provisions which the civil law in a territory has established for contracts and their disposition are to be observed with the same effects in canon law insofar as the matters are subject to the power of governance of the Church unless the provisions are contrary to divine law or canon law provides otherwise, and without prejudice to the prescript of can. 1547.

\(^{59}\) CIC-1983 c.1284, § 2(3).
considerations in order to better protect ecclesiastical property and to advise on the proper juridical structure of parishes.

A. Civil Structure:

The civil structure would mirror the two-tiered canonical entity, providing ordinary administrative responsibilities to the pastor as set forth within The Code of Canon Law. The diocesan bishop monitors the extraordinary acts of administration and supervises the operations of the parish, with the ability to intervene as delineated in the instructions. A streamlined organization with simple means of accountability is recommended. In order to understand alternative civil law organizations, one could study parish articles of incorporation, bylaws, or trust agreements of other dioceses. It is beneficial to maintain current intra-diocesan accountability by parishes to a diocese, for example through a diocesan finance office for the financial operations of each parish with periodic independent parish audits. Sound methods of accountability should be maintained wherever reasonably possible, and civil government reporting, such as the filing of annual corporate reports, should also be assured.

Addressing ecclesiastical property ownership in the United States, The Sacred Congregation of the Council decreed in 1911:

Among the methods which are now in use in the United States for holding and administering church property, the one known as Parish Corporations is preferable to the others, but with the conditions and safeguards which are now

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60 See CIC-1983 c.532. "In all juridic affairs the pastor represents the parish according to the norm of law. He is to take care that the goods of the parish are administered according to the norm of cann. 1281–1288." Id.

61 See CIC-1983 c.1277; see also NEW COMMENTARY, supra note 1, at 1479 (describing acts of extraordinary administration as those "which occur irregularly or whose financial consequences are considerable.").

In carrying out acts of administration which, in the light of the financial situation of the diocese, are of major importance, the diocesan bishop must consult the finance committee and the college of consultors. For acts of extraordinary administration, except in cases expressly provided for in the universal law or stated in the documents of foundation, the diocesan bishop needs the consent of the committee and of the college of consultors. It is for the Episcopal Conference to determine what are to be regarded acts of extraordinary administration. Id.

62 See NEW COMMENTARY, supra note 1, at 1481. "The need for financial, civil-law, and canonical expertise is critical in a complex modern world." Id.
in use in the State of New York. The bishops therefore should immediately take steps to introduce this method for the handling of property in their dioceses, if the civil law allows it. If the civil law does not allow it, they should exert their influence with the civil authorities so that it may be made legal as soon as possible.

Only in those places where the civil law does not recognize Parish Corporations, and until such recognition is obtained, the method called Corporation-sole is allowed, but with the understanding that in the administration of ecclesiastical property the bishop is to act with the advice, and in more important matters, with the consent, of those who have an interest in the premises and of the diocesan consultants, this being a conscientious obligation for the bishop in person.63

The type of property ownership called in fee simple is to be entirely abandoned.

A *fee simple* would maintain ecclesiastical property in the name of the diocesan bishop.64 This type of property ownership could be problematic at the death or retirement of the bishop. A "corporation-sole" form of ownership typically proposes the diocesan bishop as the sole administrator. Property ownership would be held by episcopal office, rather than under names of individual persons. Nevertheless, this form of corporate ownership does not typically reflect the authority of a pastor granted by *The Code of Canon Law*.65 It is helpful to realize that even in 1911 bishops were encouraged to develop parish corporations conducive to collaboration. This decree to date has not been suppressed and it contains worthwhile direction for establishment of civil entities.

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63 See CIC-1983 c.1281, § 1.
64 See Patty Gerstenblith, *Associational Structures of Religious Organizations*, 2 BYU L. REV. 439, 455 (1995) (stating that the conveyance of property in fee simple to a bishop or other religious leader runs the risk that the property will pass to the bishop's heirs or be subject to his personal debts or encumbrances).
65 See id. at 461 (explaining that the concentration of assets and authority in one person may lead to confusion between personal and religious assets, lack of accountability, difficulty in monitoring or abuses of power); see also MALDA & CAFARDI, *supra* note 52, at 131 (stating that such civil law entities are merely one function of the public juridical person, specifically the property holding function. The public juridical person "has no civil law equivalent and no civil law identity.").
In order to meet the suggestions dating from 1911, but applicable at the current time, a study of the pertinent incorporation and trust law should be undertaken to best match the jurisdiction's law with the instructions. The civil entity should be established as soon as possible after the parish instructions are published.

An initial study of civil legal structures could offer interesting options for parishes. The corporation remains one alternative under certain state laws; typically, the local ordinary is then solely responsible for the legal operations of the parish. Although convenient from the vantage point of administration and control over the purchase, alienation, and transfer of property, this arrangement does not closely follow the current canonical provisions. Some dioceses have maintained a single corporate structure in which all of the parishes and the diocese are contained. This arrangement entails significant exposure to liability, which is difficult to justify canonically. Some dioceses are reluctant to terminate a single legal entity under the sole direction of a bishop; this reluctance may be based, in part, upon an

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66 See Robert T. Kennedy, McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States, 50 JURIST 351, 373 (1990) (referring to religious or diocesan organizations establishing separate apostolic entities such as hospitals or universities).

Moreover, without canonical separateness, a sponsoring religious body may also reasonably fear that it may be civilly liable for the actions of the separately incorporated institutions pursuant to the civil-law doctrines of "ascending liability," or "piercing the corporate veil," if a civil court is persuaded that the apparent structural separateness effected by separate incorporation of the institution should yield to the reality of functional unity in the lived relationship between sponsor and institution, a relationship rooted in canonical control, status, and claimed ownership of property. Id.

One could extend the argument from the educational and charitable organizations as juridically identified with the sponsoring religious body to parishes identified with the diocese unless the canonical and civil structures clearly delineate the proper legal arrangement.

67 See MAIDA & CAFARDI, supra note 52, at 129 (explaining that a diocese can establish a corporation to hold title to its assets under a state's nonprofit corporation law and that membership in the corporation is limited to the bishop alone).

68 See Kennedy, supra note 66 and accompanying text; see also Gerstenblith, supra note 64, at 444 (stating that an unincorporated association of a diocese and its parishes has several disadvantages, including lack of limits on personal liability, difficulties in the ownership, receipt, and succession of property, and complications in entering into legal transactions).
uneasiness regarding increased risk of pastors making precipitous decisions affecting parish operations. Although the instructions place as many precautionary steps as possible to prevent rash decision-making, the danger cannot be eliminated completely.

Various parish articles of incorporation have established boards of directors which typically include the diocesan bishop, the chancellor or moderator of the diocesan curia, the pastor and two lay persons as members. Without further provisions, it is possible that the bishop and/or pastor could be out-voted. Although this would not necessarily be catastrophic when dealing with smaller matters, the civil structure should protect against unwarranted or ill-considered transfer of funds and property, and inappropriate changes of the parish mission. Loss of control by the diocesan bishop of parish assets through civil incorporation could arguably be considered alienation of property by the diocese.

In order to avoid this difficulty, some parish articles of incorporation and bylaws mandate that the bishop must be among those who approve any transfers of property. Other parishes require full consent by the board for transfers of property or other significant action by the parish. Although this requirement may prohibit any action, which would counter the desires of the diocesan bishop or pastor, every member of the board would effectively be given veto power. Actions theoretically desired by four-fifths of the board—including the bishop and pastor—could be vetoed. Although superficially appealing, such a structure creates deadlocks and should be avoided.

Although involvement by the laity is highly promoted within

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69 See Bouscaren, supra note 63, at 443-45.
70 See Kennedy, supra note 66, at 363 (critiquing the McGrath position which separated church-sponsored institutions, such as hospitals and universities, from the direct control of the ecclesiastical authority, leading to a “consequent erosion of episcopal authority over the mission and moral orientation of such institutions.”). One could argue that parish entities which stultify the proper supervision of the diocesan bishop may have a similar effect.
71 See MAIDA & CAFARDI, supra note 52, at 223. “A reorganization of corporate structure that deprives the former sponsor of civil law control . . . could also be considered an alienation of Church property.” Id.
72 See Patty Gerstenblith, Civil Court Resolution of Property Disputes Among Religious Organizations, 39 Am. U.L. Rev. 513, 546 (noting that “[c]ourts have differed in their interpretation of even the very same provisions such as restrictions on sale and encumbrances . . . .”).
the Church, membership by the laity on the parish board of directors has no apparent canonical basis, especially in light of the clarification regarding "The Structure of Collaboration in the Particular Church." This statement by Vatican offices precludes parochial councils from being anything other than consultative. The position of two lay members on a parish board of directors typically provides a deliberative vote. Moreover, membership of laity on parish boards of directors may circumvent appropriate collaboration by the pastors and finance councils.

On the other hand, some state laws have provided ecclesiastical corporate structures specifying the presence of lay members with the local ordinary and pastor. These organizations are, at times, deeply embedded in the tradition of the local church and have worked well over the years. Of benefit is the dedication of lay board members who are deeply committed to and knowledgeable of the needs of a parish. Individual parish organizations are also clearly different from each other. A further contribution to the study of the parish civil structures would be an evaluation of the membership of laity on parish boards of directors as compared to their participation in parochial councils sanctioned by The Code of Canon Law.

73 See Francesco Coccopalmerio De PAROECIA 47 (1991). "Paroecia est universitas personarum (cf. can. 115, § 1-2). Est persona iuridica non collegialis, quia eius actionem non determinant membra, in decisionibus ferendis concurrentia (cf. can. 115, § 2), etiamsi revera christifideles consilia parocho offerunt (can. 536-537)."

74 See Bouscaren, supra note 63, at 443-45. The statute provided in part: The Archbishop or Bishop, and the Vicar General of the diocese to which any incorporated Roman Catholic church belongs, the rector of such church and their successors in office shall, by virtue of their offices, be trustees of such church. Two laymen, members of such incorporated church, selected by such officers or a majority of them, shall also be trustees of such incorporated church, and such officers and such laymen trustees shall together constitute the board of trustees thereof. . . No act or proceeding of the trustees of any such incorporated church shall be valid without the sanction of the Archbishop or Bishop of the diocese to which such church belongs, or in case of their absence or inability to act, without the sanction of the Vicar General or of the administrator of the diocese. Id.

75 See XIV NEW CATHOLIC ENCYCLOPEDIA 324-25 (Catholic University of America 1967) (providing that New York State was the first to enact a law of general incorporation for church congregations). The Act of April 6, 1784 allowed adult male members of a parish, of any denomination, to elect trustees. The Act's "inadequate terminology gave parish suffrage even to lapsed Catholics, left clergy off trustee boards, and tolerated 'lay right of patronage.'" Id.
B. Exposure in Civil Court Proceedings:

In the United States, precise parish structures assist in limiting exposure in civil court proceedings in at least three critical ways:

1) The U.S. Supreme Court described the approach for evaluating disputes within churches as "neutral principles of law." This approach allows the court to consider "neutral" legal documents, such as deeds or articles of incorporation, in determining issues such as ownership of property, decisions by the board of directors, and so forth. In deference to the Religious Clause of the First Amendment, civil courts avoid hearing doctrinal disputes. Should the civil structure not be in compliance with the requirements of ecclesiastical law, courts may freely characterize conduct or perhaps the organization itself as "secular." In that circumstance, the neutral principles of law approach ceases to protect First Amendment rights. In order to assure that any resolutions offered by civil courts are in compliance with the ecclesiastical law, the onus is upon those establishing ecclesiastical corporations to ensure that the legal structure is in full compliance with requirements set forth under The Code of Canon Law. As long as the civil structure is clear and in compliance with ecclesiastical law, courts will avoid evaluating the relative merits of questions involving faith, governance or doctrines of the Church.

2) Precise parish legal structures segregate the assets of each parish from other parishes. This is a substantial assistance in truncating liability in large lawsuits. Some seek to establish parish organizations which minimize civil liability on the part of a diocese. This can be done by proper creation of corporations or trusts, but only to the degree that dilution of the proper authority of the local ordinary or weakening of diocesan structures providing supervision of and assistance to the parishes is avoided. One also should avoid minimizing parish accountability to the diocese.

76 See Jones v. Wolf, 443 U.S. 595 (1979); see also Francis Helminiski, Canon Law and Mystical Body: Religious Corporations in Minnesota, 22 Hamline L. Rev. 689, 697 n.95 (1999). The oversight of the religious society may be proven by factors external to Canon Law. This approach to religious disputes is called "neutral principles of law."

77 See Jill S. Manny, Governance Issues for Non-Profit Religious Organizations, 40 Cath. Law. 1, 14 (2000) (describing the trend to recognize the need for independent parish structures).
3) Closely linked with the “neutral principles of law” approach, the U.S. Supreme Court ratified the majority rule reflected in the operative legal documents of parishes, unless the presumption is successfully overcome. A *presumptive rule of majority representation* would support a vote of the governing board, which would dictate the operations of an organization. In the case of a parish, should the bishop or his delegate and/or the pastor be out-voted by the other board members, the presumption of *majority rule* would affirm the decision of the board. It is necessary, therefore, to represent the hierarchical ecclesiastical structure in all civil documents.

In order to assess other means by which the civil organization can limit exposure to civil liability, a survey of litigation is recommended. A broad search of cases involving church-held entities in a relevant time period, such as in the past fifteen years, may yield clues for better management and operations. Although the results of this survey vary among jurisdictions, the research questions are, to a certain extent, uniform. Of specific interest is whether and under what circumstances the applicable courts defer to the structure and internal decision making of church related entities. Other areas of study include employer-employee relations and legal obligations for the care and maintenance of property, with the means to assure that the pastor meets these obligations reflected in parish operations.

One may also consider the applicable jurisdiction’s laws for assessment of judgments against multiple defendant tortfeasors. For example, while performing work related functions, if a principal of a parish school is found liable for a tort, the defendants may well include the parish and the diocese as well as the princi-

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78 See *Jones* 443 U.S. at 608 (1979) (clarifying that Georgia law “provides that a local church affiliated with a hierarchical religious association is part of the whole body of the general church and is subject to the higher authority of the organization and its laws and regulation.”). The presumption may, therefore, be rebutted, but the rebuttal cannot overly entangle the court in “religious doctrine”. Legal documentation of the parish should clearly reflect governance within the hierarchical structure of the church, thus refuting the majority rule presumption. *Id.*

79 See, e.g., Marianne Perciaccante, Note, *The Courts and Canon Law*, 6 *CORNELL J.L. & PUB. POL’Y* 171 (1996) (stating that “[t]he point at which courts unconstitutionally trespass on a religious private domain in cases where they attempt to resolve non-intrachurch religious disputes is not entirely clear from . . . any of the Supreme Court's decisions in the past fifty years.”).

For a broad survey of cases involving the response of various courts to litigation involving church-held entities, see Gerstenblith, *supra* note 72.
pal. The following issues then arise:

1) Based on percentage of fault for each party (including the principal), how does the state law assess liability?

2) If one party is found to be without sufficient assets to pay the judgment, are other defendants then bound to contribute beyond the degree of liability initially assessed?

3) Do the cases of liability teach anything relative to the proper administration and organization of a parish?

Each civil law practitioner may well discover other areas in which to provide greater protection to the civil law entity. It is possible that a great number of civil law questions can affect the management of a parish. The means to provide for the responsible protection of assets would generally fall within the day-to-day administration of a parish.

C. Other Civil Law Considerations:

Beyond considering what the civil organization should contain, it is helpful to be attentive to what should not be present. Misleading classifications of the relationship between the pastor and his diocesan bishop should be excluded. References to the pastor as an “employee” of a bishop, or a broad classification of the relationship under the respondeat superior theory provide an uncomfortable fit. Some authors attempt to evaluate whether a priest is an “agent” of a diocesan bishop or describe the priest as an “independent contractor.” These classifications should be used sparingly as they weaken proper understanding of the relationship between a pastor and bishop, suggesting a secular relationship which the courts may determine is susceptible to their review. It would be advisable to refrain from using these and other secular terms, such as independent contractor, when describing the relationship of a priest to the bishop.

Negligence marks the occasions by which intervention in the ordinary administration of the parish may occur on the part of a diocesan bishop; this word is specifically used in canon 1279, sec-

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tion 1 and is therefore appropriate to utilize in the bylaws.\textsuperscript{82} Since negligence provides the basis by which a diocesan bishop can introduce corrective actions when an administrator acts imprudently, the bylaws of the parish should include a specific definition of negligence. The proposed insertion into the bylaws is as follows:

Negligence is the failure to act as a reasonably prudent person would act in like circumstances in the administration of the parish or an unwillingness to exercise reasonable care in the administration leading to injury of persons or damage to property. Negligence includes the following:

1. Use of property, assets, or money for purposes which are not of benefit or which are detrimental to the parish;

2. Transactions outside of the scope of the pastor's authority or without proper consultation with the appropriate Parish Council(s) or proper approval of the diocesan bishop;

3. The occurrence of theft of parish assets or resources or conversion of parish assets or resources to personal use;

4. Expenditure of funds without appropriate written permission in excess of that which is permitted by the particular law of the diocese;

5. Failure to comply with the guidelines and programs offered by those offices and persons delegated by the diocesan bishop to assist in the financial, business, and professional operations of the parish;

6. Entering into or defending litigation without approval by the diocesan bishop;

7. Loaning or borrowing of funds without the written permission of the diocesan bishop;

8. Holding oneself out to third parties with implied authority to transact business beyond the actual authority granted;

9. Acting in a manner which does not fulfill the requirements of canons 1284 and 1286 including, but not limited

\textsuperscript{82} CIC-1983 c.1279, § 1. "The administration of ecclesiastical goods pertains to the one who immediately governs the person to which the goods belong unless particular law, statutes, or legitimate custom determine otherwise. . . ." \textit{Id.}
to failure to safeguard the assets, goods and revenues of the parish, to keep well-ordered books of receipts and expenditures, to use the resources of the church in accord with the wishes of the donor(s) and to comply with civil law except where it violates divine law.\textsuperscript{83}

Upon a finding of negligence, the financial administration of the parish may revert to the diocesan bishop if, in his sole judgment, it would be of benefit to the parish.\textsuperscript{84} Reasons for this reversion include charges pending or filed in civil or criminal courts against personnel of the parish. Should negligence of the parish occur, in the sole judgment of the bishop, the parochial vicar or another suitable person may be appointed to administer the parish.\textsuperscript{85} In any circumstance in which the proper administration of the parish would benefit or in which the pastor is unable or unwilling to administer the ecclesiastical goods of the parish, in the sole judgment of the bishop, the day-to-day administration may revert to the bishop or to his delegate.\textsuperscript{86} A parochial vicar or other suitable person may then be appointed to administer the parish. The death, incapacity, transfer, removal, or sanction of the pastor would occasion reversion of the administration of the parish to the bishop.

This description of negligence excludes acts which could have been more thoroughly considered or in which opinions would vary as to the justification for decisions.\textsuperscript{87} For example, the wisdom of a decision by the pastor to patch a church's parking lot rather than to resurface the entire lot may be doubted by the local ordinary. This is a matter of ordinary administration. Therefore, the bishop would not intervene in this decision. An appropriate arena for discretionary decisions is given to the pastor in administration of a parish.\textsuperscript{88}

In addition, the articles of incorporation, bylaws, trust agreements or other legal document may include the following

\textsuperscript{83} See generally, Nicholas P. Cafardi, Rights and Responsibilities Between Dioceses and Religious Communities, 40 CATH. LAW. 59–70, 74–83 (2000) (discussing the nature and relationship regarding the allocation of risk and responsibility within the Church hierarchy).

\textsuperscript{84} See id.

\textsuperscript{85} See id.

\textsuperscript{86} See id.

\textsuperscript{87} See id.

\textsuperscript{88} See id.
additional provisions:

1. A mechanism to indemnify the pastor for judgments, liens or fines incurred when acting in proper administration of a parish.

2. A provision that all actions of the parish are to be in accord with the teachings of the Church. This would avert recognition of activities or groups who do not comply with the teachings of the Church.

3. Placement of affirmative land restrictions on deeds protecting against future transfers of property without written approval by the diocesan bishop.

4. A mechanism for adjustment should a division of the diocese occur and for continued supervision during the time in which no bishop is present in the diocese.

5. A right of reversion of the assets of the parish to the diocese should the parish be suppressed.

6. The possibility of a separate written guarantee by the local ordinary for loans or large commitments on the part of the parish.

7. Although not a full protection, a broad disclaimer of any parish action which would cause the parish to act contrary to the canonical instructions, *The Code of Canon Law* and the particular law of the diocese.

8. A requirement for record keeping and filing of annual reports, if required, in the parishes with copies sent to a centralized and secure location in the diocesan offices. This may well involve coordination by the diocesan office which monitors parochial financial operations.

9. A means to appoint suitable persons, such as a parochial vicar or deacon assigned to a parish, should the pastor be unwilling or unable to serve in this administrative role.\(^{89}\)

**CONCLUSION**

This article has projected substantive content of parish in-
structions, with attention to civil law requirements especially pertinent in the United States. It is hoped that, in the drafting of instructions, articles of incorporation or trusts, we may be attentive to the increased responsibility placed upon pastors in the administration of parishes. Underlying this responsibility is accountability for decisions made both to the specific community of faithful to which they are appointed and to the diocesan bishop. Shaping instructions that conform to *The Code of Canon Law* is premised upon careful preparation of priests to meet the administrative responsibilities to which they are assigned and prayerful solicitude for bishops in their vigilant pastoral care for each particular church.†

† Particular gratitude is expressed to Most Rev. Charles J. Chaput, O.F.M.Cap., who entrusted me with this project. Other colleagues in the Archdiocese of Denver and within the professions of civil and canon law have been most helpful in evaluating the instructions and proposed civil structure for the parishes. Gratitude is also extended to participants in the Pontifical Gregorian University Colloquium, who critiqued an earlier draft of this article in July, 2000.