

Making the decision to leave a denomination is hard. But leaving is even more difficult depending on what denomination you are associated with. Prior to engaging counsel, please collect the following documents and provide answers to the questions below. This is a time consuming exercise but it is needed to allow the best result. After we have this information, we can create a plan to move you out of the denomination and into a new entity or create a new entity for your church.

1. *Documents needed:* Please attach the following

- Articles of Incorporation of the local church
- Bylaws or Constitution of the local church
- Property deeds
- Endowment records
- Bank statements for the prior five years
- Investment records for the prior five years
- Loan documents
- Records of property ownership provided to presbytery
- Correspondence with the local presbytery about leaving the denomination
- Minutes of annual meeting for the past 25 years

2. *Questionnaire– please answer to the best of your ability*

- What denomination are you affiliated with?
  - How long have you been affiliated with the denomination?
  - Does the denomination have a trust clause for real and personal property?
  - Does the denomination have a “Book of Order” or Book of Discipline?”
  - Has the use of the local church’s name, its customs and its policy been such that the local church is known in the community as a member of a specific denomination? Explain.
  - Has the hiring of the local church’s ministers been contingent upon the appointment or approval by the denomination? Explain.
  - Has the denomination (the presbytery, conference, diocese, or other regional body) had knowledge, whether actual or constructive, of the recorded deeds,

- local articles of incorporation, or records of relevant local congregation and corporate proceedings such as resolutions or minutes? Explain.
- At the time of the original affiliation or identification of the local church with the denomination, was there an express trust proviso in the denominational constitution? Explain.
  - What trust clause, or set of trust clauses, is relevant to your local church? Presbyterian congregations for example, find such provisions in the PCUSA *Book of Order* or the PCUS *Book of Church Order* or the UPCUSA *Book of Order* as amended immediately prior to the 1983 formation of the PCUSA. Explain.
  - Did the local church have an “opt out” provision such as G-8.0700 of the PCUSA *Book of Order*? Explain.
  - If so, what does the text of the relevant resolution or minutes say in explanation? Explain.
  - Does the local church hold the property at issue – before or after the addition of express trust language in the relevant denominational constitution? Explain.
  - How is the titleholder of the property described in the property deed(s)? Explain.
  - Is the owner (as in the earlier hypothetical case) simply “Maple Street Presbyterian Church of Memphis, Tennessee?” Explain.
  - Or do the title documents also specifically describe the church as “PCUS,” “PCUSA,” etc.?” Explain.
  - Have the property deeds ever been amended to add, delete, or change a denominational reference, and were any such amended deeds recorded? Explain.
  - Do the deeds contain reversion, remainder or trust language in favor of a denomination? Explain.
- Was the property acquired by contributions exclusively from local church members, by contributions from a regional ecclesiastical body (presbytery, conference, or diocese), by a denominational mission agency or by some combination thereof? Explain.
    - If acquired in whole or in part by contributions from non-members, what is the current approximate dollar value of all such contributions in relation to the total current value of the local property? Explain.
    - Did the regional ecclesiastical body guarantee any loans or lines of credit necessary for the local church to acquire the property? Explain.

- What do the local church's articles of incorporation (charter) say about the disposition of property upon the dissolution of a local church corporation? Explain.
  - Do the articles of incorporation state that, upon dissolution, the local property would be placed in trust of the denomination? Explain.
  - What do the articles of incorporation say about determining the identity of the corporation, ownership of the corporation's assets, or the right to the use of the corporate name, and are all such provisions consistent with the provisions of the non-profit corporation law of the state in which the property is located? Explain.
  - Do the articles of incorporation include any mention of denominational affiliation with the current denomination or a predecessor denomination, or are they silent concerning a denomination affiliation? Explain.
  - Have the articles of incorporation ever been amended to add or change a reference to a denominational affiliation or to delete a reference to a denominational affiliation? Explain.
  - Do the articles of incorporation contain language that prohibits the local church from ever disaffiliating with a denomination? Explain.
    - If so, can any such language be amended under your state's corporation law? Explain.
  - Do the articles of incorporation grant plenary power concerning property matters to the board of trustees of the local church corporation, subject only to appropriate approval by the congregational governing body and/or the members of the corporation, i.e., the voting members of the local congregation? Explain.
  - Do the articles of incorporation limit the authority of the board of trustees by subjecting their authority to a congregational board of elders, administrative council or vestry or to any regional or national church rules or bodies? Explain.
- Prior to the addition of an express trust proviso in the relevant denominational constitution, was there an indication in the relation of the two parties (the local church and the denomination) of an agreement on an implied trust? Explain.
  - If so, was there any understanding whether such a trust was revocable or irrevocable? Explain.
  - Has the local church continuously maintained its affiliation with a denomination subsequent to the adoption of express trust provisions in the relevant denominational constitution? Explain.

- Has the local church ever taken any action that can be construed as explicit consent to the relinquishment of vested property rights? Explain.
- Has it ever explicitly accepted a trust upon property titled in the local church? Explain.
- If you know,
  - What are the requirements under your state's trust laws for the creation of a valid trust by a non-profit corporation or by any incorporated body?
  - Who is the "settlor," who is the beneficiary and who is the "trustee?"
  - Do the laws of your state impose any requirements regarding form and/or recording in order for the creation of a valid trust?
    - For the acceptance of a validly created trust?
  - Do the trust laws of your state require that intent be clear and explicit in order to create a valid trust?
  - Do the trust laws of your state require that a trustee be of a certain category, such as a natural (not juridical) person or an authorized financial institution?
  - Assuming a validly created trust under the laws of your state, does your state's law presume that such a trust is revocable or irrevocable?
    - Is any such presumption rebuttable?
    - If so, how is the presumption rebutted?

Once completed, please send this to:

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