

Guidelines for a Congregation in Transition: Property Matters

Long Range Planning

All churches in the Presbytery are strongly encouraged to engage in long-range strategic planning, including long range plans for the ownership and use of buildings and other property owned by the church. Each congregation in the Presbytery has a liaison with the Board of Trustees, and each church is encouraged to involve its Trustee liaison in all parts of its long-range planning process. All long range planning should have as its first goal the great ends of the Church.

Legal Framework and Background

Under the Book of Order and New York Religious Corporations Law, all Presbyterian congregations ordinarily have a Session (G-3.02) and one or more Trustees (G-4.01; Religious Corporation Law section 5). The Session is the equivalent to a board of directors in a for-profit corporation. The Trustees/Session¹ have the custody and control of property belonging to the church corporation (Religious Corporations Law section 69). The church Trustees, with the consent of the congregation, ordinarily make all decisions with regard to the ownership, title and management of church property.

Any decision of the church Trustees to sell church property, whether a manse or a sanctuary building or other real property, must be confirmed by the congregation (G-4.0101) and by the Presbytery on the recommendation of the Presbytery Trustees and also by the New York State Supreme Court (Religious Corporation Law section 17-b)² A recommendation regarding the use of the proceeds of any sale should be made by the congregation and approved by Presbytery. *Note:* While the sale of a manse or property other than a sanctuary can be approved by the Trustees and the Big Picture Team, the sale of a sanctuary must be approved by Presbytery as a whole.

Title to all property owned by a church is vested in the church corporation. However, the Book of Order and New York Religious Corporation Law also provide that if the church corporation is dissolved, then the title to all assets passes to the Presbytery (G-4.0203, Religious Corporation Law section 17-b). This is because a not-for-profit corporation such as a church has no shareholders – in other words, the members of the church corporation aren't entitled to receive any distribution of property like a dividend from the church corporation at any time, either during the life of the corporation, or on its dissolution. In a for-profit corporation, the shareholders of the corporation are the ultimate owners, and if the corporation is dissolved the title to the corporation's assets passes back to the shareholders. But because of tax and other legal requirements that apply to charitable organizations, the assets of any not-for-profit corporation cannot pass back to the members of the corporation (in our case, the congregation). Accordingly, in such a situation the law provides that the assets pass to Presbytery, which is deemed to be the "next best place" for the assets, and which is presumed to be the use of the property that is as close as possible to the original use. Another way of looking at this is that Presbytery is in the same position as the "remainder beneficiary" of a trust – the church corporation has the right to use the income of the corporation for its charitable purposes, and can use its assets (equivalent to the

¹ Under G-4.01 ordinarily the ruling elders serving on session are the trustees of the corporation; however, this can be changed by the congregation.

² In New York State the Supreme Court is a lower court, and it is the court of "original jurisdiction".

principal of a trust) during the existence of the corporation, but if the corporation is dissolved then what remains passes back to Presbytery.

Administrative Commissions

Presbytery may determine that it is appropriate to appoint an Administrative Commission for a particular congregation that is struggling with particular issues (G-3.0109(b)(5)). The Administrative Commission may replace the Session, or may in some cases operate alongside the Session, and functions as the Session as long as the AC is in existence (G-3.0109). Accordingly, the AC is subject to the same limitations that the Session and/or Trustees would be. If, for example, the AC of an ongoing church recommends any particular course of action with the assets of the corporation (for example, to sell a building) that recommendation would be presented to the congregation, and if so approved, then presented to the Presbytery Trustees and on their recommendation to the Presbytery (or Big Picture Team) for approval and finally to the NYS Supreme Court. A recommendation regarding the use of the proceeds of sale may be made by the AC with congregational and Presbytery approval.

Ordinarily, a member of the existing church is a member of the AC. However, there may be circumstances where this is not appropriate.

Dissolution of a church corporation

The Session or the AC, as the case may be, may, in appropriate circumstances, recommend that the church corporation be dissolved. In that case, under the Book of Order and New York law, all assets remaining in the church corporation (including any real property or the proceeds of sale of the real property before dissolution) will be transferred to Presbytery.

Any cash or other assets remaining on the dissolution will ordinarily be added to the Genesee Valley Fund. However, the Trustees will welcome any recommendations from the Session or AC of the church concerning the terms of sale of the building or use of the building. (for example, that it should be used "in a manner respectful of its heritage", or that mission operations in the building be allowed to continue. The Trustees will also welcome recommendations regarding the use of cash received from the dissolved congregation, for example, for mission projects that the church supported during its existence. However, any such recommendations would need to be approved by the Presbytery before they can be implemented.

It is highly preferred that, if possible, a church, either through its Session or AC, come to a decision about the disposition of the church building(s) and the use of cash or other liquid assets **before** the dissolution of the corporation. If the decision is made to sell the building(s), then it is recommended that the Session or AC take all steps necessary to complete the sale before the corporation is dissolved. This would include listing the property for sale and entering into a written contract with a buyer with all terms set forth in writing and agreed upon by both the selling congregation and the buyer. As noted above, any sale, whether in the context of a dissolution or not, is always subject to approval by Presbytery (on recommendation of the Trustees) and the New York State Supreme Court. Any real estate broker assisting with any sale should be made aware that this approval process may take several months. And as also noted, real estate sale proceeds that make up part of the church's assets on dissolution will ordinarily be added to the Genesee Valley Fund when the church is dissolved.

If a congregation is unable to determine what to do with its real property and any other assets before dissolution, the Presbytery will, on recommendation of the Trustees, determine what should be done with any remaining unsold buildings and other assets of the dissolved church corporation. It should be emphasized that Presbytery will make this determination **only** if the congregation is unable to do so on its own. Presbytery is ordinarily not able to develop any alternative use for the building, no matter the location. But the earlier the long range planning process is entered into, the greater the possibility for alternative creative arrangements.

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