

# Legal Resource Manual for Presbyterian Church (U.S.A.) Middle Governing Bodies and Churches

Third edition (2010)

## Introduction

The Office of Legal/Risk Management Services performs work for the General Assembly Mission Council, the Office of the General Assembly, the ministry divisions, and other corporations and work areas at the General Assembly level. These are our clients.

Over the years we have also provided general informal advice to the middle governing bodies and the particular churches. This third edition Manual is a compilation of some of the advice and resources we have shared over the years. Our first edition Manual (2000-2003) and second edition Manual (2004-2007) were well received and well used. We trust the same will be true for this Manual.

The law is far ranging in modern American society. This Manual does not cover every topic. Let us know if there are additional resources or changes you would like to see in future publications. Moreover, let us know if you have resources or articles to share. Some of our very best materials have been provided to us by churches, presbyteries, and synods.

The Office of Legal/Risk Management Services sincerely appreciates the contributions and work of many outside authors. Contributors to this Manual include colleagues from churches, middle governing bodies, and other General Assembly-level offices and corporations. Legal counsel from other denominations also contributed to this Manual. We especially thank the Legal Department of the General Council of Finance and Administration of The United Methodist Church. This Manual is, in part, based on the very successful legal manual published by that office.

**Finally, be certain to consult your local attorney for legal advice and expert assistance. While the information in this resource Manual should be a helpful guide, it cannot substitute for your local counsel familiar with the law and facts of your particular situation. The laws, of course, continue to change. Your local counsel will ensure the current law is applied to your needs.**

Sincere regards,

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## Important Disclaimer

While this Manual is provided in the hope it will assist you generally in answering questions, the Office of Legal/Risk Management Services is not engaged in rendering legal, accounting, or other professional services to you. If legal advice or other expert assistance is required, the services of a competent professional advisor should be sought. Indeed, before relying on information contained in this Manual or any resource, including Web sites, please consult with an attorney or other professional advisor licensed in your state.

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## **Section 1: Basic Organization of the Presbyterian Church (U.S.A.)**

The Presbyterian Church (U.S.A.) is a body of Reformed Christians who have agreed to conduct their worship and other religious activities in conformity with the then current version of the Presbyterian Church (U.S.A.) Constitution. The Constitution consists of the *Book of Confessions* (Part I) and the *Book of Order* (Part II). G-1.0500. The *Book of Confessions* contains eleven theological statements developed over the church's history. The *Book of Order* includes the Rules of Discipline, the Directory for Worship, and the Form of Government, a detailed formal structure of the church.

The Form of Government sets forth the relationships among the various elements that comprise the church. Central to the organizational structure of the Presbyterian Church (U.S.A.) is the concept of governing bodies of which there are four types:

- sessions of particular churches (11,097)
- presbyteries (173)
- synods (16)
- General Assembly (1)

The Presbyterian Church (U.S.A.) is governed by these representative bodies composed of presbyters, both elders and ministers of the Word and Sacrament. G-9.0101. The session of a particular church consists of the pastor, associate pastors, and elders in active service. G-10.0101. The presbytery consists of all the churches (represented by elders) and ministers of the Word and Sacrament within a certain district. G-11.0101. A synod consists of at least three presbyteries within a specific geographic region and is composed of commissioners elected by the presbyteries. G-12.0101. The General Assembly consists of equal numbers of elder and minister commissioners from each presbytery. G-13.0102.

Each governing body has particular responsibilities and powers. These are set out in the Form of Government: Sessions G-10.0102, Presbyteries G-11.0103, Synods G-12.0102, and the General Assembly G-13.0103. Our polity is presbyterial — as distinguished from hierarchal, episcopal, or congregational. As we explain our structure, we must not oversimplify the essential detail of our presbyterian polity.

A very important concept for this Legal Resource Manual and within the life of the Presbyterian Church (U.S.A.) is found at G-9.0102: “Governing bodies of the church are distinct from the government of the state and have no civil jurisdiction or power to impose civil penalties. They have only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying his will in relation to truth and service, order and discipline.” The corollary to this principle is that civil governments and courts must not assert ecclesiastical jurisdiction. This principle is embodied in the First Amendment to the United States Constitution and the religion clauses found in the various state constitutions.

Thus, neither the Presbyterian Church (U.S.A.) nor its governing bodies should be thought of as civil jural entities with legal capacities and attributes. Their fundamental ecclesiastical nature, relationships, duties, and responsibilities are established by the Presbyterian Church (U.S.A.) Constitution — not the civil law. The *Book of Order* does direct the particular churches (G-7.0401) and the higher governing bodies (G-8.0202) to cause a corporation to be formed whenever permitted by civil law. This provision is not understood to incorporate the ecclesiastical governing body but, instead, to create a corporation to perform the limited civil law functions necessary within the life of the church

(e.g., holding title to real estate, entering into contracts). Of course, all of these corporations operate within the applicable civil law and the strictures of the Presbyterian Church (U.S.A.) Constitution. These corporations are civil jural entities. *See Section 3: Incorporation and Boards of Trustees* for a more detailed discussion about corporate law.

## **Section 2: Property**

This Section covers a wide variety of property matters. It begins with a discussion of Presbyterian Church (U.S.A.) property provisions. These are found in Chapter VIII of the *Book of Order*, The Church and Its Property. The balance of this discussion covers property topics in more a general manner.

**Remember: Almost all property matters are governed by state law. An attorney familiar with your state's property law should be consulted on property issues and matters.**

### **A. The Presbyterian Church (U.S.A.) and Its Property**

While *Book of Order* Chapter VIII is relatively brief, it sets out very important provisions in the life of the Presbyterian Church (U.S.A.). These property provisions include:

- Decisions Regarding Property G-8.0100
- All Property Held in Trust G-8.0200
- Property Used Contrary to Constitution G-8.0300
- Property of Church Dissolved or Extinct G-8.0400
- Selling, Encumbering or Leasing Church Property G-8.0500
- Property of Church in Schism G-8.0600

As is evident from this listing, Chapter VIII sets forth the terms by which the church will act and be bound at some of the most challenging and demanding times. In addition to the discussion set out immediately below, the Constitutional Services Department of the Office of the General Assembly has written a very helpful church property summary, Advisory Opinion Note # 11: Church Property (*See Appendix A*).

#### **1. Presbyterian Church (U.S.A.) Property Trust Clause (G-8.0201)**

**All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).**

This clause is central to Chapter VIII and, in many respects, the life of the Presbyterian Church (U.S.A.). It establishes, as all Presbyterians know, that our church is not congregational in its structure. It is connectional. The governing bodies of the church interrelate with and depend on one another in many ways — defined and established by the Presbyterian Church (U.S.A.) Constitution. While the church does not describe itself as hierarchal, this is the term most civil courts use when ruling on Presbyterian Church property cases. In this context, the civil courts use hierarchal to distinguish our structure from the congregational form. As they view our structure in church property

disputes, the civil courts correctly focus on the core principles of Presbyterian government, including G-4.0301f: “A higher governing body shall have the right of review and control over a lower one and shall have power to determine matters of controversy upon reference, complaint, or appeal.” This and other *Book of Order* provisions cause the typical civil court to view the Presbyterian Church as hierarchal in regards to its property.

**It is strongly advised that all written instruments of conveyance involving property acquired for use as a place of worship or other church activities should contain the following clause or language very similar:**

**The premises herein conveyed shall be used, kept and maintained by the grantee for Divine Worship and other purposes of its ministry as a particular church belonging to the Presbytery of \_\_\_\_\_ (or its legal successors), subject to the provisions of the Constitution of the Presbyterian Church (U.S.A.). The grantee holds the property in trust pursuant to the provisions of the Constitution of the Presbyterian Church (U.S.A.).**

## **2. Absence of Trust Clause**

The absence of a trust clause in a conveyance instrument in no way mitigates or compromises the obligation of the particular church or other church agency to the presbytery, other governing body of jurisdiction, or denomination as a whole. Evidence that church property, which has no express trust in the deed, is intended to be used for denominational purposes includes the following:

- The property trust set out in the Constitution
- Prior conveyances in the chain of title to predecessor local churches or agencies within the Presbyterian Church (U.S.A.) or its predecessor denominations
- Use of the name, customs, or polity of the Presbyterian Church (U.S.A.) or its predecessor denominations in such a way that it becomes known by the community as part of the denomination
- Service by a minister member of presbytery of the Presbyterian Church (U.S.A.) or its predecessors
- Activity within the presbytery, including participation in presbytery meetings, committees, and functions by ministers and elders of the church
- Funding and development assistance from presbytery or any other PC(USA) or predecessor governing bodies

Where such evidence is present, civil courts have upheld the right of denominational units to succeed to the title on the express or implied trust theories. It is extremely important to understand that, although title to the property may be held by a particular church subject to the provisions of the Constitution, the title is merely held in trust for the denomination by that entity. The title may be taken in the name of the corporation or certain trustees but the Constitution clearly states that **all such properties are held in trust for the denomination, whether or not a trust clause is included in the instrument of conveyance.**

## **3. Property Used Contrary to the Constitution, Church in Schism, Church Dissolved**

As is evident from this discussion, most church property cases appear in civil court because of difficult and often wrenching disputes. When such disputes arise in the particular Presbyterian church, it is the presbytery that holds central responsibility and power to resolve the matter. If it cannot be successfully resolved, again the presbytery determines how the property will be handled.

G-8.0301 establishes the central principle that when the property of a particular church is not being used in accord with the Constitution, the presbytery shall determine how the property shall be held, used, applied, transferred, or sold. In a similar vein but more specifically, when a particular church is dissolved by the presbytery, the presbytery has all the same powers in regards to the property. G-8.0401. Finally, in a schism at the particular church, the presbytery again holds the central authority. As established by G-8.0601

- Only the presbytery can sever the relationship with a particular church (G-11.0103).
- The presbytery is to effect a reconciliation of the membership or divide the church into two separate PC(USA) churches.
- If this is not possible, the presbytery determines which faction is entitled to the property because the presbytery identifies it as the true church within the PC(USA). This determination does not depend on the majority vote within the particular church.

These mandates, in conjunction with the property trust and other provisions of the Constitution (G-8.0101), establish a systematic process whereby the Presbyterian Church (U.S.A.) makes decisions about its property.

As noted above, most civil courts ruling on Presbyterian Church property disputes will recognize and enforce the property trust set forth in the Constitution. Others will look to the trust along with a combination of

- the core polity that a higher governing body has the right of review and control over a lower governing body;
- other constitutional provisions setting forth the authority of presbytery;
- the historic interrelationship, support, customs, and functions between a church and other governing bodies.

Courts that consider these factors rule in favor of the presbytery pursuant to the free exercise of religion found in the First Amendment. They respect the polity and structure the Presbyterian Church (U.S.A.) has determined for itself via its Constitution and polity. They do not transform the Presbyterian Church (U.S.A.) into a congregational polity it does not and never has embraced.

Unfortunately, a number of church property cases do not reflect the free exercise of religion by respecting the polity and structure a church has chosen for itself. Presbytery officials and their legal counsel must be wary of these rulings.

See the subsection below titled **E. Property of a Dissolved or Extinct Church** near the end of this Section. That discussion sets out helpful suggestions about the typical church dissolution, where members have moved away, died, or the like. A sample form is also provided there.

## **B. Resources**

### **1. Church Property Cases in Your State or Jurisdiction**

The Office of Legal Services has compiled a 52 jurisdiction review of pertinent church property cases. **If you are involved in such a dispute, please contact our office and we will determine what state-specific resources we have available to you. Phone Martha Clark at (888) 728-7228 ext. 5390.**

### **2. Funds and Assistance for Church Property Litigation**



**The Office of the Stated Clerk has some funds available to assist presbyteries in civil litigation when a church is in schism or its property is being used contrary to the Constitution. Contact Laurie Griffith at (888) 728-7228 ext. 5432 or Mark Tammen at (888) 728-7228 ext. 5433 for further information about this fund and other church property resources. Key elements of this fund include:**

- Support of the property trust and other provisions of the PC(USA) Constitution.
- Support the Presbyterian Church (U.S.A.)'s right of autonomy protected by the Free Exercise Clause of the First Amendment to the Constitution of the United States of America, to govern itself and order its life and activity free of government intervention (God Alone Is Lord of the Conscience, Minutes, 1988, Part I, p. 555).
- Support a presbytery that determines to resist efforts by a local congregation attempting to withdraw from the Presbyterian Church (U.S.A.) and to take church-owned or church-controlled property with it (*Book of Order*, G-8.0200).
- Assist in protecting the property rights of congregations, institutions, or organizations to use their property in conformity with *The Constitution of the Presbyterian Church (U.S.A.)*.
- Such financial and technical support shall be made at such level (administrative or within trial or appellate courts) as the Stated Clerk shall determine.
- The Stated Clerk is authorized to share up to 50 percent of the direct legal costs, that is, the hours and costs of services and fees billed by attorneys or courts. The proportion may be negotiated downward if insurance or contribution from other sources is available. To assist the Office of the General Assembly in responsible management of this fund, the presbytery is asked to provide a copy of the itemized statement of the attorney and a short report of the progress of the matter quarterly.
- Such financial support of the presbytery for professional legal expenses incurred in connection with such proceedings as described above shall be negotiated in each case, but accepting as a general guide the participation by the Office of the General Assembly in an amount up to 50 percent of such expenses not covered by other sources available to the presbytery. Such expenditures shall be entirely under the discretion of the Stated Clerk, and no governing body shall have any right to have such funds expended on its behalf.
- The presbytery should provide a letter certifying its request for assistance in a certain matter, the name of the officer or staff person with whom the Stated Clerk or assigned staff is to correspond, and a description of any other funds that may be available for legal expenses.
- As the matter proceeds, the presbytery's contact person is expected to keep the Stated Clerk informed and invite consultation regarding strategy, provide information needed for consultation to be effective, and copies of all papers filed with a court in the matter by any of the parties.
- The Stated Clerk will consult as needed with the General Counsel of the PC(USA) and may ask for an opportunity to speak with the presbytery legal counsel but will relate primarily with the presbytery's designated contact person.
- Note that the policy adopted by the General Assembly is permissive and funding may be limited by the amount budgeted in a given year. The Stated Clerk could advise a presbytery that in a certain matter the presbytery ought to settle a case or withdraw, and then decline to participate further.

### **3. Selling, Encumbering, and Leasing Church Property**

The *Book of Order* Chapter VIII also vests the presbytery with certain powers when the property of a particular church is being sold, mortgaged, encumbered, or leased:

- A particular church shall not sell, mortgage, or encumber its real estate without the permission of presbytery. G-8.0501.
- A particular church shall not lease its real estate used for worship or enter into a lease for more than five years on its other real estate without the permission of presbytery. G-8.0502.

Generally, these provisions ensure the presbytery will be involved when the particular church begins a significant real estate project. These may include land acquisition, building expansion, rehabs, sales, and relocations. Because of these provisions in Chapter VIII, as well as other provisions vesting the presbytery with authority, most lenders require the presbytery to guarantee loans to the particular churches.

Section G-8.0500 Selling, Encumbering, or Leasing Church Property, and Section G-8.0700 Exceptions, are the only sections in the present Chapter 8 not included in the new Chapter 6 Church Property adopted in 1982 by the Presbyterian Church in the United States. With those exceptions, all of the churches in both former denominations entered the Presbyterian Church (U.S.A.) in 1983 with the same constitutional provisions for holding, using, and disposing of church property.

The purpose of the requirement that presbytery approve selling, mortgaging, or leasing church property is to enable the presbytery to participate in planning an affordable project for the use of its property and to avoid legal pitfalls. The rules were adopted in 1935, 1941, and 1946 at a time when many churches were facing financial difficulties and have enabled presbyteries to provide assistance that often the congregation was unaware presbytery could offer.

#### **4. Exceptions**

Section G-8.0700, Exceptions, provided a window of opportunity for eight years after June 1983 during which congregations of the former Presbyterian Church in the United States might vote to excuse themselves from that provision of the chapter by which they had not been bound before reunion. Once this exception has been properly adopted and the presbytery notified it is legally binding and runs as long as the congregation or its legal successors exist, or until the congregation votes to accept section G-8.0500. For this reason, to avoid future disputes, it is important that the session of an exempt congregation hold the record of this action with the deeds and other property records, and that presbyteries that have received notice of such actions also hold the record where it will be available when needed.

### **C. Information about Property Generally and Church Property**

#### **1. Special Issues with the Leasing of Church Property**

From time to time, local churches and other church organizations will encounter the opportunity to rent church real property to another organization. There are legal, tax, zoning, and practical issues that should be considered before any leasing decisions are made.

The leasing of a portion of church property should not create any problems with the Internal Revenue Code 501(c)(3) (federal income tax exemption). Unless rental activities not related to the organization's exempt purpose (religion) become substantial, the federal tax exemption is not affected. Although rentals of church property do potentially give

rise to unrelated business income (UBI), Internal Revenue Code Section 513 specifically exempts most rental income from being taxable UBI. See Hammar's *Tax Guide* for additional information.

A more likely area of complication arises at the state and local tax exemption level. One area of concern relates to local real estate **property tax exemptions** for charitable and religious use property. Check state and local laws and regulations to make sure there is no question of jeopardizing the exemption by engaging in a nonreligious use. Many states, counties, or municipalities have statutes that mandate "exclusive religious use" in order to maintain tax-exempt status for property. Governmental bodies also require periodic reporting and reaffirmation of the tax-exempt use of the property. Failure to report in time can lead to loss of the exemption. Churches are strongly advised to confer with legal counsel familiar with local property tax law regarding these pitfalls. Be sure to open and respond to mail from the county assessor's office as exemptions have been lost for failure to respond in a timely fashion. **See Section 8: Taxation, below, for more information about state property tax exemptions.**

Some churches may be in areas where there are zoning restrictions that would prohibit rental of the property. For example, a church in a residential area may not be properly zoned to be used as a school or child-care facility. Before entering any significant lease negotiations, the zoning restrictions should be checked and, where desired, variances or zoning modifications may be considered. Some churches have also successfully challenged zoning restrictions under the free exercise of religion. These challenges, however, involve lawsuits, are uncertain, and may take many years for a final decision.

In addition to the above concerns, there are other points that churches should consider when renting property. They are as follows:

1. Obtaining presbytery's approval. See G-8.0502.
2. The renting/leasing group (tenant) should, if possible, be a not-for-profit organization.
3. The tenant should further the cultural, civic, spiritual, or educational goals of the church and/or community.
4. The tenant's activities should not supersede or interfere with the programs of the church.
5. The tenant should submit a properly completed application form including an explanation of the structure of the tenant's organization and of the general uses that it intends for the rental including hours, access desired, and any special needs.
6. The tenant should sign a lease spelling out the rights and liabilities of the parties. As part of that lease, there should be an indemnification and a hold harmless agreement in favor of the church. The church should carefully draft the lease in conjunction with its legal counsel so that the church requirements and needs become lease obligations of the tenant.
7. As part of its duties under the lease, the tenant should be required, prior to occupancy, to submit a current certificate of insurance from the tenant's liability insurer naming the church as an additional insured under that policy. A copy of this certificate should be sent to the church's insurance agent. If the lease is a multi-year agreement, a new certificate should be submitted each year. The certificate of insurance should show General Liability and Property coverage. If the tenant is conducting a business such as a day care, the certificate should show Worker's Compensation Insurance for the employees. It should also show property insurance for the tenant's contents.

8. All legal documents should be reviewed and approved by a local attorney.
9. The church should review the state and local laws relating to zoning and property tax exemptions prior to executing a lease.
10. There should be an inquiry made in writing to the current church's liability insurer to make sure the insurance company provides coverage for any liability resulting from the proposed rental and that there will be no premium increase or any exclusion due to the proposed rental. Any increase that may be incurred can be offset by adjusting the terms of the lease or requiring the tenant to pay for the increase. The church also may wish to review the adequacy of its own insurance policy limits in light of the new activity. If supplemental or specialized coverages are needed, they should be obtained prior to lease execution and property occupancy. Ask the agent to send you a binder or endorsement showing coverage is in effect for the new occupancy. The lease should not be signed until you receive written confirmation. If any insurance claim or lawsuit should arise, give immediate written notice to your agent and the insurance company.
11. You may wish to consider adding a lease provision to protect the church in the event of a dispute and litigation. Such a provision may provide that in the event of a lawsuit, the prevailing party shall be entitled to attorney fees and costs.
12. The lease should obligate the tenant to pay for any damage or disrepair to the property and/or its contents.
13. Beware of any new obligations to comply with state or federal disability statutes because of this rental.
14. The lease should be as simple and clear as possible. The church should make best efforts to determine the appropriate rent for the uses of the property involved. Issues such as increased utility bills, maintenance costs, and other new expenses such as possible property taxes, should be considered when setting the rent or terms of the lease. The lease should spell out specifically the space covered by the lease and the uses that are permitted and the time the occupancy is allowed. The tenant should not be allowed to make changes in the building or improvements without the prior written consent of the church. Special zoning, safety, and licensing requirements may involve additional costs. The lease should cover the duty of the tenant to comply with zoning, make safety inspections, and obtain licenses and permits. The party required to pay for any improvements to the building should be spelled out in the lease. There should be a clear statement that such improvements become property of the church.
15. When evaluating a potential tenant, the church should make sure that it is a legitimate organization that can fulfill its obligations under the lease. Special consideration should be given to security when outside individuals are to be given keys and access to the building. The responsibility for locking the building should be fully understood. Alternatively, the church may designate trustees or other persons to open and close the building.
16. Typically, the lease terms should be short enough to allow periodic evaluation of the rental amount and other terms. There should also be provision for cancellation of the lease and for prior notifications of intent to terminate the lease.

After the lease is executed, the church must monitor and enforce it. It must be prepared to act appropriately if the tenant is violating the lease. It is unpleasant to evict a tenant but that is one of the negatives landlords should consider. Should problems arise with improper use, breaches of security, nonpayment of rent or other conflicts, it is always best to address them promptly. Written notice on the points of dispute and on the needed resolution of those points should

be forwarded to the tenant so that all parties understand the relevant concerns and are aware of the consequences for failure to rectify them.

Through rental of church property, churches can generate additional income and increase their outreach into their communities. Persons involved with the renting organization may become interested enough in the church to become members. If all of the ramifications, legal and practical, are carefully considered and dealt with in advance, leases can be mutually beneficial.

## **2. Conveyances of Property**

In the simplest terms, a conveyance is the process by which title to real or personal property is transferred from one party (grantor) to another party (grantee). Most conveyances are sales but other instruments related to the creation of interest in real estate, or which affects the title to property, such as deeds, mortgages, assignments, trusts, and wills, could function as a conveyancing instrument.

Conveyancing is basically a two-step process. **First**, a **contract** for the conveyance is prepared and executed by the parties. This contract should include any particular provisions that either party desires to be part of the agreement. The contract will guide the parties through the conveyancing process. Preprinted form contracts are often used by buyers or sellers of real property, **but remember that the terms in such contracts are negotiable**. Local counsel should be consulted **before** executing a contract of purchase or sale rather than afterward because it is easier to negotiate for particular terms prior to execution of the contract. Indeed, some matters may prove to be nonnegotiable after the contract is executed.

The **second step** of the conveyancing process is the actual delivery of the conveyancing instrument (usually a **deed**) by the grantor and delivery by the grantee to the grantor of the consideration stated in the contract for the conveyance. The buyer must determine the capability and competence of the seller to transfer the property involved prior to paying over the consideration. A complete and thorough examination of the seller's title must be made. A title summary (abstract) may be prepared and examined either by the counsel for the buyer or by an abstract company specializing in title searches and title insurance. Local law may determine whether an attorney or title company must be used. Title insurance should be considered and used in most cases. Title insurance protects the buyer against losses due to defects in the seller's title.

### **a. Items of Concern When Property Is Being Conveyed**

Where real property is being conveyed to a local church, presbytery efforts should be made to take the property free of any encumbrances such as possibilities of reverter to the donor's heirs if the property is no longer used for church purposes. These steps should be taken because local churches may find it necessary in the future to relocate or to use the property for other purposes. Reverter or other restrictive use clauses could lead to the property reverting to the heirs of the donor with no compensation to the local church. Current deeds should be reviewed for potential restrictive clauses. An attorney familiar with real estate should be consulted about the best course of action if such clauses are included in the deeds to any church property. Some states have laws that extinguish reverter clauses after a certain number of years has passed. Other states enforce such clauses regardless of the elapsed time. Your attorney should check your state's law

### **b. Contracts for Sale**

Contracts for the sale of land must be written and properly executed in order to ensure their enforceability. In the land sale contract, the buyer usually agrees to accept the deed of the grantor (seller) who will warrant the validity of the title. In their simplest form, such purchase agreements must contain the following provisions:

1. Names and addresses of the parties.
2. An address and complete legal description of the property to be conveyed.
3. Delivery by the grantor of title documentation. The documentation may take the form of abstracts and title insurance binders containing the agreement of a title insurance company to insure the buyer's interest against seller's defective title, or an attorney's title opinion letter prepared after her research into the state of the title.
4. The time allowed the buyer to examine the seller's title and the date for the "closing," that is, final conveyance of the deed, and the date of possession.
5. The type of deed to be delivered.
6. Apportionment of charges—specific clauses relating to the liability of the vendor and buyer to pay the costs incurred for title insurance, surveys, deed preparation, taxes, recording and filing of deed, surtaxes, mortgage costs, and attorney fees. These are often referred to as closing costs.

Implicit in all contracts for the sale of property is the grantor's obligation to convey a marketable title. A marketable title has been defined as one that is:

1. Free of encumbrances — mortgages, liens, easements, and so on.
2. Free of defects in the chain of conveyances by which the grantor took title, for example, grants of all or part of the property to two different grantees by a previous owner, creating more than one claim of title, which the buyer might have to litigate in order to establish as the rightful claim. All title should be in fee simple.

Exceptions to the marketability rule are found in cases of zoning restrictions and public rights-of-way or easements. The grantor's obligation to convey a marketable title does not require him or her to convey title free from these restrictions. Any exceptions to the grantor's duty to convey free of encumbrances must be *specifically* noted in the contract even if they are customary exceptions, such as special assessments related to incomplete improvements, installments of assessments not yet due, general taxes for the stated and subsequent years, or zoning and public easement restrictions. Leases and outstanding mortgages also may be included as exceptions. **Generally, a presbytery or church in the role of buyer should include a provision that, "The seller represents that there are no restrictions which would prevent the property from being used as a sanctuary for worship and house for residence."** The contract serves as a navigation chart for the conveyance procedure by stating the operative guidelines of the transaction and setting the stage for closing.

### **i. Purchase of Real Property**

Several practical concerns also will arise in purchases of real property. In the case of buildings, warranties should be obtained in the purchase contract as about soundness of structure, compliance with local building codes, and pest and termite infestations. A professional building inspector should be used to check for structural problems. Environmental issues such as the presence of underground storage tanks, asbestos, mold, and radon accumulations need to be addressed. An environmental audit of the property to be purchased should be obtained. At times, appropriate relief from the burdens of any potential cleanup can be placed in the purchase contract. The seller may be asked to warrant

there are no environmental problems, and title insurance may be purchased to insure against any future discovery of problems. Specific provisions also should be made in the real estate contract for the disposition of any fixtures such as refrigerators, ranges, and other equipment. Insurance responsibilities of the seller prior to the closing should be spelled out. Many jurisdictions affix documentary stamps to title documents, and the seller generally assumes the cost of the stamps affixed to the deed. The buyer assumes those costs from the filing of mortgages requiring documentary stamps. Where construction is contemplated, the contract should permit testing to determine whether the prospective site is suitable for the planned building. Zoning requirements should be checked and time to obtain necessary zoning approvals may be provided in the contract as well.

The corporation of the particular church will adopt resolutions that direct and authorize the corporation's board of directors to execute the necessary papers, that is, contracts of sale, deeds, leases, bills of sale, mortgages, and so on. The corporation's board of directors also must adopt any resolutions as necessary or required by local law and the corporation's bylaws. Any written instruments, that is, contracts, deeds, bills of sale, mortgages, and so on, necessary to carry out the action as authorized are to be executed in the name of the corporation by its authorized officers. Upon execution, these instruments are binding and effective as the action of the corporation.

**Remember: The congregation must approve the purchase of real estate. G-7.0304. Also, the presbytery must approve if the property is subject to an encumbrance or condition. G-8.0501.**

## **ii. Zoning**

Some churches may be in areas where there are **zoning restrictions** that would disallow the use of property for a church, school, or child-care facility. **Thus, prior to any purchase being made, zoning restrictions should be checked** and, where desired, variances or zoning modifications may be considered.

## **iii. Option Agreements**

Option agreements, while not conveyance instruments, serve to reserve the rights of parties as to future purchases of property. An option is a continuing offer to buy property at a fixed price during a specified period. Other than the initial consideration paid for the option by the option buyer, neither buyer nor seller need make any additional payments over the term of the agreement.

## **c. Deeds**

The second stage of the conveyance process requires the delivery of a properly prepared and executed deed from grantor to grantee and payment of any agreed upon consideration for the conveyance of the deed. A written instrument signed by the grantor or his or her duly authorized agent is required for the conveyance of any interest in real property. There are three types of deeds and they vary as to the degree of protection given to the buyer by the seller:

1. A "**General Warranty Deed**" contains a covenant of warranty under which the grantor is obligated to protect the property interest granted against lawful claims of ownership from any person whatsoever. This is the deed presbyteries and churches should obtain.
2. A "**Special Warranty Deed**" is more limited in that the grantor warrants against defects of the title arising subsequent to his ownership, but does not warrant the grantee against claims of persons who acquired their title prior to the grantor's ownership.

3. A "**Quitclaim Deed**" is a deed in which the grantor warrants nothing. This deed passes any title, interest, or claim that the grantor may have in the premises but does not profess that the title is valid and does not warrant the grantee against claims of others to the same property.

All deeds conform to a certain pattern that includes the following component parts:

1. **Names of Parties** — The grantee must be identified with reasonable certainty or the deed is void. Where bona fide buyers or mortgagees are involved, the person to whom the deed is delivered may have express or implied authority to fill in the name of the grantee. Omission of grantor's name will not void the deed where grantor has signed and delivered the deed.
2. **Consideration** — The law does not require consideration for a valid deed and thus a grantor may be bound by a gift of land once a deed has been properly executed and delivered. However, it is the custom to specify at least nominal consideration (ten dollars and other good and valuable considerations) to protect the grantee from claims he or she is under a trust obligation to the grantor and to protect the grantee from adverse actions that allege that the grantee is not a bona fide buyer for value. No matter what consideration is recited, documentary stamps required by taxing authorities on the face of the deed are based on the actual consideration paid.
3. **Words of Conveyance** — Certain operative words of conveyance are often used in deeds. Phrases such as "convey and warrant," "grant, bargain, and sell," and "warrant and defend the title" are common phrases in warranty deeds. "Conveys and quitclaims" and "quitclaims all interest" are normally used in quitclaim deeds. Any words that substantially indicate the intent of the grantor to transfer his or her estate to the grantee are usually deemed sufficient.
4. **Description of Land Conveyed** — The primary requirement of such a description is that it be legally sufficient to permit identification of the property to be conveyed. A current survey (within six months) should be required of the seller by the buyer.
5. **Exceptions or Reservations** — In essence, a description of the property conveyed describes the grant: exceptions or reservations to grants immediately follow this description. Reservations imply retention of such rights as mineral rights in the grantor, or their assignment to the grantor's heirs and assigns.
6. **Quantity of Estate Conveyed** — This clause defines the nature of the estate conveyed and the extent of the grantee's ownership of the estate, for example, "To have and to hold Blackacre (grantor's property) in fee simple absolute." By obtaining title in fee simple absolute, buyers gain total control over the property for an unlimited period with unconditional powers to dispose of the property during buyer's lifetime. Although zoning requirements and easements may restrict use of the property in some ways, obtaining title in fee simple gives the buyer maximum latitude in use of the property. **Churches should obtain title in fee simple absolute wherever possible.**
7. **Covenants of Title** — These are the promises of the grantor about or her title in the land that guarantee the grantee undisturbed possession and the subsequent transferability of the property without adverse claims of right by third parties. These covenants indemnify the grantee in the event that the covenants are breached.
8. **Execution** — The signature of the grantor and a seal of acknowledgment before a notary public generally conclude the execution of a deed. The significance of the seal has been diluted in some jurisdictions and has been replaced by the word "seal" or the initials "L.S." However, an acknowledgment is usually a prerequisite



to recording a deed; in its absence a deed may not be effective against third parties. Local statutes cover the specific form of acknowledgment or notarization necessary.

The final act of conveyancing is the delivery of the deed. Physical delivery is the best evidence of intent of the grantor to divest herself of dominion and grant control to the grantee. A presumption that an effective delivery has occurred will arise from the grantee's possession of the deed. Also, if the grantor records the deed to the grantee, it is presumed that she or he made effective delivery of the deed to the grantee. The grantor's words and conduct are evidence of her intent to make a valid delivery. Escrow arrangements are often used whereby the grantor makes delivery to an "escrow grantee" who is bound to deliver the deed to the grantee upon the happening of a named event or upon the performance of stated conditions within a stated period. If the grantee does not perform or the event does not occur within the time stated, the deed is returned to the grantor.

### **i. Adverse Possession**

Aside from the two-step conveyance process described above, title occasionally will pass because of adverse possession. At common law, if a person openly and continuously occupies or exerts dominion over the property of another for a period of twenty-years, the law provides that the occupying person shall gain title to the property that she has been occupying. Some states have statutes that shorten the period of continuous and open occupation. The possession must be continuous. Any act of dominion by the true owner during the twenty year period will toll the period of adverse possession, that is, break the continuity of the possession. If one purchases the property from an adverse possessor who has been in possession for seven years, the buyer may tack on those seven years to her or his own period of adverse possession in order to establish the required twenty-year period. Adverse possession is not valid against either federal or state government lands. For example, one who openly and notoriously lives on a corner of a U.S. military base for twenty-years cannot take the land he has lived on from the federal government by adverse possession. **Because adverse possession typically results in litigation about unclear ownership and title, presbyteries and churches should not purchase property acquired by adverse possession.**

### **ii. Recording**

**Deeds and transfers should be promptly recorded.** Unrecorded instruments are only valid between the immediate parties and those who know about the transfers. The bona fide buyer for value without notice is one who takes the property in good faith, for value, without notice, actual or constructive, of previous grants of the property. The burden of proof about the status of the bona fide buyer is on the buyer. Failure to record a deed properly opens the possibility of losing one's interest in real property to a subsequent bona fide buyer without notice. Legal counsel should be consulted for the recording of conveyancing instruments to avoid the consequences that can result from failure to record deeds, mortgages, and other instruments properly.

All conveyancing instruments should be recorded immediately upon delivery to the grantee. Recording will avoid the potential problems described above. It is the buyer's responsibility to make sure that the instrument is properly recorded in the recorder's office. The cost of recording is generally the obligation of the grantee (buyer). Recording systems vary from state to state. Recording statutes enable the owner to give **constructive notice** of her ownership to all other potential buyers of the estates or interest disclosed in the instrument recorded. Recording prevents a subsequent buyer or mortgagee of the same piece of real property from qualifying as a bona fide buyer without notice. Some state recording statutes protect the bona fide buyer and cut off the interest of another grantee with an unrecorded instrument whether the bona fide buyer recorded first or not. These are known as Notice Statutes. In other states, the first grantee to record the instrument in the recorder's office is protected, whether she had notice of the other grantee's existence or not. These statutes are known as Race Statutes because the person who wins the race to

the courthouse to record her deed gets the property. A third type of recording statute is the Race-Notice Statute. In this system, a bona fide buyer is protected if she records before a prior grantee. As with the Race system, there is a premium on the race to the recorder's office between bona fide buyers of the property without notice. However, if the first to record in a Race-Notice state has actual notice of a prior grantee, she is not considered a bona fide buyer without notice and the first grantee will take the property. A fourth type of state statute is the Period of Grace Statute, which gives the prior grantee a period of grace in which to record and protect her interest against subsequent grantees. In these states, the bona fide buyer is protected if the prior grantee does not record in the time allowed to her or him by the statute.

### **iii. Ensuring Good Title**

Although most deeds contain covenants of warranty about the title, it is generally of little consolation to a buyer that she has a cause of action against the grantor for damages arising out of defects in the title. The buyer's title will remain clouded until an action to quiet title is brought to clear the cloud on the title, thereby subjecting the buyer to a period of uncertainty about the nature and marketability of her title. Several methods can be employed to ensure the title is clear prior to the sale of property. One is a written opinion from the buyer's attorney about the marketability of title based on an individual title search in the recorder's office. The more prevalent procedure is an abstract or insurance in which the preliminary report of title is furnished by the title insurance company to the buyer's attorney to determine any title defects. The abstract or commitment for title insurance is then used to determine whether the title policy guarantee from the title insurance company is sufficient to protect the grantee from all defects and encumbrances on the title. Where available, the buyer should secure title insurance. The costs of the abstract or title insurance should be specifically assigned in the contract of sale and the method employed also should be indicated. Typically, the seller is obligated to pay for title insurance to guarantee good title.

### **iv. Mortgages and Deeds of Trust**

A mortgage takes the form of a lien on real property that secures the payment of money owed. The borrower is called the mortgagor, and the lender is the mortgagee. The mortgage represents security to the lender for the borrower's promise to pay. It is accompanied by a promissory note that is expressly secured by the mortgage from the buyer or borrower (mortgagor) to the seller or lender (mortgagee). In the event of a borrower's failure to pay on the note, the mortgagee can secure return of the loaned funds by foreclosing on the property, selling it, and taking its share of the sale proceeds. A first mortgage gives the lender (mortgagee) first priority on the proceeds of a foreclosure. A second mortgagee recovers proceeds only after satisfaction of the first mortgage. Some states require the use of a deed of trust. A deed of trust is the same as a mortgage except the legal title to the real property is placed in one or more trustees, to secure the sum of money or the performance of the conditions. Although it differs in format from a mortgage, it is still a security instrument. Both mortgages and deeds of trust are recorded in the county where the property is located and become public documents.

### **v. Releases**

As indicated above, both mortgages and deeds of trust are recorded in the county where the property is located and upon recording become public documents. When a mortgage/deed of trust is paid in full, a release and/or satisfaction document will need to be prepared and recorded in the appropriate county to remove the document from the public records. Normally, when the debt that secures the mortgage/deed of trust is paid the holder of the mortgage/deed of trust sends the original document marked "paid" to the borrower to record in the appropriate county office. In most states, a separate Deed of Release or Release of Mortgage is also required to be filed. It is important to note the requirement concerning the release document varies from state to state. The appropriate release documents verify the

original mortgage/deed of trust has been paid and authorizes the recording officer at the local county office to release the mortgage/deed of trust from the public records. A mortgage/deed of trust will remain on the public records until it is officially released. Therefore, it is important to have a release document prepared and filed whenever a mortgage/deed of trust is paid in full.

#### **vi. Mechanic's Liens**

In most states, the law gives laborers or subcontractors who provide services connected with the construction, repair, or remodeling of a building a lien on the property, buildings, and improvements in order to secure their claims for payment for the materials and labor provided. Note that subcontractors who have not been paid by a general contractor may establish a mechanic's lien on the property although the general contractor has been paid in full. Lien waivers or releases must be obtained from contractors and subcontractors prior to payment for the work ordered. Once a mechanic's lien has been perfected, suit may be brought to collect the amount of the lien against property owner.

**Upon completion of a church building or remodeling project, releases or lien waivers should be obtained from the contractor and subcontractors on the job.** Title would be clouded by the possibility of an outstanding mechanic's lien unless the releases are obtained. It may be advisable to use the services of a third party (such as a title company) to ensure that all the necessary waivers and releases have been obtained.

#### **vii. Surveys**

A description of the land conveyed is contained in all deeds. Customary formal descriptions fall into three categories:

- 1. Description by reference to monuments and courses** — Monuments may be either man-made reference points specifically placed for purposes of boundary identification, such as iron rods or concrete emplacements, or natural objects such as rocks or trees. Courses, on the other hand, are boundary lines sighted by direction in terms of the compass: such lines may be described as running a certain distance or between boundaries. In the case of a conflict between monuments and courses about the determination of a boundary line, monuments prevail in view of their permanency, as opposed to the personal judgment used to determine courses.
- 2. The Rectangular Survey System** — Most states in the continental United States west of the Allegheny Mountains employ this system. The beginning points of this survey are lines that run parallel to longitudinal and latitudinal bases. Lines conforming to a parallel of latitude are called base lines. A series of lines running due north and south at right angles to the base lines are Principal Meridians. Township lines are those lines running at six-mile intervals on either side of the base line. Range lines are drawn at six-mile intervals parallel to the Principal Meridians. The six-mile strips in each case are numbered consecutively. Six-mile squares formed by the intersection of these lines are called townships, which are further divided into one-mile squares, called sections. Sections may be subdivided successively into 160-acre quarters and 40-acre tracts.
- 3. Reference to a recorded plat** — This method involves the description of property in a deed by referencing a survey of a larger tract that includes the conveyed parcel. Great care needs to be exercised in the deed language to designate accurately property identified by this method of survey. **In all property transactions, a registered land surveyor should be employed to establish the physical location of buildings, to place appropriate markers, and to determine any encroachments.** The survey is needed to ensure the buyer's awareness of the extent and location of the property.

Descriptions of the property in question also will appear on the deed, mortgage, and title policy or abstract. **It is critical that these descriptions, including the description on the deed, be identical.** A new survey should always be compared with any previous surveys on hand in order to detect any discrepancies.

#### **4. Property Used by Two Denominations**

With the rise of agreements for sharing church buildings between separate congregations of differing denominations, it is advisable to enter into a written agreement to ensure fairness and orderly procedures in the evolution of such arrangements. The mutually agreed-upon written relationship should include a statement of purpose and a reference to the length of time the arrangement is expected to run. The development of such a document is to enable coordination of schedules and building use, to provide for cooperative building maintenance and to coordinate cooperative programs.

#### **5. Historic Landmarking of Church Property**

Church property often is a prime target for local community efforts to preserve historic sites. The preservation effort begins with the designation of a particular property — or an area of town — as historic landmark. Landmark status sounds prestigious but it can have serious drawbacks. Landmark status can give governmental entities the “right” to impose significant controls and financial burdens on the owners of landmarked property. For example, if a church decides it can no longer afford the upkeep of its old, expensive, stained-glass windows and wants to replace them with contemporary glass, the governmental unit may say no. If a church decides to build an addition onto an historic sanctuary, the governmental unit in charge of approving such an addition may say no — or may impose significant financial and other burdens on the church before approving the changes. If a church decides to tear down a deteriorated secondary building on its property, which is in a designated historic district of a community, the governmental unit in charge of approving such changes may say no. The designation also can affect changes to the heating or cooling of a large sanctuary. Likewise, attempts to make the church accessible handicapped persons may be more complicated because of restrictions on changes to the structure.

In exchange for such limitations on the use of property, governmental bodies may compensate the property owner for such reduction in property value and limitations on development and use by allowing federal and state income tax credits against actual expenditures made for future rehabilitation work done to the property. Such income tax credits are, however, worthless to a church because a church does not pay such taxes.

In its seminal 1988 policy statement *God Alone Is Lord of the Conscience*, the General Assembly adopted the following statement about landmarking of church property:

**The government may not require a congregation to maintain a church structure because of its historical significance or subject it to proceedings in eminent domain in order to preserve a church structure. The church should make every effort to cooperate with efforts to preserve esthetic and architectural character but must finally itself be the judge of what religious life and mission require concerning property and its use.**

As this section reflects, landmarking can impose substantial limitations on church property. If it is decided to oppose landmarking status, the church should do so at every administrative and judicial level so that the church does not accidentally waive any of its rights.

## **D. Loan Programs Offered by General Assembly Offices**

The General Assembly of the Presbyterian Church (U.S.A.) has two loan programs. The purpose of both programs is to facilitate the mission of the Presbyterian Church by helping churches and governing bodies meet their needs to fund capital improvements. The General Assembly Mission Council and the Presbyterian Church (U.S.A.) Investment and Loan Program, Inc. (PILP) provide a coordinated loan program. PILP administers this coordinated loan program and its two components: The Church Loan Program (endowed funds) and the PILP Loan Program (investment funds).

### **1. Church Loan Program**

The Evangelism and Church Growth Ministry Area of the General Assembly Mission Council oversees the Church Loan Program. The Mission Development Resources Committee (MDRC) approves the policies and guidelines for this program. The sources of funds for these loans are endowments that have been left to the General Assembly for this purpose and mission funds that have been accumulated and set aside for this program. These funds make it possible to provide loans for a variety of purposes, at affordable rates for churches. **Contact Ben Blake at (800) 903-7457 ((800) 903-PILP).**

### **2. Presbyterian Church (U.S.A.) Investment and Loan Program, Inc.**

The second program is offered by the Presbyterian Church (U.S.A.) Investment and Loan Program, Inc. (<http://www.pcusa.org/pilp/>) The source of funds for these loans is from investments by individuals, congregations, governing bodies, and other related entities of the Presbyterian Church (U.S.A.). Individuals and congregations purchase term notes paying competitive rates. These loans too are made at affordable rates. **Contact Ben Blake at (800) 903-7457 ((800) 903-PILP).**

## **E. Property of a Dissolved or Extinct Church**

From time to time it becomes necessary for the presbytery to take formal action to dissolve a congregation, at the request of the members or on the initiative of the presbytery. Rarely, but sometimes, the presbytery learns that all of the members have moved away, died, or become unable to act. When one of these events happens, the remaining property, real estate, financial assets, and furnishings become the responsibility of the presbytery to use in the mission of the Presbyterian Church (U.S.A.). The committee on ministry and the presbytery trustees or strategic planning committee both have significant responsibilities and will need to work together. There are a number of legal requirements and procedures for the transfer and disposition of property in consultation with the session and trustees of the congregation. This includes considering their requests for the disposition of family memorials, furnishings, and the uses of financial assets.

When it is proposed to dissolve a congregation, representatives of the presbytery and the session should compile an inventory of all real and personal property. Parcels of real estate and the buildings on each should be separately identified, along with all bank accounts, investments, and the documentation of all endowments or other funds held for specific purposes. An attorney should be consulted to advise how to transfer ownership where legal requirements must be followed. Normally it is much simpler to complete this process before dissolution becomes final, so that appropriate documents can be executed by the congregation's corporate officers. Care should be taken to assure that any prospective gifts, known or unknown, will flow to the presbytery or, in the case of a merger, the successor Presbyterian Church (U.S.A.) church.

A title search of all real estate should be conducted to determine whether there are reversionary interests that would cause the property to pass out of the control of the church if the property ceases to be used for specified purposes. Also, if it is decided to transfer the property, this must be done properly to ensure good title. Consult legal counsel.

The presbytery's insurance agent should also be notified when ownership is transferred or the location is to be vacated. An unused or abandoned building may become an expensive risk. Special care should be taken to secure the building from trespassers and to inspect the building regularly. The owner of an unused building continues to be liable for any accident that may occur on the premises. Consult your agent to determine the particular provisions of your insurance policy regarding vacant property. Often a vacant building endorsement must be added.

When property is of minimum value and/or a buyer is difficult to find, it may be better to transfer the property for nominal consideration rather than having the responsibility to maintain and insure the property. One solution for a cemetery is to transfer the property to a local cemetery association composed of individuals with family buried there.

**The “Sample Form for the Property of a Dissolved Church” (see Appendix B), can serve as a guideline when the presbytery and a congregation are considering dissolution of a church.** As a sample, the form is simplified as though the property all moves in one piece. Actually, a task force representing the presbytery and representatives of the church often list and consider a large number of separate items.

### **Section 3: Incorporation and Boards of Trustees**

This Section covers two major issues. The first section focuses on the *Book of Order* requirements related to incorporation at the particular church and middle governing body. The second section focuses on the duties of trustees in a more general way.

**Remember: Almost all corporate and trustee matters are governed by state law. An attorney familiar with your state's laws in these areas should be used. They should also review all sample forms to ensure they comply with controlling state law.**

#### **A. Requirements of the Presbyterian Church (U.S.A.) Constitution**

The *Book of Order* directs that whenever permitted by civil law, the particular church shall cause a corporation to be formed. G-7.0401. This is also true for the middle governing bodies and the General Assembly. G-8.0202.

The church itself does not incorporate; instead, it causes a corporation to be formed. This is a recognition of the difference between ecclesiastical jurisdiction (reserved to church courts) and civil jurisdiction (in civil courts). See **Section 1: Basic Organization of the Presbyterian Church (U.S.A.)**, for a discussion of this topic.

Corporate statutes generally refer to a board of directors. The *Book of Order* uses the term trustees instead of directors. This discussion will use trustees.

Chapter VII: The Particular Church sets out various directives regarding incorporation at the particular church level. These provisions are set out at G-7.0401, G-7.0402, G-7.0403, and G-7.0304:

- Only members on the active roll shall be members of the corporation and eligible for election as trustees. G-7.0401.
- The elders in active service on the session shall, because of their office, be the trustees of the corporation. G-7.0401. Note: The ministers are not members of the congregation and, so, are not trustees or officers of the

church corporation. Also note: For middle governing bodies and the General Assembly, the governing body council shall constitute the board of the trustees unless the governing body determines an alternative method. G-8.0202.

- This is an efficient model that allows the session/board of trustees to move forward with the church's mission (as the governing body) and corporate matters (as the corporate board of trustees) at the same time. It is the preferred model. G-7.0401.

- Some states, however, prohibit this dual capacity. Also, some churches choose to have a board of trustees different from the session. If either of these is the case, another method of electing trustees may be established. Any such alternate method shall provide for a nominating committee elected by the corporation and for trustee terms the same as those provided for elders. G-7.0401. Other important elements arise when the session is different from the board of trustees:

- It is very important to establish regular communication between these bodies. Annually, and as requested by session, the board of trustees shall provide reports to the session. G-9.0407a; G-10.01021.

- The session should designate the specific functions of the board of trustees so it understands its duties and authority. Such planning will help avoid disputes.

- Always remember the session, not the board of trustees, has responsibility for the budget, mission giving, and property. G-10.0102 h, n

- Where a particular church does not form a corporation, it may select trustees from the members on the active roll. G-7.0401.

- The corporation and its trustees perform their work subject to the authority of the session. G-7.0402; G-10.0102m. The power and duties of trustees shall not infringe upon the powers and duties of the session or of the board of deacons. G-7.0401.

- Pursuant to G-7.0402, the corporation and its trustees shall have the powers to

- receive, hold, encumber, manage, and transfer real or personal property for the church;

- accept and execute deeds of title to such property;

- hold and defend title to such property;

- manage any permanent special funds for the furtherance of the church's purpose

**Note:** All of the above is performed subject to the authority of the session and the Presbyterian Church (U.S.A.) Constitution. Moreover, when the board of trustees moves to buy, sell, or mortgage real property, it shall act only after the approval of the congregation in a duly constituted meeting. See also G-8.0500 for the circumstances where presbytery approval is also required.

Recall that the members of the corporation are the members on the church's active roll. G-7.0401. When corporate membership meetings are required, the following applies:

- Where permitted by civil law, corporate and ecclesiastical business can be conducted at the same meeting. G-7.0304b.

- Where civil law requires corporate business be conducted in a separate corporate meeting of the congregation, the meeting provisions of G-7.0300 shall apply, except:

- such a meeting shall be called by the trustees in their discretion or as directed by the session or presbytery;

- unless civil law provides otherwise, the trustees shall designate from the active roll a presiding officer and secretary for the meeting;

- the meeting minutes shall be attested by the presiding officer and the secretary and, then, entered in the board of trustee minutes.

- Proxy voting is prohibited except where civil law specifically requires that proxy voting shall be permitted. G-7.0404.

Two additional points bear mention:

- Because ministers are not members of the congregation (they are members of presbytery), they are not members of the corporation. G-7.0401. Generally, this means ministers do not serve as officers of the corporation either. Some states' civil corporation laws allow nonmembers to serve as officers of the corporation. While such a provision would allow the minister to serve as an officer, the preferred method is that the minister not serve in such a capacity. The corporation president, not the minister, should preside at corporation meetings.

- The *Book of Order* does not limit governing bodies to one corporation but this is both the most common and preferred structure. Generally, a single corporation should be able to perform all the civil law functions a typical church or middle governing body needs. When a governing body chooses to establish second or third corporations, it must ensure

  - all the Constitutional requirements noted above are in place;

  - every power of the subsequent corporation is very carefully defined and such powers are integrated securely in the session (GA 1990, p. 243);

  - clarity between the duties and authority of the first corporation versus those of subsequent corporations.

Examples of second and third corporations include separately incorporated camps, day cares, and foundation/endowment boards. Once again, there is no legal necessity to separately incorporate such boards. If, however, your governing body chooses to do so, be certain the above requirements are met. Attention to such detail in the initial incorporation process will best prevent future disputes and drifts away from the governing body.

## **B. Forming a Local Church Corporation**

The *Book of Order* directs that all governing bodies shall cause a corporation to be formed unless incorporation is prohibited by civil law. The first step in the incorporation process should be the retention of qualified legal counsel.

Under the law, a corporation is a separate legal entity from its officers, directors, and its incorporators. Corporate powers are conferred by the articles of incorporation (sometimes called the corporate charter) and by the state corporation statute. As noted above, corporate requirements are also set out in the *Book of Order*. The corporate form



provides a continuous entity for the ownership and management of property and for carrying out the business and programs of the corporation. Assertions of liability for acts undertaken by the corporation may be satisfied, if proved, from corporate assets only, rather than from personal assets of the corporate directors/trustees. Note, however, that in cases of fraud against the corporation by a director/trustee, or where corporate formalities are not followed, a case can be made that the corporation is acting as an alter ego of its directors and personal liability can be imposed.

A corporation derives its powers and existence from the state. The sources of its powers are its articles of incorporation and the state statute under which the corporation was organized. The statutes grant numerous specific powers relating to organization, the use and conveyance of property, the election of officers, the amendment of articles of incorporation and bylaws, the right of dissolution, and the like. **Care should be taken to ensure all corporate documents conform to the *Book of Order*. See the sample corporate articles (see Appendix C) and bylaws (see Appendix D).**

The express powers of a corporation are those related to the activities in which the corporation is engaged that are enumerated in its articles of incorporation. Implied powers arise out of reasonable inferences about the scope and intent of the language of the corporate articles as they relate to certain facts and circumstances. Great care should be taken by the church corporation to ensure that its acts and transactions do not extend beyond its limits of authority. Such acts are termed ultra vires and should be expressly barred by the corporation's articles of incorporation.

Procedures for forming and organizing corporations vary from state to state. However, general incorporation statutes in the vast majority of jurisdictions allow for the issuance of articles of incorporation to certain persons by a designated state official (usually the Secretary of State) in compliance with the provisions of the corporation statute. The typical state incorporation statute requires:

1. The preparation and execution of the articles of incorporation by the incorporators, and the acknowledgment of their signatures before a notary public.
2. The delivery of the articles of incorporation to the Secretary of State, including any other required incorporation papers and payment of required organizational fees.
3. Filing of the articles by the Secretary of State, and subsequent issuance by her of the certificate of incorporation.
4. The recording of the Certificate and Articles of Incorporation with the Recorder of Deeds, or any other county officials as required in the county or parish where the corporation is located.
5. The convening of the first corporation organization meeting at the call of the directors to adopt bylaws, elect officers, and transact other business.
6. The procurement of a corporate seal and the commencement of business.

The articles of incorporation generally include the following provisions:

1. The name and address of the corporation.
2. The address of its registered agent for the service of process, notice, or demand upon the corporation. Usually the agent will be the board of trustees, inasmuch as it manages the business of the church about property and other legal affairs.

3. The duration or tenure of the corporation, which may be perpetual or limited. Church corporations are typically perpetual in duration.
4. The names and addresses of the incorporators.
5. A statement of purpose for which the corporation is formed.
6. The names and number of trustees constituting the initial board of trustees, and the names and addresses of those who are to serve as the initial trustees.
7. Membership of the corporation.
8. The powers of the corporation.
9. Procedures for the adoption of bylaws by the board of trustees.
10. Definition of the quorum of directors needed to transact corporate business.
11. Procedures for amending the articles of incorporation.
12. Provisions for the distribution of assets upon dissolution of the corporation.

See the beginning of this Section for the specific requirements for corporations formed by Presbyterian Church (U.S.A.) governing bodies. Also see the sample corporate articles (Appendix C) and sample corporate bylaws (Appendix D), which are attached in the Appendix.

After completion of the incorporation, care should be taken to deed all property into the new corporation. Real property can be deeded by use of quit claim deed. This transfer process presents an excellent opportunity to review the title to property, to determine if there are any limitations or reversionary interests and to make sure that the property trust clauses are put into the new deeds. See **Section 2: Property** for suggested trust language to be used in deeds.

State incorporation statutes vary. **Many states now have special not-for-profit corporation statutes or religious corporation statutes that significantly decrease the reporting requirements and filing costs for such corporations. Local counsel should be instructed to incorporate under such statutes if possible.** Some states (principally in the northeast) have incorporation statutes for the particular mainline denominations: Presbyterian, Congregational, Methodist, Lutheran, and so on.

**Note: Sample corporate articles and bylaws are included in the Appendix. Each state has different incorporation requirements. These forms should be a useful starting point for local legal counsel.**

**Another very good resource is the *Companion to the Constitution, Polity for the Local Church*. This book is produced by the Office of the General Assembly and published by the Presbyterian Publishing Corporation. It is a very useful guide to the Presbyterian polity and procedures of especial importance to congregations, their members, and the session. In addition to corporate materials, it has chapters on Organizing a Particular Church, The Particular Church and Its Members, Nominating, Electing, Ordaining and Installing Elders and Deacons, Calling and Installing a Minister of the Word and Sacrament, Property and Finances, Meeting and Minutes, and Conflicts in the Particular Church. This book also has variety of useful forms for the particular church. It is available at the Presbyterian Publishing Company (<http://www.ppcbooks.com/default.asp>) or by calling (800) 227-2872.**

## C. Fiduciary Duty of Trustees

Church trustees have fiduciary obligation to hold property interests for the benefit of another — the local church and, per G-8.0201 of the Constitution, the denomination. A fiduciary relation is one in which the law demands of one party an unusually high standard of ethical or moral conduct with reference to another. The settlor of a trust is the person who intentionally causes the trust to come into existence. The trustee is the individual or entity which holds the trust property for the benefit of another. The trust property is the interest in property which the trustee holds, subject to the rights of another. The beneficiary is the person for whose benefit the trust property is to be held by the trustee. The trust instrument is the document, whether a deed, agreement or will, in which the settlor expresses an intent to have a trust and sets forth the trust terms, that is the details as to beneficiaries and their rights and the duties and power of the trustee. In some cases trusts are created without a writing and hence there is no trust instrument as such. In such a case the terms of the trust are determined by evidence of the settlor's intent.

The law imposes two basic duties on all trustees: the duty of loyalty and the duty of care. The duty of loyalty requires that the trustee take no part in an action regarding trust property in which she would have an actual or potential conflict of interest without having previously disclosed that conflict to the board. **Decisions must be made by the trustee looking only toward the interest of the beneficiaries and not to the trustee's own interest.** Any form of self-dealing is prohibited and any profit or advantage gained by the trustee due to self-dealing transactions must be returned to the beneficiaries. When a conflict or potential conflict does arise, the trustee must disclose the conflict or potential conflict prior to any discussion of the decision to be made. Preferably, this disclosure should be in writing and given to the secretary and chair of the board. This procedure will provide protection to a trustee who might later be challenged on whether or not she actually did make the proper disclosure. **Any trustee with an actual or potential conflict of interest should abstain from any discussion or action on the issue in question.** Care should be taken to document the abstention in the minutes in order to provide a record of its in the event of a challenge on this point. Trustees who breach their fiduciary duty of loyalty may be required to reimburse the trust for any loss suffered by the trust due to that breach.

Courts often deal harshly with those who deal for their own benefit in a trust situation. Justice Cardozo, in the case of *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928), made a famous statement concerning the high standards the trustees must uphold:

Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden by those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty ...

This statement indicates the seriousness with which courts look at potential breaches of loyalty on the part of trustees.

In local church settings, disclosure of the actual or apparent conflict should be followed by the individual's abstention from participation in the decision. These situations can arise, for example, in building situations (where members are contractors), in financial management areas (where members are bankers or investment advisors), or in insurance (where members are insurance agents). So long as the potential conflict is properly disclosed, and the party in conflict abstains from participation in the decision or selection process, the trustees can still elect to do business with the disclosing party. However, the board of trustees as a whole has a legal duty to ensure that its decisions are made in the

best interests of the trust beneficiaries. This standard requires extra care when the trustees are considering doing business with an organization in which one of the trustees has a personal or professional interest.

The second primary duty of all trustees is fulfillment of the duty of care. Trustees are required to act in good faith and in a manner they believe to be in the best interests of the beneficiaries and of the trust. They should act with such care as an ordinarily prudent person would use under similar circumstances in the management of her own affairs. Thus, trustees are required to be diligent in attending meetings and in making sure they are properly informed as to that various aspects of the decisions to be made. **Trustees who do not have time to attend meetings should resign from the board.** Attendance at meetings and reading and understanding relevant materials concerning the issues at hand are vital. To the extent that any board of trustees is making decisions, it needs a reasonable basis for making those decisions.

Given the facts available at the time of the decision, trustees are required to use their best judgment in making their decision. Trustees are not held responsible for facts that they could not have known at the time the decision was made. Decisions made in good faith and with reasonable care should be upheld if challenged even if they prove not to be the best decision in the light of later unfavorable developments. However, boards of trustees must keep track of the information available to and considered by the board in making the decision in order to answer such charges. Regular and accurate minutes, including exhibits of information considered, should be kept by boards of trustees.

Trustees are not absolved from the requirements of the duty of care by delegating their responsibility to others. For example, should a board of trustees entrusted with a large sum of money engage an investment adviser? The board still has the ultimate responsibility for the funds, even if the adviser is given broad powers to make trust investments. The trustees need to be able to demonstrate that proper procedures were used in choosing advisers. Persons engaged to handle funds or to do legal work should be trustworthy and competent in the areas for which they are engaged. Trustees may rely on delegates so long as the initial decision in choosing the delegates is well-founded and so long as the trustees have no basis for concern about relying on the delegates. Any trustee who has knowledge, from whatever source, that would cause the reliance of the board of trustees on a particular person to be unwarranted must disclose that knowledge to the board. If the trustee does not make the disclosure and allows the board to rely on a delegate she knows to be unreliable, the trustee is not considered to be acting in good faith any may be personally liable for breaching her fiduciary duty of care.

## **1. Investment of Funds**

The local church board of trustees has broad powers in regard to investment of local church funds, including funds received from wills and bequests and funds received from operations. In regard to bequests made under a will or written gifts in trust made by living donors, the board of trustees is bound to receive and administer such bequests subject to session direction, in accordance with local law, and the terms of the bequest or trust. Where the gift or bequest is unrestricted, the trustees may make a recommendation regarding the use of the funds to the session, but it is the session that is the final decision-maker on policy to be followed. It is an excellent idea for the session to develop guidelines and to give prospective direction to the trustees in regard to receipt and administration of funds. Trustees should be cautious and consult with legal counsel about the benefits versus the burdens of accepting restricted gifts or bequests.

The essential elements of most trusts are (1) designation of a beneficiary and a trustee, (2) sufficient identification of the funds or other assets to enable the passing of good title to the trustee, and (3) actual delivery of the property to the trustee with the specific intention of passing title of the property to the trustee. In the particular church, the trustees must be sure that the terms of the trust agreement as spelled out by the donor are carried out. For example, should the

trust provide funds exclusively for loans to students, only loans to students may be made. The funds could not be diverted and used for scholarships because that would be a breach of the trust agreement. Any such action taken in violation of the trust agreement by the board will subject the individual trustees and the board as a whole to liability for a breach of fiduciary duty in not following the instructions of the trust. Trustees should be extremely careful to make sure that restrictions on the use of trust monies are carefully reviewed and followed where legally permissible. Courts and juries often deal harshly with boards of trustees when trust funds are perceived to have been misappropriated or misused in contravention of express restrictions and conditions placed upon such funds.

If bequests, legacies, and trusts are encumbered with restrictive covenants which may guarantee the obsolescence of the purpose of the gift or otherwise impossible to administer, the session may wish to instruct the trustees to reject it. The session, pursuant to G-7.0402, has authority to direct the board of trustees regarding acceptance or rejection of any gift or bequest for the use and benefit of the particular church. In turn, trustees should make the governing body aware of the necessity for responsibility in the construction and administration of all trust bequests.

Local trustees should carefully examine any actions taken in regard to an investment or distribution of funds held in trust. If a trustee becomes aware of situation where the funds are being improperly invested, distributed to the wrong parties, or where proper reports by investment advisers or the trustees are not being made, she should ask why proper actions are not being taken. Failure to take action in such a case could expose a trustee with such knowledge to a charge that the duty of care was breached. When necessary reporting procedures are not followed, it is difficult to argue later that the proper standard of care was upheld in the handling of the trust or church funds.

The trustees are responsible to carry out the donor's intent, if it is expressed, for the investment of principal and distribution of income. In most jurisdictions, trustees making decisions about trust investments must assume the posture of the prudent person investing her own funds for her own purposes. The prudence required involves sufficient diversification of investments to minimize risk in order to preserve capital as well as consideration of the income potential of any investment. Funds also must be invested in conformity with the laws of the state in which the church is located.

Whenever the board of trustees is dealing with gifts and trust property, it is acting **subject to the direction of the session**. The board of trustees may make recommendations and interim decision on management of property. However, all significant decisions and permanent actions should be approved by the session.

Routine receipts of gifts, sale of securities, and administration of the gifts is handled by the board of trustees. In the event there is some unusual question regarding a gift of securities, the session should be consulted. **Receipt of unrestricted gifts of securities in the normal course of events presents no problem. However, when considering accepting securities or other property subject to restrictions as to use or sale of the property, it is wise to obtain approval of the session or to act in accordance with previously enacted session policies regarding restricted gifts.** For example, if a donor wished to give \$500 in a restricted fund, only the income from which was to be used for scholarships for needy church members to attend a specific Presbyterian Church (U.S.A.) related college, the administrative responsibility of the choice to award this income is likely greater than the benefit it provided. Therefore, the decision might be made to encourage the donor strongly to take the restriction off the gift (explaining why administering such a bequest would be unduly cumbersome) or suggest an alternate trustee. Likewise, if a donor gave property with a restriction on sale or use, such restrictions could present a problem. The church or the board should consider developing a policy (approved by the session) to be used in accepting or rejecting gifts, bequests, and the obligations of trust administration.

When receiving a specific gift, it is important that the trustees consider the appropriateness of retaining the security or selling it and investing the proceeds. Typically, if the church portfolio contains a large percentage of investment in a single stock or security, there are problems with lack of diversification. A prudent person standard would suggest selling of the security to have a more varied portfolio mix. Also, concerns for investment return and long-term growth could dictate a more diverse portfolio. When a decision has been made to sell or purchase securities, a board resolution should be adopted.

Particular concern should be given to the handling of original stock certificates and related original evidences of ownership. It is advisable to use a stockbroker to handle stock transactions. As long as the broker is reputable and properly bonded, it may be easiest to keep the church's securities in street name accounts at the broker's office, i.e., the original certificates are not held by the church trustees but rather by the stock brokerage house itself. Be aware that lost or misplaced certificates are expensive and cumbersome to replace. Certificates should be mailed by certified mail or return receipt requested or, if possible, personal delivery with a receipt from the brokerage house.

**Because the session has the ultimate authority over bequests, gifts, and trusts, it should consider drafting a policy for the acceptance or rejection of such property.** When receiving bequests and gifts that have a restricted purpose, it is important to memorialize the terms of the bequests, keep them properly organized in the church records, and keep proper financial accounting. The board of trustees, in consultation with the session, should consider adopting investment guidelines and standards.

There are often legal and tax issues involved in dealing with property and the administration of trusts. Consult with an attorney or tax advisor to obtain an expert opinion on legal or tax questions. There are significant tax advantages to the donor who contributes appreciated securities. Donors of security or other non-cash gifts worth more than \$500 must file Internal Revenue Service Form 8283, Non-cash Charitable Contributions. This form acknowledges that a proper evaluation has been made of the property, which in the case of regularly traded securities would be straightforward. The church is required to sign Part Four of Form 8283. Under that form, the church must acknowledge receipt giving its name, Employer Identification Number, and a signature by the appropriate board representative, typically the chairperson, who is empowered to receive gifts.

Should the board decide that the church will sell the securities within two years of the date of receipt, it is necessary to file Internal Revenue Service Form 8282, Donee Information Return, with the Internal Revenue Service and send a copy to the donor. An exception applies to certain publicly traded securities and items having a value of \$500 or less if the donor identified the items and signed the statement in Part 2 of Form 8283.

The board of trustees should prepare an annual written report to the session and include in that report the amount of income received from income-producing property, a detailed list of expenditures in relation thereto, a list of all trusts in which the local church is a beneficiary, how those funds are invested, and an explanation of the use and goals for which those funds are expended or applied.

## **2. Church Property**

**G-8.0201 of the Constitution states that all property held for a particular church, presbytery, synod, the General Assembly, or the Presbyterian Church (U.S.A.) is held in trust for the use and benefit of the Presbyterian Church (U.S.A.).** The legal titles to property may be held by corporations, trustees, or unincorporated associations. When the trust is created, the rights of ownership to the property are separated into legal and equitable rights. The benefits of the property go to the holders of the equitable rights, known as the beneficiaries. The trustees hold the legal title to the property and are considered to be in fiduciary relationship with the beneficiaries. The

fiduciary duty to the beneficiaries is very strong. It requires the trustees to administer the trust solely for the benefit of the beneficiaries. In denominational terms, a local church board of trustees must administer the property solely for the benefit of the members of the denomination and, in particular, the members of the denomination who are members of the local church. See G-8.0201.

**See Section 2: Property, for a detailed discussion of the trust clause, property transfers, and other aspects of church real property.** In regard to church property, the board of trustees has certain responsibilities to the whole church as established in the Constitution. The trust clause set out at G-8.0201 has been upheld by both state and federal courts as valid expressions of the rights of the denomination, through its presbyteries, to retain church property where local congregations are in schism, have disbanded, or have been discontinued and the property has been abandoned. Great care must be taken to ensure that these clauses are protected in the event of legal attack. Written authorization of the presbytery is necessary for the trust clause to be released in conveyances of mortgages by the local church board of trustees. A limited exception is set out at G-8.0701. See Section 2: Property, for a full discussion. All involved must be especially aware of the risks and responsibilities inherent in the handling of real estate transactions. Competent counsel in the area of real estate law should be engaged and great care taken in any real property transaction. If such transactions are not carefully handled, questions regarding title validity and restrictions on the use of the property that could have been resolved at the outset may lie dormant for years. These questions can become major problems when future efforts are made to convey the property or to use it for other purposes. It should be noted that prior to a recommendation to discontinue the use of church property as a particular church (or before any action is taken to consider local church property abandoned), the presbytery should obtain and consider an opinion of legal counsel. This legal work will be much simpler if the groundwork has been properly laid years earlier as a part of the original real estate transaction.

**Where real property is being conveyed to a local church, every effort should be made to take the property free of any encumbrances such as possibilities of reverter to the donor's heirs if the property is no longer used for church purposes.** These steps should be taken because local churches may find it necessary in the future to relocate or to use the property for other purposes. Reverter or other restrictive use clauses could lead to the property reverting to the heirs of the donor with no compensation to the local church. Current deeds should be reviewed for potential restrictive clauses. An attorney familiar with real estate should be consulted about the best course of action if such clauses are included in the property deeds. Be sure the attorney is also aware of the relevant trust provisions in the Constitution. **It is strongly advised to use the following clause or similar language in deeds:**

**The premises herein conveyed shall be used, kept, and maintained by the grantee for Divine Worship and other purposes of its ministry as a particular church belonging to the Presbytery of \_\_\_\_\_ (or its legal successors), subject to the provisions of the Constitution of the Presbyterian Church (U.S.A.). The grantee holds the property in trust pursuant to the provisions of the Constitution of the Presbyterian Church (U.S.A.).**

Although the local church board of trustees does not have program responsibilities in the local church structure, it is responsible for maintaining and repairing the local church property so that the programs of the particular church can be carried out. The church trustees should inspect the property annually to determine upcoming maintenance needs. Record keeping of prior maintenance expenditures can be useful in planning when future expenditures can be expected, such as when a new roof might be needed, when the furnace might need to be replaced, and so on. By systematizing the repair and maintenance function through careful record keeping and annual inspections, the trustees will be able to submit budgets adequate to provide for the financing of needed repairs and maintenance. In addition, ideas for property use policies are often generated within the board of trustees. Such policies should keep program

considerations in mind and be developed in conjunction with the minister and the session. In preparing policies on the use of the church buildings and property by church groups and community groups, flexibility should be a primary consideration. Factors to be considered include the purpose and nature of the groups, the possibility of additional maintenance expenses, the cleaning and locking of the property after the use is completed, the supervision of the groups using the church, and so on. It is important to remember, however, that final decisions regarding the programmatic nature of church property use are not vested in the board of trustees but in the session. See Section 2: Property, for a detailed discussion of leasing the church's property.

### **3. Annual Report and Record Keeping**

It is advisable for the board of trustees to make an annual report to the session. Elements of an annual report might include the following and should be recorded in the minutes:

1. The legal description and the reasonable valuation of each parcel of real estate owned by the church.
2. The specific name of the titleholder in each deed of conveyance of real estate to the local church.
3. An inventory and the reasonable valuation of all personal property owned by the local church.
4. The amount of income received from any income-producing property and a detailed list of expenditures in connection therewith.
5. The amount received during the year for building, rebuilding, remodeling, and improving real estate, and an itemized statement of expenditures.
6. Outstanding capital debts and how contracted.
7. A detailed statement of the insurance carried on each parcel of real estate, indicating whether restricted by co-insurance or other limiting conditions and whether adequate insurance is carried.
8. The name of the custodian of all legal papers of the local church, and where they are kept.
9. A detailed list of all trusts in which the local church is the beneficiary, specifying where and how the funds are invested, and in what manner the income is expended or applied.

An annual report with these elements will keep the trustees and session well informed about the church's assets and liabilities. Each church board of trustees should have a system of record maintenance to establish the chain of ownership of all church-owned properties. A title company can perform a title search on all church real estate. This report will inform the trustees what the property status is — whether the title is clear of if flaws or restrictions exist. In the event that conveyances, mortgages, or other actions concerning the local church property are contemplated, these records will be vital in preventing delays in the transactions. When real estate transactions are undertaken, this information will be required by potential buyers and/or financial institutions. An up-to-date inventory of local church and manse contents is also advisable. Retain records of purchases; consider supplementing the list with a videotape of contents, and keep inventory materials off-site in a fireproof place such as a bank safe-deposit box where other vital church papers are kept.

### **4. Building Committees and Programs**

Care should be taken to select individuals qualified to assess building needs, plans, and financial arrangements. The committee should make diligent efforts to ascertain from within the local community assessments of the reliability



and competence of architects and general contractors under consideration for the project. Price, reputation, and quality of work as well as experience in working on church projects are all factors to be considered. **Careful selection of the architect and contractor can do much to make the project run smoothly and be completed on schedule. Make sure the contractor is bonded and has insurance coverage for worker's compensation and general liability. Request the contractor provide a certificate of insurance before the work is to begin.** A payout schedule contingent on the percentage of work completed can provide protection for the church.

## **D. Sample Articles of Incorporation and Corporate Bylaws**

**Each state has different nonprofit incorporation laws. Use a local attorney familiar with your state's incorporation requirements to draft the corporate articles and the corporate bylaws.. The sample at Appendix C and Appendix D should be a useful starting point for your legal counsel.**

## **Section 4: Copyright and Trademark**

### **A. Copyright**

A copyright is a property right under federal law protecting original works of authorship fixed in tangible medium of expression sufficiently permanent or stable to permit it to be perceived, reproduced or otherwise communicated. Works of authorship include: literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works. Computer programs, lyrics, music, and videos are also included.

Federal copyright law does not protect an idea, procedure, process, system, method of operation, concept, principle or discovery, regardless of the form in which it is described, explained, illustrated or embodied in such work.

### **B. Who is the Owner of a Copyright?**

The owner of a copyright is the author unless the work is prepared by an employee or by an independent contractor as a work made for hire. Where a work is created by an employee, the employer is the copyright owner. Where the work is created by an independent contractor as a work made for hire, the person or company that hired the independent contractor is typically the copyright owner.

The owner of a copyright has the exclusive right to do the following:

1. reproduce the work in copies or phonorecords;
2. prepare derivative works based on the copyrighted work (a derivative work is one based upon one or more pre-existing works; for example, the update to an existing book would be a derivative work);
3. distribute copies or phonorecords of the work to the public by sale or other transfer of ownership, or by rental lease or lending;
4. in the case of literary, musical, dramatic, choreographic, pantomime, motion picture, and other audiovisual works, to perform the copyrighted work publicly;

5. in the case of literary, musical, dramatic, choreographic, pantomime, pictorial, graphic, or sculptural works (including images of a motion picture or other audiovisual work), to display the copyrighted work publicly; and

6. in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.

### **C. Religious Services Exemption**

For churches, the majority of questions involve copying music from hymnals or sheet music and taping services for shut-ins. The Religious Services Exemption contained in the U.S. copyright law exempts from copyright infringement **performance** of non-dramatic literary or musical works or of dramatico-musical works **of a religious nature, in the course of services at a place of worship or other religious assembly**. This exemption does not extend to copying the music or to audio or video taping of the performance.

### **D. Copying Music**

Under the Copyright Act of 1976 the copyright owner has the exclusive right to copy or reproduce a musical work. If a church purchases sheet music or hymnals, that purchase alone does not authorize the church to make copies or transparencies of the sheet music or songs from the hymnals. This applies to the lyrics as well as the music. The only exceptions are (1) music that is in public domain (no longer copyrighted) may be copied; and (2) music may be copied in an emergency situation to replace purchased copies that are not available for an imminent performance provided the church replaces the copies with purchased copies, *see The Church Guide to Copyright Law*. This excellent resource is available for \$14.95 from Christian Ministry Resources (800)222-1840. Public domain music is that which has either lost its copyright protection or was never protected by copyright. **It is important to note that the absence of a copyright notice © does not mean a work is in the public domain.**

In the *Presbyterian Hymnal*, copyright ownership can be determined by looking at the bottom of the first page of each hymn. If the bottom of the page contains no copyright/ownership information, one can assume this version of the hymn is in the public domain and can be freely used. If copyright ownership does appear at the bottom of the page, the work is not in the public domain and permission to copy or tape is necessary. **For further information about the copyright ownership of various hymns in the *Presbyterian Hymnal*, please contact the Robin Howell, Manager of Rights & Permissions for the Presbyterian Publishing Corporation at [rhowell@wjkbooks.com](mailto:rhowell@wjkbooks.com).**

A word on music on the Internet — uploading or downloading music from the Internet without authorization from the copyright owner or authorized distributor is a violation of copyright because it results in an unauthorized copy. Consider posting notices to this effect near computers and include it in the Internet policy section of the employee handbook.

### **E. Audio and Videotapes of Religious Services**

As noted above, under federal copyright law, a copyright owner has the exclusive right to: reproduce, prepare derivative works (make changes), distribute copies, publicly perform, and publicly display the copyrighted work.

The religious services exemption in the copyright law permits the **performance** by the congregation and choir of these hymns in the course of the worship services, but the exemption **does not extend to taping** the performance. Taping or transmitting a live performance without permission or license is copyright infringement because it constitutes making a copy and distributing it without the owner's prior consent.

If the church wants to tape copyright music for shut-ins, the options set out in Richard Hammar's *The Church Guide to Copyright Law* are: obtain permission from copyright owners; avoid the use of copyrighted music; turn off the recording device when copyrighted music is being performed; "splice in" prerecorded public domain musical works that were previously sung by the church choir; obtain a compulsory license; or enter into a "blanket license agreement."

The compulsory license process is cumbersome and not recommended. For information about blanket licenses, contact Christian Copyright Licensing, Inc. of Portland, Oregon (503)257-2230, and EMI Christian Music Publishing (formerly Sparrow Corporation) of Brentwood, Tennessee (615)371-6800; these companies can provide information about blanket licenses, fees and the list of songs in their repertoires. Make clear that your church wants the right to tape and make copies of these tapes to be distributed to shut-ins. Please make certain you carefully consider all the uses of the music you want to make and communicate that to the licensing corporation so the license will cover all your intended uses.

If these licenses prove too expensive for the church, the only options, as noted above, are not to tape the copyrighted music performed, use only public domain music in the service to be taped, or stop the recorder during the performance of copyrighted music and splice in public domain music. Again, the church does not have to obtain permission to tape or copy public domain music.

Also, for hymns projected or broadcast onto screens in the course of a service, the right to make copies for the purpose of preparing overhead transparencies is not given to the church when it buys hymnals. The copyright owner retains the right to make these types of copies. If the church wants to make these kind of copies, it must obtain written permission from the copyright owner or obtain a license that permits such use.

Copyright infringement is serious. It can result in significant civil damages, injunction, and/or criminal penalties. As an example, willful infringement can result in statutory damages of up to \$100,000. The infringer may also be liable for attorneys' fees and costs. There are companies that act as agents for the copyright owners. These companies have employees that spend their time traveling the country to discover unauthorized use and collect license fees, so proceeding without permission or license is both unwise and illegal.

## **F. Video Viewing**

As noted earlier, a copyright owner is given the right by federal copyright law to regulate public performances or showings of copyrighted videotapes.

**Renting a video tape for in-home viewing (the typical video store tape) is not a license for public viewing such as viewing in Sunday worship services, youth group or small church group meetings or retreats.** Certain distributors of religious videos may include a license for public viewing. If the video is labeled "For In-Home Viewing," public viewing is not permitted.

## **G. Other Copyright Resources**

In addition to *The Church Guide to Copyright Law*, other resources are available on the World Wide Web:

Church Music Publishers Association (<http://www.cmpmusic.org/html/main.isx>) (answers to common copyright questions)

United States Copyright Office (<http://www.copyright.gov/>)

Augsburg Fortress Copyrights & Permissions (<http://www.augsburgfortress.org/copyrights/index.asp?PageID=666> )  
(Guide to copyright law by the publishing house of the Evangelical Lutheran Church in America)

The Motion Picture Licensing Corporation (<http://www.mplc.com/> ) (information about the use of videos. See, in particular, the very helpful questions and answers in the FAQ section.)

## **H. Internet and Other Electronic Media Copyright Issues**

The Internet presents the unique opportunity to make materials almost immediately accessible to anyone in the world with Internet access. This communication medium continues to evolve as does the law related to it. In general, communication on the Internet is subject to the same rules as communication in print or broadcast.

### **1. Web Pages**

Web page owners should place copyright notices on their copyrighted information posted on the Web page. If a Web page owner places copyrighted material on her Web page without prior permission or allows a third party to do so, the Web page owner will be liable to the copyright owner for copyright infringement. A Web page owner who permits third parties to upload information to the Web page should place a notice on the Web page stating the owner is not responsible for content or information uploaded by third parties and that third parties shall not upload copyrighted information to the Web site. Such a disclaimer may limit or eliminate liability by the Web page owner.

### **2. Computer Software**

Computer software is generally copyrighted. A copyrighted software program cannot be copied without a license or permission from the copyright owner. Installation of software results in "copying." **Generally, purchase of software from a retailer gives permission to install on one computer only.** It does not give the purchaser the right to install the software on multiple computers. The license must be read carefully to ascertain whether the software can be installed on more than one computer and, if so, under what conditions. Unless the license permits, copyrighted computer software should not be loaned for two reasons: (1) lending is a form of distribution reserved to the copyright owner, and (2) installation by an unlicensed borrower will result in an infringing copy.

Generally, revising computer software will not result in a copyrightable program. Revision results in the creation of a derivative work and may constitute infringement if done without the copyright owner's permission. The copyright owner enjoys the exclusive right to create derivative works.

Transferring a copyrighted work from some other medium to CD-ROM without the copyright owner's consent is also prohibited. Any reproductions of such a CD-ROM would violate the copyright laws as well.

### **3. Uploading and Downloading from the Internet**

Churches and other organizations need to be aware that software developers and publishers fund an organization known as the Business Software Alliance ("BSA"), located in Washington, D.C. The sole purpose of this organization is to locate and delete unlicensed software and capture pirates. According to an article in the National Law Journal, BSA had 35 hotlines around the world, sometimes working in cooperation with the Federal Bureau of Investigation and the U.S. Department of Justice, to receive reports of unlicensed software. BSA has been successful in obtaining many monetary settlements from unauthorized users. The settlements have also included agreements to delete the unauthorized software, purchase replacement copies, and develop a software policy. Many BSA investigations are the

result of calls from disgruntled employees and calls from computer consultants. If contacted by BSA, provide them an opportunity to voice their claim, but contact an attorney that specializes in computer law before responding.

It is recommended that churches and middle governing bodies conduct periodic software audits to ensure they have a valid software license for every program on every computer. In addition, they should adopt a software policy that only specified personnel are permitted to load software into the employer's computers and then the program must be licensed unless it is public domain software.

Downloading copyrighted materials (including photographs) from or uploading to the Internet without permission of the copyright owner results in unauthorized copying. The same is true with regard to transferring copyrighted material to a third party via email. Do not assume drawings and games are not copyrighted and can be freely downloaded and used. Check the respective site's terms of use agreement and copyright policy.

## **I. Domain Names**

One essential step in establishing a Web site is the selection and registration of a domain name that will function as the Internet address, for example, "First Presbyterian of Anytown.org." See InterNIC (<http://www.internic.net/>) and Internet Corporation For Assigned Names and Numbers (<http://www.icann.org/>) for more information. Churches and presbyteries should be aware that entrepreneurs, sometimes referred to as domain name "squatters," can easily register the church or presbytery's name as an Internet domain name for as little as \$100. Once they have done so, it is not unusual for these squatters to then contact you for business based on their ownership of a domain name attractive to you or for them to try to sell the domain name to you. While some businesses may see the domain name as important enough to justify paying a premium to receive ownership of it, others have challenged these squatters' registrations based on trademark and trade name infringement.

If the domain name registered by the squatter is a registered trademark, it is possible to successfully challenge the domain name registration through the dispute resolution process of a registrar or through a court action. For a list of approved dispute resolution service providers, see this website (<http://www.icann.org/en/dndr/udrp/approved-providers.htm>). Because an infringement action is costly, the recommended approach is to select a domain name and be the first to register it. The Anti-Cybersquatting Consumer Protection Act creates a cause of action for bad faith registration and profiteering in the registration of domain names that are identical to or confusingly similar to a distinctive or famous trademark. The remedies under the act include injunction and damages. The law in this area continues to evolve as do the domain name registrars and the dispute policies. For more information on these topics, see Internet Corporation For Assigned Names and Numbers (<http://www.icann.org/>).

## **J. Trademarks**

Trademarks are distinctive words, symbols, or a combination of both that identify the source of goods to the public. These symbols are distinctive words (or phrases), designs or a combination of both, and may be registered on the state and/or federal levels or used, unregistered under the common law. An example of a famous federally registered trademark is "Coca-Cola®" for soft drinks.

To develop a trademark, the more arbitrary and fanciful the selected mark is the better. The idea is to select a distinctive mark, such as "Xerox®" for a photocopier, rather than one that is generic or descriptive. The purpose is to distinguish one company's goods or services from another's. Once the mark is selected, a trademark search should be designed with an attorney and conducted by the attorney or a trademark search firm. The attorney will also work with you to determine whether the mark should be registered and, if so, whether it should be registered at the state level or

with the U.S. Patent and Trademark Office at the federal level. After registration, the mark must be consistently used as a trademark or service mark, meaning that whenever possible the mark should be used with a generic term or with the word "brand," for example, "Coca Cola" soft drinks or "Coca Cola" brand soft drinks. This is an important precaution to avoid losing the mark by its becoming a generic term as was the case with the term "aspirin." A notice that the mark is registered should be included when the mark is used. One of the following notices should appear with a federally registered trademark:

- The letter R enclosed in a circle: ®
- Reg. U.S. Pat. & Tm. Off.
- Registered in the U.S. Patent and Trademark Office

To maintain a federal registration, an affidavit of use must be filed during the fifth year of registration or the mark will be canceled. In addition, an affidavit of incontestability should also be filed. The filing of this affidavit makes the mark incontestable, meaning the registration becomes conclusive evidence of the registrant's ownership and renders the mark immune from attack in certain instances. Federal registrations must be renewed every ten years after registration.

While maintenance of the registration is important, it is equally important to protect the mark from infringement and dilution. Failure to act to stop unauthorized use of a trademark may result in abandonment of the mark and loss of the exclusive right to use it.

From time to time, one may desire to use a trademark owned by someone else. Always obtain written permission to make any commercial use of another's mark. If you receive a cease-and-desist letter from a trademark owner for unauthorized use of their mark, contact your attorney before responding.

## **K .Application and Use of the Presbyterian Church (U.S.A.) Name**

The words *Presbyterian Church (U.S.A.)* should not be used as, or as a part of, a trade name or trademark or as a part of the name of any business, firm, or organization, except by the particular churches, middle governing bodies, corporations they control or other entities created for the administration of work undertaken directly by the Presbyterian Church (U.S.A.).

The term property includes many elements or ideas in addition to land and the rights incident to land. The law of unfair competition prohibits the misleading use of a name, even while unintentional, and is based on the idea that the right to use a name is a valuable property right entitled to protection from misappropriation and misuse. The right to exclusive use of a name may be established by a history of prior usage of the name, by compliance with statutory provisions about registration and notice, or by a combination of both.

The use of the name "Presbyterian Church (U.S.A.)" by unauthorized persons or organizations comes within the area of the law known as unfair competition. The use of the name of the church in such a manner that deception or confusion may result is considered unfair competition. The remedy at law is generally an injunction prohibiting the offending party or parties from continuing the unauthorized use of the name and/or monetary damages. The complaining party must show that the effect of the offending use is the likelihood of confusion or deception of third parties.

Sometimes other churches with confusingly similar names to a Presbyterian Church (U.S.A.) church are established in the same community. This situation could lead to confusion not only among potential members but also with wills and bequests that are ambiguous in their reference to the recipient church. The term "Presbyterian Church" has been in use for hundreds of years and is one to which several denominations lay claim. Each of these denominations should incorporate some wording into their name to distinguish them from one another in order to avoid confusion. For example, the term "Presbyterian Church in America" is distinguishable from "Presbyterian Church (U.S.A.)." Such distinguishing denominational names on local church signs, letterhead, and the like often remedy any potential confusion.

The ultimate concern is that the term "Presbyterian Church (U.S.A.)" not be used by parties that are not official organizations of the church. If you become aware of such misuse, contact Martha Clark, Office of Legal/Risk Management Services, 1(888)728-7228 ext. 5390. The Legal Office can help determine next steps. Generally, the first step will be a friendly call on the infringer by the local minister or presbytery executive. If that contact is not productive, the next step will most likely be a letter to the infringer demanding they immediately cease and desist use. If an infringement legal action becomes necessary, the relief requested would most likely be a permanent injunction against the continued use of a misleading name by an unauthorized organization. Any actions necessary to enjoin misuse of the term "Presbyterian Church (U.S.A.)" would be brought by Presbyterian Church (U.S.A.), A Corporation. If the unauthorized user is allowed to continue the use with the knowledge of the denomination, the denomination's exclusive rights to the term "Presbyterian Church (U.S.A.)" could be compromised.

## **L. The Seal of the Presbyterian Church (U.S.A.)**



The seal of the Presbyterian Church (U.S.A.) is a registered trademark, registered in the United States Patent and Trademark Office on the principal register. In addition, the seal is registered with the United States Copyright Office. The seal is comprised of the symbol, the basic components of which are cross, scripture, a descending dove at the upper part of the cross, and flames on either side of the lower part of the cross; and the name of the denomination, Presbyterian Church (U.S.A.), encircles the symbol.

The seal was approved by the 197th General Assembly (1985). **Each congregation and governing body may use the seal without receiving prior permission. Congregations and governing bodies may not, however, license use of the seal to anyone else. All other organizations, groups, and members must receive prior written permission to use the seal from the Office of the General Assembly, Attn: Director of Operations, 100 Witherspoon Street, Louisville, Kentucky 40202. The phone number is (888)728-7228 ext. 5500.**

A congregation or governing body may, of course, authorize the seal to be used for core functions of the governing body. For example:

- Printing on church stationery and publications

- Church signs
- Shirts for church athletic teams

The church must, however, be sure the vendor that produces these items does not then use the seal for its own purposes. For example, if Acme Printing produces fifty T-shirts for First Presbyterian Church using the seal, that use authorized by the 1985 General Assembly action. If Acme Printing then uses the seal on other shirts and markets them, that is a copyright violation without a prior license from the Office of the General Assembly.

Any authorized use of the Presbyterian Church (U.S.A.) symbol must comply with the following guidelines, as may be amended from time to time by the Office of the General Assembly:

1. The design and proportions of the symbol must not be altered in any way, except the size may be changed for use on stationery, signs, banners, and so forth. The colors may be changed in the manner set forth below.
2. The symbol may be used with or without the words "Presbyterian Church (U.S.A.)" encircling the symbol.
3. The use of color in the symbol is permitted as follows:
  - Traditional colors using royal blue or gold for the cross, scripture and dove portion, and gold for the words "Presbyterian Church (U.S.A.)" encircling the symbol.
  - Liturgical colors using one color for the entire symbol as follows: violet for Advent and Lent, red for Good Friday and Pentecost and green for the Sundays after Pentecost.
  - Other colors and color combinations with prior approval of OGA.
4. The symbol must never be depicted with any type of motion. For example, the symbol must not be depicted in a video or on an Internet web page as spinning.
5. While every use of the seal may not provide an opportunity to display the statutory notice (the circle "R", ®) and use of the statutory notice is not mandatory, it is good practice, when practicable, to give public notice of the trademark registration by using one of the following:
  - The letter R enclosed in a circle: ®
  - Reg. U.S. Pat. & Tm. Off.
  - Registered in U.S. Patent and Trademark Office

So, while it is not practical to display the statutory notice on a stained glass window or church sign, it is possible to note it on the reverse of a piece of jewelry or in another inconspicuous place.

Trademark protection may be lost through improper use, abandonment, and dilution. To minimize this risk, the symbol must always be used in its entire and original form.

As is the case with the notice of trademark registration, copyright notice is not mandatory but, whenever possible, it is desirable to include some notice of the copyright on the inside cover of publications displaying the seal. The following language is suggested: **"The seal is the exclusive property of the Presbyterian Church (U.S.A.) and is registered in the U.S. Copyright Office. This seal may not be used or reproduced without the prior written**



**permission of the Office of the General Assembly of the Presbyterian Church (U.S.A.), 100 Witherspoon Street, Louisville, Kentucky 40202."**

In addition, any suspected unauthorized use should be promptly brought to the attention of the Office of Legal/Risk Management Services or the Office of the General Assembly by forwarding the name and address of the user as well as a sample of their use of the seal.

**Anyone other than a congregation or governing body who plans to use the seal must receive the prior permission of the Office of the General Assembly.** Any products marketed in wholesale or retail settings must be specifically licensed by the Office of the General Assembly. An application for use must be submitted and a fee must be paid for each design. A sample of the proposed product should be sent to the Office of the General Assembly so approval may be based on the finished product.

For more information or a license to use the seal, contact:

Office of the General Assembly  
Attention: Director of Operations  
100 Witherspoon Street  
Louisville, KY 40202  
(888)728-7228 ext. 5500  
Request for License to Use the Seal of the Presbyterian Church (U.S.A.)

## **1. Request for License to Use the Seal of the Presbyterian Church (U.S.A.)**



### **a. Commercial Use**

The Presbyterian Church (U.S.A.) Seal is a registered trademark of the Presbyterian Church (U.S.A.), A Corporation. Anyone making a commercial use of the seal must first have a license issued through the Office of the General Assembly.

### **b. Accuracy**

Every usage of the trademark must maintain the accuracy of the seal in its design, proportion, and style and comply with our guidelines.

This completed request-for-permission form (*see* Appendix E), should be sent to the Office of the General Assembly. A sample of the product should be sent with this request. Send to:

Office of the General Assembly  
100 Witherspoon Street  
Louisville, KY 40202

Attention: Director of Operations  
(888)728-7228 ext. 5500

## **2. Instructions for Request for Permission to use Presbyterian Church (U.S.A.) Seal**

The following are instructions for completing the request for permission. As stated, the completed request should be mailed to the Office of the General Assembly of the Presbyterian Church (U.S.A.), 100 Witherspoon Street, Louisville, KY 40202, Attn: Director of Administration. If this is a request for a renewal, please send a copy of the original request form that you completed or, if it is not available, complete another request and tell us in Question #7 when permission was first granted.

### **a. Explanation of the Questions:**

1. Provide your name, the company name, if any, and address.
2. Please set forth in detail the proposed use of the seal. (For example, for a jewelry pin, on clothing, etc.) Please supply us with as much information as possible. Also, please explain how the product is to be marketed or sold. (For example, to a local Presbyterian church, produced for a conference, etc.)
3. If you have a sample of the product, please enclose it and indicate in #3 that you have enclosed it. In order to maintain the integrity and proportions of the seal, you should obtain design proofs from the Office of the General Assembly if you do not have any available.  
  
If you do not have the actual product, describe how it will appear. For example, if it is used for a jewelry pin, give the materials and dimensions (if no sample is available, enclose a sketch). For clothing, describe the specific article of clothing and explain how the design will appear (if no sample is available, enclose a sketch).
4. State the number of products you intend to produce.
5. State the sale price per individual item.
6. Provide the name of the governing body or entity in the Presbyterian Church (U.S.A.) that requested that you produce this product. For example, a local church, presbytery, agency, etc. Please supply us with the name of the individual from which you obtained this request. If such authorization is not direct, please explain how you plan to market this product.
7. For renewals, you may enclose the original application and a note that you are requesting a renewal. If you do not have the original request, please complete this form again and include the date the original license was granted. If you have changed your name from the time of the original request, please let us know.

As part of the license, it is understood that if you have not included a sample product, you will supply us with the actual product within a reasonable time after production. If a license is granted it will be with the understanding that the product you produce conforms substantially with the information set forth on the request. If the actual product you produce differs substantially from the sample or description you have given in the request, you need to supply us with a new request or sample. If you have any questions, please call (888)728-7228 ext. 8038.

## **3. Guidelines for use of the Seal of the Presbyterian Church (U.S.A.)**

Any authorized use of the Presbyterian Church (U.S.A.) symbol must comply with the following guidelines, as may be amended from time to time by the Office of the General Assembly:

1. The design and proportions of the symbol must not be altered in any way, except the size may be changed for use on stationery, signs, banners, and so forth. The colors may be changed in the manner set forth below.
2. The symbol may be used with or without the words "Presbyterian Church (U.S.A.)" encircling the symbol.
3. The use of color in the symbol is permitted as follows:
  - Traditional colors using royal blue or gold for the cross, scripture and dove portion, and gold for the words "Presbyterian Church (U.S.A.)" encircling the symbol.
  - Liturgical colors using one color for the entire symbol as follows: violet for Advent and Lent, red for Good Friday and Pentecost and green for the Sundays after Pentecost.
  - Other colors and color combinations with prior approval of OGA.
4. The symbol must never be depicted with any type of motion. For example, the symbol must not be depicted in a video or on an Internet Web page as spinning.
5. While every use of the seal may not provide an opportunity to display the statutory notice (the circle "R", ®) and use of the statutory notice is not mandatory, it is good practice, when practicable, to give public notice of the trademark registration by using one of the following:

The letter R enclosed in a circle: ®

Reg. U.S. Pat. & Tm. Off.

Registered in U.S. Patent and Trademark Office

So, while it is not practical to display the statutory notice on a stained glass window or church sign, it is possible to note it on the reverse of a piece of jewelry or in another inconspicuous place.

Trademark protection may be lost through improper use, abandonment, and dilution. To minimize this risk, the symbol must always be used in its entire and original form.

## **Section 5: Contracts**

The material in this Contracts section deals with general contract issues such as what is a contract, why is a contract needed, what types of contracts exist, what items should be included in contracts, what can be done to amend an existing contract, and what can be done when a dispute arises. Typical instances when you would use a contract include:

Purchasing equipment (computers, organs, furniture)

Services (painting, roofing, architects, remodeling)

Using hotels or conference centers

### **A. Definition of a Contract**

A contract is a promise or set of promises constituting an agreement between the parties that gives each a legal duty to the other and also gives each the right to seek a remedy for the breach of those duties. It is the total legal obligation that results from the parties' agreement and a promise or set of promises for the breach of which the law in some way recognizes a duty. In order to be legally binding, a contract must contain competent parties, subject matter, legal consideration (something of value given), mutual assent, and mutual obligation to perform.

One common misconception some have is that a contract must be written to be valid. Generally, oral agreements that have competent parties, subject matter, legal consideration, mutual assent, and mutual obligation to perform constitute legally binding contracts. There are, however, certain types of contracts that must be in writing in order to be legally binding, and, if you have any questions regarding whether a particular contract must be written, it is always best to consult an attorney in your jurisdiction. A written contract is generally preferable because the terms exist in "black and white" instead of merely in the parties' minds.

## **B. Function of a Contract**

A clear written agreement between the parties lets each party know what to expect and avoids future disputes. Without such a written agreement, excess funds may be expended and future working relationships may be hindered.

## **C. Types of Contracts**

As discussed above, a contract can be either oral or written. In addition, a contract can be express, promises communicated by language (i.e., A promises to paint B's garage in return for B's promise to pay A \$250), or implied, parties' conduct indicates that they assented to be bound (i.e., A fills his car with gas at B's gas station. There is an implied contract for the purchase and sale of gas.).

The following are examples of types of contracts churches may encounter:

1. **Purchase Orders** are generally used for items such as office supplies, printing, and computer equipment. Terms and conditions (which typically favor the seller) are preprinted on the form. Remember: You can negotiate these terms if you desire.
2. **Honorarium Letters** are used for services of limited duration rendered by an individual for which no set standard of quality is to be dictated and which does not include the creation of a copyrightable work. Examples of such services are one-time speeches, lectures, teaching engagements, and musical or other performances. (A sample form of honorarium letter is attached as Appendix F).
3. **Independent Contractor Agreements** are used for services rendered by an individual. For such an agreement to be entered into, the services performed by the individual must meet the common law rules which determine whether one has been properly classified as an independent contractor as opposed to an employee. In making the determination whether one is an independent contractor or an employee, all information which provides evidence of the degree of control and the degree of independence should be considered. Three categories of consideration will provide evidence regarding the degree of control and independence. They are: behavioral control, financial control, and the type of relationship of the parties. The IRS publication titled "Independent Contractor or Employee" (<http://www.irs.gov/pub/irs-pdf/p1779.pdf>) provides examples of these categories and the proper classification in certain situations. Another helpful IRS publication which provides similar information but does not require Acrobat Reader to view can be found at this link: <http://www.irs.gov/govt/fslg/article/0,,id=110344,,00.html>. Some examples of services provided pursuant to

such agreements are: video production, manuscript acquisition, and production or consulting services. (*See* Sample Independent Contractor Contract Form attached at Appendix G).

4. **Specialized Contracts** are used for services rendered by individuals or companies. Specialized contracts may be drafted when no other form of agreement (i.e., purchase order, independent contractor agreement) fits the situation at hand. The types of services that may be provided under such an agreement are similar to the types of services that may be provided pursuant to an independent contractor agreement. (*See* Sample Company Contract Form attached as Appendix H).

5. **Hotel and Conference Contracts** are used for providing accommodations for meetings and conferences. These agreements are types of specialized agreements. Generally, the hotel or conference center will have a form contract that it will provide. However, you should review this form and negotiate any revisions you deem necessary for your event as well as the financial well-being of your governing body. For example, look for oppressive, one-sided cancellation, indemnity, and attrition clauses as well as clauses regarding overflow of rooms at off-site locations, clauses concerning the hotel or conference center's responsibilities pursuant to the Americans with Disabilities Act, and clauses requiring large advance deposits. Also be aware you may need separate transportation, catering, audiovisual, or parking contracts. Finally, given the current political and security situation review the contract's "Acts of God" clause, paying special attention to whether it may be canceled due to terrorist acts or government imposed state of emergencies.

## **D. Terms to Include in Contracts**

Certain items should generally be included in contracts. Examples of these items are:

1. the legal names of the parties and their addresses;
2. start and end dates;
3. whether the contract is renewable;
4. a clear statement of the services or product to be provided;
5. a clear indication of the cost of the service or product including any installment payment schedules;
6. a clear statement of the ownership of any copyrightable material;
7. a clear statement regarding whether any expenses shall be reimbursed and, if so, to what level;
8. the parties' taxpayer identification numbers (for a corporation this is its employer identification number);
9. a clear statement regarding termination;
10. a clear statement regarding warranties provided; and
11. a clear statement of how any potential disputes will be resolved (i.e., arbitration, mediation).

## **E. Amending an Existing Contract**

If you have an existing contract and need to change some of its terms, an addendum to the existing contract is needed. It should clearly identify the original agreement it is amending (usually by title and date), identify the specific terms

being amended, set forth the amendments in detail, specify that all items not amended remain in full force and effect, and be signed and dated by the parties

## **F. Dispute Issues**

Sometimes, despite your best efforts, contract relationships go sour, and there is a dispute. It is at this point that a well-drafted, detailed contract can be your ally because you can look to it to see what each party's obligations are as well as what is to happen in the event of a dispute (i.e., Can you terminate? Can you require the other party to provide the partially completed product? Do you have an obligation to arbitrate the dispute? If you decide to resort to litigation, must it take place in a particular jurisdiction?). Generally, litigation should be a last resort option because it is costly both in terms of financial resources and human resources.

## **G. Important Tax Information**

For 2009, the IRS required that the payer (here, the church or middle governing body) issue a 1099-MISC to any nonemployee worker paid \$600 or more during the year. This would typically arise under an independent contractor agreement or an honorarium. Note: The 1099-MISC is not used for payments to corporations or to employees. The individual receiving the money should fill out a Form W-9 (U.S. citizen or resident alien) or a Form W-8 BEN (foreign person subject to withholding) and submit it to you so you have the correct information on file to issue the required 1099-MISC. Richard Hammar's *Church & Clergy Tax Guide* has additional information on this topic. Remember: IRS forms and publications are available by telephone at (800) 829-3676 and on the IRS's Forms and Publications page (<http://www.irs.gov/formspubs/index.html>).

## **Section 6: Personnel and Employment Matters**

The area of employment law has become increasingly important in recent years. New laws governing the employment relationship have increased and existing laws have expanded while filings with the EEOC and filings of employment-related lawsuits have increased. Employers need to be careful when making decisions involving hiring, compensation, benefits, supervision, discipline and termination. Churches are not totally immune from this flurry of activity in the employment arena. While many government regulations exempt religious organizations, there are other government regulations that do not exempt religious organizations (for example, many state worker's compensation laws do not exempt churches; some state disabilities and discrimination laws do not exempt churches, etc.).

Increasingly, disgruntled employees and former employees of religious organizations — as well as disgruntled clergy — are filing lawsuits in an effort to have the courts address their often bitter feelings toward their employer, church or denomination. As a general rule, the courts do not like to deal with lawsuits of this nature. **Courts try to avoid dealing with disputes between clergy and churches because it is impossible to address these lawsuits without becoming entangled in the church's polity and ecclesiastical jurisdiction. Part of the protection of the First Amendment of the Constitution of the United States and many state constitutions is to prevent the courts from meddling in a church's internal polity. The courts are generally very respectful of that important protection.**

Nonetheless, many churches, middle governing bodies, and other church entities have become increasingly interested in developing personnel policies that give guidance about how to handle particular types of common personnel problems. The Presbyterian Church (U.S.A.) *Book of Order* contains some information on employment and its provisions are, of course, mandatory. The *Book of Order* provisions are, of course, mandatory. The Human Resources Department of the PC(USA) also has information available at (888) 728-7228 ext. 5710. In addition, many churches and middle governing bodies have developed and continue to refine their own policies for addressing sexual abuse

and sexual harassment. To address sexual abuse and sexual harassment, the 207th General Assembly (1993) adopted the Presbyterian Church (U.S.A.) Sexual Misconduct Policy and Its Procedures. This document sets out useful guidelines and samples. It is not mandatory upon middle governing bodies and the particular churches. It is available through the Office of the General Assembly. The Sexual Misconduct Policy is available for order through the Presbyterian Church (U.S.A.) Marketplace or by calling (800) 524-2612. The cost is \$1 per copy plus shipping and handling.

**Employment law, especially regarding clergy and other church staff, is a rapidly evolving area. We welcome your suggestions and especially the policies and procedures used in your church, presbytery or synod.**

**Employment law varies from state-to-state, which is why it is important to consult with a local attorney in your state regarding employment-related matters. Resources may often also be found on the internet, typically through state departments of labor websites.**

## **A. Federal Laws Coverage**

Many federal laws regulate employers' actions. The theory of federal government control is typically under the U.S. Constitution's Interstate Commerce Clause in which the federal government may assert jurisdiction into states and over organizations involved in interstate commerce. Typically, most organizations, having a certain number of employees, can be assumed to be in interstate commerce, and therefore many federal laws set a certain number of employees as the threshold on which coverage by the federal law applies. The following is a short summary of federal laws affecting employers who have the required number of employees:

**Civil Rights Act of 1964 (Title VII) as amended:** bans discrimination based upon race, color, religion, sex, or national origin in employment; applies to companies of 15 or more employees. Sexual harassment is a form of sex discrimination. Discrimination based upon sex includes discrimination based upon pregnancy. This law is enforced by the Equal Employment Opportunity Commission (EEOC) and the Department of Labor. There is a limited exception for religious organizations to enable them to restrict job positions to those of their own religious faith. In the leading case on the matter, the Supreme Court has given religious organizations very broad powers to require religious qualifications for their employees. Most states and cities have similar civil rights laws covering fewer employees. In addition some states and cities have included other protected categories such as sexual orientation and veteran status. *See* <http://www.eeoc.gov/facts/qanda.html>.

**Pregnancy Discrimination Act:** This Act amended Title VII and prohibits discrimination against a female employee because she is pregnant. If a woman is able to work, she must be permitted to work under the same conditions as other employees. If she becomes unable to work for medical reasons, she is entitled to the same rights to benefits and leave as other workers who become unable to work for medical reasons.

**Age Discrimination in Employment Act of 1967 (ADEA):** generally prohibits discrimination against employees age 40 or older. The First Amendment to the Constitution of the United States protects a church's right to set a certain age for its ministers to retire. The ADEA applies to companies of 20 or more employees; prohibits employers from failing or refusing to hire or discrimination in terms or conditions of employment or firing employees on the basis of age. This law is enforced by the EEOC. Again, most states and some cities have parallel laws prohibiting age discrimination and covering fewer employees. *See* <http://www.eeoc.gov/laws/types/age.cfm>.

**Older Workers Benefit Protection Act of 1990:** amended the Age Discrimination in Employment Act to prohibit age discrimination with regard to employee benefits. This law is also enforced by the EEOC. *See* <http://archive.eeoc.gov/types/age.html>.

**Genetic Information Non-Discrimination Act of 2008:** This law prohibits discrimination by employers on the basis of genetic information. Genetic information is broad and includes not just results of genetic tests, but also tests of family members and information from a medical history of an employee. Remedies for violation of this Act are the same as those provided under Title VII. This law is enforced by the EEOC. This law becomes effective on November 21, 2009. *See* <http://www.eeoc.gov/laws/types/genetic.cfm>.

**Occupational Safety and Health Act of 1970 (OSHA):** a regulatory system designed to aid worker safety; current threshold for required reporting is one employee or more engaged in secular activities. Employees performing or participating in religious services are not covered by OSHA. This law is enforced by Occupational Safety and Health Administration. The Act covers organizations to the extent engaged in commerce (see discussion of Fair Labor Standards Act). *See* <http://www.osha.gov/>.

**Immigration Reform and Control Act of 1986:** bans hiring non-U.S. citizens who do not possess the authorization to work in this country and provides fines up to \$10,000 for each illegal immigrant hired and in some cases imprisonment; all employers (even of one person) must fulfill the document verification provisions of the Act. Failure to do so can result in penalties. The discrimination provisions apply to four or more employees. This Act makes it an offense to refuse employment to anyone whom the employer believes may be an illegal immigrant but turns out not to be; applies to companies with four employees or more. Employers are required to verify employment eligibility within three days of hire of a new employee by completing the I-9 form. It is important to keep copies of the evidence of employability: green card, passport, driver's license, Social Security card, birth certificate, or citizenship papers as set forth on the I-9 form. The I-9 form must be kept by the employer for the longer of the following: three (3) years after the date of hire or one (1) year after termination of employment. In the 1980s this law was unsuccessfully challenged on religious grounds. Churches must comply with the law. This law is enforced by the U.S. Citizenship and Immigration Service (USCIS). *See* additional immigration information in **Section 7: Immigration**.

**Worker Adjustment and Retraining Notification Act of 1988 (WARN):** this notice of plant-closing legislation requires 60 days' written notice of large-scale layoffs and plant closings; applies to companies with 100 or more employees. WARN is enforced through a civil lawsuit which can be filed in U.S. district court. *See* <http://www.doleta.gov/programs/factsht/warn.htm>.

**Americans with Disabilities Act of 1990 (ADA), as amended in 2009:** covers both treatment of employees as well as architectural requirements for buildings; applies to companies of 15 or more employees. This Act requires employers to make reasonable accommodation for qualified employees with disabilities that substantially limit one or more major life activities (examples - caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working) absent a showing of "undue hardship" and expense on the employer. If significant risks to health and safety of others that cannot be eliminated by reasonable accommodation would arise from the employment of a person with a disability, the ADA does not require hiring of that individual. Qualified individuals with a disability are those who can perform the essential job functions with or without accommodations. This law is enforced by the EEOC. The ADA contains provisions permitting churches to discriminate in hiring based on religion. There is also an exemption for churches relieving them of the requirement to comply with provisions related to building accessibility to



public accommodations by the disabled, but this does not relieve a church of the responsibility to make a reasonable accommodation for a disabled employee. Congress amended this law in 2009 to restore much of its original intent. Consult with your attorney to ensure compliance. Many states and cities have parallel laws that may cover fewer employees. For information on the amendments implemented in 2009, see <http://www.eeoc.gov/laws/regulations/adaaa-summary.cfm>.

**Fair Labor Standards Act:** contains standards for minimum wage (\$7.25 effective 7/24/09), and overtime pay of time and one-half to non-exempt (non-managerial) employees working over 40 hours a week; also regulates child labor providing that anyone age 18 or older may work, but employees who are younger are subject to restrictions related to hazardous work and work hours, and provides for a minimum wage. There is a limited exception for religious camps operating no more than seven months a year. While churches that are not engaged in "interstate commerce" are not subject to the act, many activities fall into this gray area. Consult with your local employment attorney. The Department of Labor may view any entity with employees as covered by the Act, including churches. The operation of a day care facility, preschool, or school will subject a church to coverage by the Act. Further, the requirements of the Act cannot be avoided by classifying a worker as an independent contractor to avoid paying him overtime. Ministers are professional employees and are exempt from the overtime pay requirement. This law is enforced by the Department of Labor's Wage and Hour Division. New overtime rules took effect in August of 2004. Consult the U.S. Department of Labor web site (<http://www.dol.gov/>), for further information and training. Many states also have wage and hour laws.

**Equal Pay Act of 1963:** The Fair Labor Standards Act was amended by the Equal Pay Act to require equal pay for equal work, regardless of the employee's sex. This law applies to all employers.

**Family and Medical Leave Act of 1993, as amended in 2009:** Applies to private sector employers who employ 50 or more employees in 20 or more workweeks in the year leave is sought. Eligible employees may take up to twelve weeks of unpaid, job-protected leave with continued benefits during a twelve-month period for the birth of a child, care of a newborn, placement for adoption, or foster care, to care for a spouse, son, daughter, or parent with a serious health condition, or the employee's own serious health condition or due to a qualifying exigency when a spouse, son, daughter or parent is on active duty or is called to active duty in the military. In addition, an employee who is a spouse, son, daughter, parent or next of kin of a service member can take up to 26 weeks of job-protected leave to care for member of the armed forces who suffers a serious injury or illness. To be eligible the employee must have worked for the employer at least twelve months and at least 1,250 hours during the immediately preceding twelve months, at a work site where fifty or more employees are employed within seventy-five miles of the work site. There is no specific exception for churches, but if a church employs fewer than fifty employees it is not covered by the law. The employer's obligation is triggered by the employee's notice to employer of need to take leave under the Act or upon employer's learning that an eligible employee needs leave for purposes covered by the Act. The employer must provide eligibility notice within five business days and then should require medical certification from the affected person's physician. "Serious health condition" covers inpatient care and continuing treatment by a health care provider. This law is enforced by the U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division. Many states have family medical leave statutes. Due to the complexity of this law, it is a good idea to work with an attorney who specializes in employment law to ensure compliance. For information on the amendments in 2009 see <http://www.dol.gov/whd/fmla/finalrule/factsheet.pdf>.

**Personal Responsibility and Work Opportunity Reconciliation Act of 1996:** generally referred to as federal welfare reform, contains a requirement that all employers report new hires to the employer's respective state agency. The appropriate state agency varies from state to state. One purpose of this law is to locate parents who avoid child support payment obligations by moving and changing jobs. There is no exclusion for small employers or religious organizations. The designated state agency may be a child support enforcement agency or state labor department.

**Unemployment:** by virtue of inclusion in the Presbyterian Church (U.S.A.)'s Federal Group Tax Exemption Ruling, churches and middle governing bodies are exempt from federal unemployment tax. However, individual states may impose an unemployment tax on certain nonprofit organizations even though they are exempt from the federal tax. Organizations should consult their tax advisers concerning liability for the state unemployment tax.

**Worker's Compensation:** This is a matter of state, not federal, law. There is no per se exemption for churches, and coverage depends upon the specific state law. It is important to determine who is considered a covered employee for state law purposes. This is also a very important area for insurance coverage. Consult your insurance agent about worker's compensation coverage for your church's employees.

**National Child Care Protection Act of 1993:** This Act allows (does not require) states to require that certain child care providers make mandatory background checks on child-care workers (both employees and volunteers). States will have the right to designate certain organizations, such as day care centers, nurseries, schools, and possibly Sunday schools, as child-care providers. Churches and presbyteries should become aware of their state's requirements regarding the designation of child-care providers. The National Child Care Protection Act was amended in 1999 by the Volunteers for Children Act to enable (not require) child care providers designated by state law as qualified entities to contact an authorized agency of the state to request nationwide criminal fingerprint background checks. To find out if churches are designated as qualified entities in your state, contact a local attorney. There are advantages and disadvantages to any screening process; select a screening process that best suits the needs of your church.

**Employee Polygraph Protection Act:** This Act applies to churches engaged in interstate commerce and prohibits requiring or suggesting employees or job applicants submit to polygraph tests. Consult with your attorney to determine whether your church is engaged in interstate commerce and covered by the Act.

**Bankruptcy Discrimination:** Section 525 of the Bankruptcy Code prohibits private employers from discriminating against persons who is or has been a debtor in bankruptcy, with some exceptions. This is a complicated area of the law and employers should consult with their local attorney when they plan to take an employment-related action against an employee known to the employer to be involved in a bankruptcy, past or present.

**Uniformed Services Employment and Re-employment Rights Act of 1994:** Generally, this law provides that an employee who leaves to train or serve in the uniformed services must be re-employed upon return and has a right to certain benefits during absence and upon return, provided the employee's service does not exceed five years and the employee did not receive a dishonorable discharge. There is no exemption for churches or small employers. The employer is not required to re-employ under specified limited circumstances set forth in the Act. This law is enforced by the U.S. Secretary of Labor and may be referred to the U.S. Attorney General for further action. See also Section 2, below, titled “**Military Service and the Call of Presbyterian Ministers**”

## **1. Posting Requirements**

The following is a list of the federal laws that require covered employers to post notices for employees. First, determine whether you are a covered employer. Many of these laws may be inapplicable because the church or middle governing body does not meet the minimum number of employees or does not engage in interstate commerce. Second, the Free Exercise clause of the First Amendment exempts ministers and, in some cases, other core religious employees from some of these laws. These notices need not be posted if you are not a covered employer:

- The Fair Labor Standards Act (minimum wage and overtime)
- Equal Employment Opportunity
- Occupational Safety and Health Act (OSHA)
- Employee Polygraph Protection Act
- Family and Medical Leave Act (FMLA)

Posters for all of the above, except Equal Employment Opportunity, can be obtained at no charge from your local office of the U.S. Department of Labor. For a free poster covering Equal Employment Opportunity, contact your local office of the Equal Employment Opportunity Commission. Many states have posting requirements in addition to those required by federal laws. Consult with your attorney on posting requirements.

## **2. Military Service and the Call of Presbyterian Ministers**

*Book of Order* G-14.0534 provides in relevant part "The presbytery shall ensure that the call meets the requirements of the minister. If the minister is obligated to fulfill military commitments during a period of pastoral service, an agreement should be added to the terms of call for that obligation and potential mobilization."

Two very good resources on this topic are on the Web. The Constitutional Services Department of the Office of the General Assembly has posted an Advisory Opinion about Presbyterian Church polity and how it intersects with a minister's military obligation. See Advisory Opinions Note 5 Chaplains Recalled to Active Duty (Appendix I).

In 1994, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA). This federal law secures a variety of rights to employees called to military service. In cooperation with other General Assembly offices, the Board of Pensions wrote USERRA Questions and Answers: ([http://web.pensions.org/Publications/pensions/Home/Forms%20&%20Publications/Booklets%20&%20Brochures/userra\\_qa.pdf](http://web.pensions.org/Publications/pensions/Home/Forms%20&%20Publications/Booklets%20&%20Brochures/userra_qa.pdf)),

a document covering 18 central issues. You can obtain this document by calling the Board of Pensions at (800)773-7752.

## **B. HIPAA: Health Insurance Portability and Accountability Act Privacy Rules**

The Health Insurance Portability and Accountability Act (HIPAA) privacy rules prohibit unauthorized disclosure by covered entities of individually identifiable health information (protected health information). In general, local churches and middle governing bodies are not "covered entities" under the HIPAA privacy rules. Covered entities are health plans, health care providers and health care clearinghouses. If, for example, a local church or middle governing body directly operates a health clinic, then it would be a health care provider and, consequently, a covered entity.

There are two categories of disclosures where local churches, as non-covered entities, may be affected by the HIPAA privacy rules. One instance is disclosure of protected health information of a church member and the second is disclosure of protected health information of an employee.

- **Church Member's Protected Health Information.** Again, a church with respect to its member is not a covered entity. The HIPAA privacy rules permit a hospital to provide the name, general condition, room number and religious affiliation in a directory accessible by clergy and permits this information to be given to those who ask for the patient by name, unless the patient has objected. It is not a violation of the HIPAA privacy rules for a minister to access the information in the hospital directory and then subsequently disclose the information to the congregation. If a member has notified the church that the member does not consent to such disclosure, any subsequent disclosure may amount to an invasion of the member's privacy. The best approach is to obtain a written consent from the member to make disclosures. However, if this is not practicable, then notice of the church's practice should be posted or placed in the church bulletin from time to time with an opportunity for members to notify the church if they object to disclosure of their information. A notice in the church bulletin might include the following:

When a congregation member is ill or injured, we inform fellow members and pray for you by name—seeking the comfort and healing of the Risen Christ. If you do not want members informed or your name and illness stated in these congregation prayers, please notify the pastor in a brief written note.

- **Church Employee's Protected Health Information.** The church, as an employer, may need to request disclosure of an employee's protected health information from a health care provider, for example, in connection with an employee's return to work after a medical leave. The church employer requesting the protected health information will be required to submit to the health care provider an authorization signed by the employee that in the provider's opinion complies with HIPAA. If the church employer does receive an employee's health information, this information should be used solely for the narrow purposes it was gathered. Otherwise, it should be held in a secured confidential file separate from the employee's personnel file.

For further information see the Department of Health and Human Services' Office for Civil Rights - HIPAA web site (<http://www.hhs.gov/ocr/privacy/>), and "Are Prayer Lists Illegal?" Church Law & Tax Report, Vol. XVIII, No. 2, March/April, 2003. Church Law & Tax Report is a publication of Christian Ministries Resources. You can subscribe by calling (800)222-1840.

## **C. Potential Problems in Hiring and Firing Employees**

### **1. Interviewing**

#### **a. Lay Persons**

In formulating questions for interviewing lay persons, the two most important guidelines are to ensure that each question be related to the job for which the applicant is applying and that the questions be asked of each applicant for the position. Questions should not be posed to applicants in order to determine their race, marital status, age, sex (including pregnancy), national origin, citizenship, genetic information or disability. Because a religious organization may discriminate based on religion, the church or presbytery may require the employee be Presbyterian or may indicate applicants who are Presbyterian will be given preference.

#### **i. Examples of Prohibited Questions**

What year did you graduate from high school? (Can learn of age)

Could you enclose a photograph with your resume? (Can learn of race, national origin, sex, or age)

Are you married? (Illegal inquiry about marital status)

Have you ever been arrested? (Some groups are arrested at a higher rate than others and this question could lead to race discrimination.)

What is your native language? (National origin discrimination)

Are you handicapped? (Disability discrimination)

What medications do you currently take? (Disability discrimination)

How old are you? (Age discrimination)

Do you plan to have children? (Sex discrimination)

Are you pregnant? (Pregnancy discrimination)

Do you have a drug or alcohol problem? (Disability discrimination)

## ii. Examples of Permitted Inquiries (Job Related)

Have you ever been fired or otherwise had your employment involuntarily terminated?

There is a gap in the time frames shown on your resume. Tell me about that.

If hired, can you prove you are at least 18 years of age?

Can you show proof of eligibility to work in the United States?

Are you able to perform essential functions of this job with or without accommodation?

Would you be willing to travel?

If you need to compile applicant tracking information for affirmative action purposes, for example, do not ask for this information on the employment application unless it is on a perforated portion at the bottom that will be separated from the application and not available to the decision maker.

## b. Ministers

**In the civil law arena, the protections of the First Amendment to the Constitution of the United States give the nominating committee and the committee on ministry much greater flexibility in posing questions to a minister.** The *Book of Order* requires the nominating committee to take care to consider candidates without regard to race, ethnic origin, sex, marital status, age, or disabilities. Any interview questions must comply with the Presbyterian Church (U.S.A.) Constitution. If a search committee has questions related to this topic, the committee should contact its committee on ministry, the presbytery office, or OGA Constitutional Services.

Of course, the *Book of Order* sets out many provisions applying to the employment and call of a minister. The call form is set out at G-14.05066.

## 2. Background Checks in General

Employers are finding themselves in lawsuits over their hiring and firing practices. Failing to properly investigate a prospective employee's background could result in legal liability for negligent hiring or negligent retention if that employee later injures someone. Conducting background checks before hiring and before allowing employees to start work is always a good idea, as is having applicants sign a release to obtain such background checks. A background check is especially important for employees who will be working with children, counseling, handling funds, or operating church vehicles. Investigation of the applicant's background should involve contacting personal and employment references as well as conducting a criminal records investigation. Some background checks may amount to consumer investigative reports under the federal Fair Credit Reporting Act. A few guidelines to follow in conducting these types of background checks are: (a) Keep the investigation work-related; (b) obtain written authorization from the potential employee; (c) disclose negative information to the potential employee before adverse action is taken; (d) give the potential employee an opportunity to dispute the accuracy of the information; (e) do not ask references legally impermissible question (see examples above); and, (f) always consult with a local attorney before conducting background checks. The release from the applicant for reference checks can be included on the employment application. Sample language:

"I hereby authorize any investigator of [Name of Church Employer] bearing this release to verify and obtain any information from schools, residential management agents, former and current employers, religious bodies, criminal justice agencies and individuals relating to my activities. This information may include, but it is not limited to, academic, residential, achievement, performance, attendance, personal history, disciplinary, criminal conviction records, and any judicial or ecclesiastical proceedings involving me as a defendant. I hereby direct and authorize you to release such information upon request to the bearer. I hereby release [Name of Church Employer], and any individual or group, including record custodians, from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance or any attempts to comply, with this authorization."

If the information obtained in a reference check is inappropriately used or disclosed, the employer could later be found to be liable to the employee or prospective employee for defamation or violation of privacy. Local churches and presbyteries should develop reference checking procedures in conjunction with their local employment attorney.

See the discussion of the National Child Care Protection Act of 1993 set out earlier in this Section.

## 3. Background Checks for Ministers

Pursuant to *Book of Order* G-14.0501b "A pastor or associate pastor shall be elected by the vote of the congregation and the relationship between them shall be established by the presbytery. The call extended to a pastor or associate pastor shall be approved by the presbytery and cannot be changed except by consent of the presbytery, at the request of the pastor or associate pastor, or at the request of the church by action of the congregation."

Under the *Book of Order* the congregation elects a nominating committee that works with the committee on ministry of the presbytery. The committee on ministry is required by the *Book of Order* at G-11.0502d to advise with the nominating committee regarding the merits, availability, and suitability of any candidate or minister whose name is contemplated for nomination to the congregation, and shall have the privilege of suggesting names to the nominating committee. Once the nominating committee makes a selection, that selection is presented to the presbytery for

approval through the committee on ministry. The *Book of Order* further requires the nominating committee to take care to consider a candidate without regard to race, ethnic origin, sex, marital status, age, or disabilities.

The nominating committee of the church and/or the committee on ministry of the presbytery should exercise reasonable care in checking the minister's background. **Reference checkers should consult with the committee on ministry and/or the presbytery executive.** If the reference and background checks reveal previous incidents of sexual misconduct, Richard Hammar's *Pastor, Church and Law* recommends the following factors be considered before hiring the minister:

"(a) the nature and severity of the previous misconduct; (b) the frequency of the previous misconduct; (c) how long ago the misconduct occurred; (d) whether the minister received counseling; (e) the competency and effectiveness of any counseling received; (f) the likelihood that the minister will repeat the same type of misconduct now; (g) the possibility of legal liability if a jury concludes, on the basis of all evidence, that the church or denomination was negligent in hiring the minister."

#### **4. Job Descriptions and Performance Management**

Job descriptions define the essential and nonessential functions of the position. Job descriptions can be shown to interviewees who may be asked if they can perform the essential functions of the position. If the applicant says no, this provides a basis not to extend an offer of employment. If the applicant says yes, but later plainly demonstrates he cannot perform the essential functions, this may provide a basis to sever employment. Job descriptions are useful in providing job information to the employee and supervisor, information for performance appraisals, information in situations calling for review under the Americans with Disabilities Act (can the employee perform the essential duties, with or without reasonable accommodations), and information for the employee discipline process.

The performance appraisal should be conducted at least annually. Supervisors should manage employee performance throughout the year, documenting conversations with the employee regarding good and unacceptable performance. Any documentation should contain only facts, not generalizations or assumptions. For example, if a church staff person is tardy in arriving to work 3 out of 5 days each week, week after week, month after month, and the church has warned the staff person several times that repeated tardiness will not be tolerated, the tardiness — and the warnings to the staff person — should be documented in the person's personnel file. If the situation becomes intolerable and the church decides to terminate the person's employment, then the documentation in the file will serve as an important record of **what** transpired, **when** it transpired, and **how** it was handled. If the discharged staff person tries to challenge the decision, the detailed records will provide an important defense for the church in support of its decision. Having the employee sign disciplinary write-ups and evaluations will make it difficult for the employee to claim surprise in further discipline or termination. When performance management is an ongoing process, the annual performance review will be unlikely to contain assessments that surprise the employee. Performance appraisals should be truthful appraisals. It is unhelpful to both the employee and the church employer to gloss over or fail to document performance problems. Truthful appraisals are important in the defense of adverse personnel actions and in improving performance.

Employees should be given an opportunity to review and comment on the performance appraisal. The performance appraisal should be signed by the reviewing manager and the employee to indicate that the review occurred, not that the employee necessarily agreed with the review. If the employee refuses to sign, indicating that the review has occurred, the manager may note that fact on the appraisal form.

#### **5. Compensation**

As a federal tax exempt organization, all Presbyterian Church governing bodies are prohibited from paying unreasonable compensation to their staff. Unreasonable compensation is compensation above what would ordinarily be paid for like services by like organizations under like circumstances.

Detailed and helpful information is set out in Intermediate Sanctions subsection in Section 8: Taxation, in this Manual.

## **6. Terminations**

Before terminating the employment of a lay employee, the church or middle governing body should determine whether employment in their state is employment at will, meaning the employment relationship between the employer and the employee may be terminated by either at any time with or without cause. If employment is at-will and if the church or middle governing body has an employee handbook, this employment relationship should be stated in the handbook, along with disclaimers that the handbook is not a contract of employment nor a guarantee of future employment, and so forth. If a contract of employment with the employee exists, that eliminates the "at-will" relationship and the employee's rights upon termination will be governed by the employment contract. Some states recognize oral and implied employment contracts. In those states, the employment contract may not have to be in writing to be enforceable. A termination in violation of a state or federal law will be subject to legal challenge. For example, a typical employee cannot be discharged on the basis of age, sex, race, or for any other unlawful reason.

In addition, an employer that discharges an employee in retaliation for exercising the employee's rights or obligations under state or federal law may be found liable for wrongful discharge. For example, if an employee files an EEOC complaint for race discrimination, he cannot be terminated for filing the complaint.

**Termination of a minister's employment must be consistent with the written call and any applicable provisions of the *Book of Order*. As noted above, because of constitutional protections, most civil courts will not hear a lawsuit filed by a minister against the church or presbytery. Such relationships are not ordinary civil employment. They are ecclesiastical relationships defined by Presbyterian Church (U.S.A.) polity and governing bodies.**

## **D. Resources**

There are a number of websites on which employers can find information concerning employment issues:

U.S. Department of Labor (<http://www.dol.gov/>)

U.S. Equal Employment Opportunity Commission (<http://www.eeoc.gov/>)

U.S. Citizenship and Immigration Services (<http://www.uscis.gov/portal/site/uscis>)

U.S. Occupational Safety and Health Administration (<http://www.osha.gov/>)

## **E. Funds and Assistance for Litigation Challenging the Presbyterian Church (U.S.A.) Constitution**

As noted previously, employment litigation is one of the fastest growing areas of the law. Unfortunately, more ministers are attempting to sue their churches and presbyteries via the civil courts. Of course, the relationship between clergy and church is not a standard employment arrangement. The call/employment relationship between church and clergy goes to the heart of church polity. It is impossible, without violating the First Amendment, for a civil court to



apply secular law standards to such core religious relationships. A majority of civil court cases recognize the First Amendment limitations and dismiss lawsuits involving ministers and their churches.

**The Office of the Stated Clerk has some funds available to assist presbyteries in civil litigation that impinges the church's free exercise of religion in administering its polity and the practice of its ministry. Call Laurie Griffith at (888)728-7228 ext. 5432 or Mark Tammen at (888)728-7228 ext. 5433 for further information about these funds and other church polity resources. Key elements of this fund include:**

- Support the Presbyterian Church (U.S.A.)'s right of autonomy, protected by the Free Exercise Clause of the First Amendment to the Constitution of the United States of America, to govern itself and order its life and activity free of government intervention (*God Alone Is Lord of the Conscience*, Minutes, 1988, Part I, p. 555).
- Support a presbytery's rights and responsibilities to "determine the ministers of the Word and Sacrament who shall be its continuing members" (*Book of Order*, G-11.0403) and to designate such ministers "to such work as may be helpful to the church in mission, in the performance of which they shall be accountable to the presbytery" (*Book of Order*, G-6.0201).
- Such financial and technical support shall be made at such level (administrative or within trial or appellate courts) as the Stated Clerk shall determine.
- The Stated Clerk is authorized to share up to 50 percent of the direct legal costs, that is, the hours and costs of services and fees billed by attorneys or courts. The proportion may be negotiated downward if insurance or contribution from other sources is available. To assist the OGA in responsible management of this fund, the presbytery is asked to provide a copy of the itemized statement of the attorney and a short quarterly report of the progress of the matter.
- Such financial support of the presbytery for professional legal expenses incurred in connection with such proceedings as described above shall be negotiated in each case, but accepting as a general guide the participation by the Office of the General Assembly in an amount up to 50 percent of such expenses not covered by other sources available to the presbytery. Such expenditures shall be entirely under the discretion of the Stated Clerk, and no governing body shall have any right to have such funds expended on its behalf.
- No such participation shall be made for cases filed by third parties involving inadequate preparation, supervision, or retention of ministers, nor for inadequate maintenance of vehicles, structures, or property causing accident or injury.
- The presbytery should provide a letter certifying its request for assistance in a certain matter, the name of the officer or staff person with whom the Stated Clerk or assigned staff is to correspond, and a description of any insurance coverage that may be available for legal expenses.
- As the matter proceeds, the presbytery's contact person is expected to keep the Stated Clerk informed and invite consultation regarding strategy, provide information needed for consultation to be effective, and copies of all papers filed with a court in the matter by any of the parties.
- The Stated Clerk will consult as needed with the General Counsel of the PC(USA) and may ask for an opportunity to speak with the presbytery legal counsel but will relate primarily with the presbytery's designated contact person.

- Note that the policy adopted by the General Assembly is permissive and funding may be limited by the amount budgeted in a given year. The Stated Clerk could advise a presbytery that in a certain matter the presbytery ought to settle a case or withdraw, and then decline to participate further.

## F. Advantages and Disadvantages of Personnel Policies

There are several important advantages to personnel policies on certain key issues:

- **Uniform statement of information:** Creating policies and handbooks or manuals is a uniform method to inform employees about the terms and conditions of their employment. It informs employees of compensation policy and benefits policies. It provides information on what is expected of employees and their duties with regard to certain aspects of their employment. Having such written, formal policies helps avoid ignorance, confusion, and misinformation about how matters will be handled at work, such as the employer's intolerance for harassment and discrimination and how such matters should be reported and what holidays are recognized by the employer.

- **Consistency:** Policies can help ensure that certain situations are handled in a consistent manner (Examples: holidays; work schedule; reimbursement of business expenses) — and that all staff are treated equally.

- **Strong statement of acceptable and unacceptable conduct:** Policies inform staff and others about conduct that is acceptable and unacceptable in a work setting and the consequences of engaging in unacceptable conduct. The existence of a policy makes it more difficult for a staff person to say s/he did not understand this type of behavior would not be condoned (Examples: policy on the use of alcohol during work hours or while traveling on church business; policy on sexual abuse and harassment). U.S. Supreme Court cases (*See H. Anti-Harassment Policy* for a discussion of these cases.) make the existence and communication of a sexual harassment policy and complaint procedure very important. Without such a policy and complaint procedure, the employer may be open to vicarious liability for sexual harassment unknown to the employer. .

- **Protection from liability exposure:** Policies can help protect a church from liability exposure. For example, if an employer has a policy prohibiting employees from using the employer's computer system to illegally engage in file-sharing, that may provide a defense if someone in the music industry sues and claims that the employer aided and abetted an employee's illegal conduct by not having a policy that notifies employees that they are prohibited from using the employer's computer system to engage in illegal file-sharing.

There is one major disadvantage to personnel policies:

If an organization adopts a policy and then does not follow it — or follows it only with respect to certain staff — there is an increased risk of liability exposure to the organization for claims of discrimination. Some states will apply personnel policies as legally binding; some states will not. Having clear disclaimers in a handbook is important (“this handbook is not a contract of employment or an agreement for continued employment or for specific compensation or benefits”). Of equal importance is training of supervisors and executives. These folks must be trained on the employer's handbook and policies and informed how the policies should be implemented. Encouraging supervisors and executives to consult with the human resources official of the organization also helps to foster consistent application of policies across the organization. Consult with an employment attorney in your state as you consider personnel policies. Also, check with other churches and governing bodies in your area to determine if they have personnel policies. These policies may be a helpful model.

Personnel policies and handbooks should be updated annually, if possible. Laws are amended, new laws are passed, technology develops, and you discover new issues in employee relations each year that are not addressed in your policies or handbook. It is recommended that employers maintain a file in which they keep notes about new laws which should be included in their handbook, situations not covered by handbook policies, and ideas for human resources and personnel committees to discuss which might be included in a handbook.

## **G. Common Personnel Policies**

Each church and governing body needs to decide for itself whether to adopt personnel policies, who should be covered by each policy (lay/clergy; full/part-time staff); and which types of policies should be included in a set of policies. Subjects that are commonly included in personnel policies are the following:

- **Hiring policies** (recruitment; job posting; immigration; references; hiring of relatives; promotions; statement of "at-will" employment; etc.)
- **Salary administration** (pay periods; overtime; time card procedures; wage assignments; performance reviews; etc.)
- **Operations** (work schedule; etc.)
- **Benefits** (health insurance; disability; life insurance; pension; bereavement leave; worker's compensation; social security; unemployment compensation, if applicable; vacation; holidays; maternity and paternity leave; sick leave; jury duty; personal days; policy on HIV/AIDS; attendance records; leave of absence; family and medical leave; continuing education; etc.)
- **Accountable reimbursement policy**
- **Annual performance review and corrective action** (evaluations; work rules; disciplinary action)
- **Retirement issues**
- **Termination and resignation issues**
- **Conduct issues and compliance with employment laws** (race and gender issues; sexual abuse and harassment; violence; code of ethics; conflicts of interest; confidentiality; etc.)
- **Complaint process**
- **Neutral reference policy for lay employees** giving only title and length of service (written release from employee allows for full disclosure)
- **Personal use of employer's equipment and software** (computers, cell phones, social networking, Internet, and email)

## **H. Anti-Harassment Policy**

Sexual harassment is a form of sex discrimination under Title VII of the Civil Rights Act and is illegal under federal and state law. The EEOC defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature if rejecting the conduct results in an adverse employment action, or

submitting to the conduct is explicitly or implicitly made a condition of the target's employment, or the conduct unreasonably interferes with the target's work performance or creates an intimidating or hostile work environment. While sexual harassment is traditionally thought to occur between male supervisors and female subordinates, it may occur between a female supervisor and a male subordinate, between supervisor and subordinate of the same sex, between co-workers of different sexes or between co-workers of the same sex. **Two U.S. Supreme Court decisions, *Burlington Industries, Inc. v. Ellerth* and *Faragher v. City of Boca Raton*, make it essential that:**

- all employers have a strong policy against sexual harassment;
- all employees be made aware of it, preferably by annual training; and
- all employees be made aware of how to file a complaint with the employer and the employer's complaint process.

There are two types of sexual harassment: *quid pro quo* and hostile environment. In a *quid pro quo* (this for that) case, if the employee suffers a tangible job action (termination, demotion, loss of pay), the employer will be strictly liable to the harassed employee as will the individual harasser regardless of whether the employer had notice of the harassment.

In a hostile environment case where there is no tangible job action, but the employee proves she was subjected to unwelcome, severe, and pervasive conduct of sexual nature, the employer will be vicariously liable unless the employer can prove an affirmative defense establishing the exercise of reasonable care to prevent or promptly correct a sexual harassment and that the plaintiff failed to use these preventive or corrective measures.

The suggested preventive or corrective measures are:

- a strong, detailed policy against sexual harassment
- a complaint process with multiple avenues of reporting
- a annual training program to communicate the policy and the complaint process to the employees
- each employee should sign documentation indicating they completed the training and the training should be mandatory on at least an annual basis

In 1999, the EEOC issued enforcement guidance on employer vicarious liability for unlawful harassment by supervisors, extending liability to harassment based on an individual's race, color, sex (whether or not the harassment is of a sexual nature), religion, and national origin. For more information on this issue and on sexual harassment prevention, please see the Equal Employment Opportunity Commission's Enforcement Guidance: (<http://www.eeoc.gov/policy/docs/harassment.html>).

In addition, some state and federal courts have broadened the scope of *Ellerth* and *Faragher* to include harassment based on an individual's race, national origin, and disability. It would be advisable to implement similar preventive measures for these forms of harassment.

## **I. Personnel Records**

Churches and middle governing bodies should work with their attorneys to have a clear understanding about the importance of keeping good personnel records — what to keep in those records and what not to keep in those records.

It is advisable to put any and all records related to employment in a personnel file with a separate, locked file for medical records.

### **1. Access to Personnel Records and Confidentiality**

There are state and federal laws that provide access to or protect confidentiality of certain personnel records. Middle governing bodies and churches should review these legal requirements with their attorney. Medical information is particularly sensitive. It should be gathered only when there is a legitimate business reason to do so and then gathered, retained, and disclosed in strict compliance with applicable state and federal laws. A written consent to release medical information, signed and dated by the employee specifying the information to be released, must be obtained by the employer before any release of medical information. To comply with the Americans with Disabilities Act, any medical information should be kept in a separate, locked file, not the employee's personnel file and access should be strictly limited only to those with a clear need to know.

The following is the policy used by the Presbyterian Church (U.S.A.) General Assembly Mission Council; it is provided as a sample policy:

#### **Personnel Records**

The Employer maintains a personnel file on each employee, which is the property of the Employer. The personnel file includes such information as the employee's job application, resume, records of training, documentation of performance reviews and salary increases, and other employment records. Any medical or health information shall be maintained separately. Employees may review their personnel file by contacting Human Resources. Employees may review their personnel file only in the presence of a member of Human Resources. Former employees are not allowed access to their personnel file. Information in personnel files is confidential. Generally, only those with supervisory responsibility for the employee have access to the employee's personnel file. Supervisors with open positions may review the personnel files of employees who are candidates for those open positions.

### **2. Record Retention**

The types of personnel records that must be retained by federal law include but are not limited to:

<u>Record</u>	<u>Retention Period</u>
Payroll records	3 years
Personnel records used in hiring, termination, and promotion	1 year from action
Records relevant to legal action or discrimination complaint	until matter is concluded
Time sheets	2 years
FMLA records	3 years
Immigration records	3 years from date of hire or 1 year after termination whichever is later
OSHA records	5 years log and summary of Injuries

duration of employment + 30  
years for medical exams

The safest course is to retain any and all records on employees for the length of their employment + the number of years within which an employee can file an action for discrimination or other employment related actions, in the employer's state. Employers should check with their attorneys for that information.

An employer should consider maintaining three types of files on an employee in its Human Resources office: (1) personnel file; (2) confidential file (interview evaluation, reference checks, EEO/affirmative action data, credit checks, and information regarding legal actions or complaints); and (3) medical information. As a general rule, it is best for an employer not to maintain files with any employee medical information. The law in this area is in flux. If, however, a medical information file is maintained (due to ADA or FMLA needs), the employer should ensure this is a separate and confidential file. All files should be secured under lock and key and access to such records should be limited at all times.

### **3. Subpoena of Personnel Records**

An employer can no longer simply produce documents in response to a subpoena, especially if the subpoena is issued by a court in another state. Upon receipt of a subpoena, the employer should consult with an employment attorney to determine whether this disclosure is permitted under state law. If there is no law on point, the employee should still be notified. If the employee objects, the employer may instruct the employee's own attorney to act to quash or modify the subpoena. At the same time, the employer should let the attorney who issued the subpoena know of the employee's objection. In any event, the employer should contact the issuing attorney to determine the issues in the matter that require the subpoenaed documents and obtain a release from the employee that mirrors the request contained in the subpoena.

### **4. Employee Privacy**

The Fourth Amendment to the Constitution of the United States does not protect the privacy of employees of nongovernmental entities unless their respective state law indicates otherwise. Some states have laws addressing confidentiality of certain personnel records. Confidentiality of records is discussed under the **I. Personnel Records** subsection of this Manual.

Employers may want to monitor phone calls and email or conduct surveillance for quality assurance or safety compliance. The Electronic Communications Protection Act of 1986 created civil and criminal liability for the intentional interception and disclosure of any wire, oral or electronic communication. To avoid liability it is advisable to have a policy, published in an employee handbook, that informs employees that the employer's computer systems belong to the employer, that employees should have no expectation of privacy in anything that is sent to, stored in or sent from the system, and that the employer has the right to monitor any information and data in its system. Employers should have employees sign a receipt for the policy or the handbook to show they received it and understand it.

Employees also have privacy rights in what they bring to work inside their clothing, inside bags and purses, in their offices and desks, and other work-related areas. The reasonableness of the expectation of privacy varies and the ability of the employer to search also varies and may depend upon state law. Consult with your local attorney before engaging in a search of any employee or his/her work area.

## **5. Privacy Issues Concerning HIV/AIDS**

The Americans with Disabilities Act and state medical confidentiality laws protect the confidential nature of an employee's medical information, particularly whether he/she has AIDS or is HIV-positive. HIV is not transmitted by casual contact and, therefore, the employee's need for confidentiality typically outweighs any concern the employer may have about transmission.

## **J. Benefits Plan of the Presbyterian Church (U.S.A.)**

By administering the Benefits Plan and the Assistance Program, The Board of Pensions of the Presbyterian Church (U.S.A.) serves ministers of the Word and Sacrament and lay workers of the Presbyterian Church (U.S.A.) throughout the United States and abroad.

### **Community Nature**

The Benefits Plan has several unique features that collectively are referred to as “the community nature of the Plan.” These features relate primarily to the Plan’s funding, pension benefits, and family medical coverage. The Benefits Plan is a self-insured church plan that is funded by dues from Presbyterian churches and church-affiliated employing organizations, as well as the income and capital appreciation on the Plan assets. The dues contributed by the local church or an employing organization are based on a percentage of its employees’ effective salaries and represent that employing organization’s share of the cost of protecting the entire community.

### **The Benefits Plan**

The Benefits Plan serves as a cornerstone for the ministry of the Presbyterian Church (U.S.A.). The pension, death, disability, and medical benefits, as well as the optional benefits, provide a comprehensive package of protection and financial assistance for participating church workers and their families.

The Benefits Plan provides two programs: the Traditional Program and the Affiliated Benefits Program. The Book of Order requires all churches to provide Traditional Program coverage for their installed pastors. The Traditional Program includes the Death and Disability and Medical Plans and the defined benefit pension, and is non-contributory by the employees (i.e., the employer pays all the dues). Dues are based on a percentage of each employee’s compensation and family coverage is provided without additional dues.

The Affiliated Benefits Program allows the employer to offer the Benefits Plan medical coverage on a contributory basis (i.e., the employees can be required to contribute up to 50% of the dues), and any of the Benefits Plan programs, such as the defined contribution retirement savings, death and disability, and/or other voluntary plans, other than the defined benefit pension plan. Coverage is available on an individual or family basis.

Coverage is also available on a subscription basis for members in transition and seeking a new call and seminary students; continued medical coverage is available for specified durations for termination members and their dependents. Retiree medical coverage is available on a subscription basis to eligible members and their spouses.

### **The Assistance Program**

The Assistance Program of the Board of Pensions helps church workers whose personal financial needs exceed the bounds of the Benefits Plan, personal resources, and other means. It also provides grant opportunities and programs to build the practical skills needed to minister in today’s world. The Assistance Program comprises a range of

discretionary grant programs that complement the Benefits Plan. These grants are funded by gifts, legacies, endowment income, and half of the Christmas Joy Offering, not dues.

### **For More Information**

For more information about the Benefits Plan and the Assistance Program, please reference the Benefits Plan document and other publications and forms available on Pensions.org.

The Board of Pensions of the Presbyterian Church (U.S.A.)  
2000 Market Street  
Philadelphia, PA 19103-3298  
Phone: 800-773-7752 (800-PRESPLAN)

### **K. Board of Pensions Publications**

**These excellent resources are available by calling the Board of Pensions at (800)773-7752 (800)PRESPLAN) or on the Board of Pensions Web site:** (<http://www.pensions.org/portal/server.pt>)

- Benefits Plan Overview
- Benefits Plan of the Presbyterian Church (U.S.A.)
- Community Nature of the Benefits Plan
- Product Sheets
- Healthcare Summary Plan Description
- Retirement Pension, Death and Disability
- Medicare Supplement
- Retirement Savings Plan Summary Plan Description
- Benefits Administrative Handbook (For Churches & Employing Organizations)
- Benefits Administrative Handbook (For Presbyteries, Synods, & General Assembly Entities)
- Understanding Effective Salary
- Benefits Plan and Divorce
- A Shopper's Guide to Long-Term Care Insurance
- Tax Guide for Ministers & Churches
- Federal Reporting Requirements for Churches
- Information for Members Planning to Retire
- Benefits for Lay Employees



- Social Security Basics for Ministers and Churches
- Major Medical Continuation Program
- Stewardship of Life: Preparing an Advance Directive
- The Living Needs Benefit

## **L. Flexible Spending Accounts and Other Benefits**

Federal tax laws now provide for Section 125 Flexible Spending Accounts which enable an employee to set aside portions of their salary on a pre-tax basis to pay for medical, dental, and vision expenses not covered under group insurance plans, as well as certain child care expenses. Section 132 of the *Internal Revenue Code* also provides certain tax benefits related to commuting and parking for employees.

## **Section 7: Immigration**

The purpose of this chapter is to give the reader a brief overview of some relevant immigrant and nonimmigrant visas and status possibilities that exist for foreign nationals. Church members, churches, and middle governing bodies (or affiliated organizations) may find this overview helpful when they wish to assist a foreign national with immigration issues. The categories below are by no means exhaustive of the visa possibilities, nor are all grounds of eligibility for each category discussed. Consultation with an experienced attorney specializing in immigration law is required to properly evaluate the possibilities that may exist for each individual.

### **A. Religious Worker Visas- General Overview**

#### **1. R-1 Nonimmigrant (Temporary) Visas**

A minister or an individual working in a professional capacity in a religious vocation or occupation, or an individual working for a religious organization in a religious vocation or occupation, can obtain an R-1 visa. To qualify, the individual must have been a member of the religious denomination for a two-year period immediately preceding the application for a visa. Previous employment with the religious organization is not required. The religious denomination abroad must have a bona fide nonprofit religious organization in the United States. Initial entry on an R-1 visa is for a maximum of three years. The R-1 status can be extended up to 5 years. Spouses and children can enter based on the principal's (R-1 visa holder's) status. If the individual and family members are in the United States, they can apply to change their status to R-1 status without leaving the United States.

#### **2. Special Immigrant (Permanent Resident) Visas ---- Religious Workers**

There also exists a special immigrant (permanent resident) visa for those seeking to enter the United States and work in a religious occupation or for a religious organization. Major requirements are: (1) the individual was a member of a religious denomination for two years immediately preceding the time of application; (2) the religious denomination must have been a bona fide, nonprofit religious organization in the United States; (3) the individual enters the United States solely to carry his or her vocation as a minister, or if before October 1, 2000, he/she enters to work for an organization or 501(c)(3) affiliate in a religious vocation or occupation; and (4) the individual was engaged in such vocation, professional work, or other work continuously for at least a two-year period. The two-year period of prior employment does not have to be abroad. Employment in the United States qualifies. In fact, the required employment may include time studying in the United States as a student, if the study is consistent with the duties of a minister and

the person continues to perform the duties of a minister during the two-year period. Additionally, to fulfill the two-year requirement, the work does not have to be full-time, as long as it is continuous. As with the R-1 visa, spouses and children are eligible to enter based on the principal's status. The terms minister, religious organization, and professional capacity are defined in the regulations and must be established before the petition is approved.

The petition for the special immigrant visa is approved by the United States Citizenship and Immigration Service (USCIS) in the United States. If the individual and family members are abroad, the approved petition is sent to the nearest United States consulate. They can then apply for immigrant visas and enter the United States as permanent residents. If the individual and the family members are in the United States, they can apply at the appropriate USCIS service center to obtain permanent resident status after the petition is approved.

## **B. Some Nonimmigrant (Temporary) Visa Options**

### **1. H-1B Nonimmigrant (Temporary) Worker Visas**

If an individual in a profession desires to work in the United States for a temporary period (up to six years), the H-1B visa category is an often obtained visa. The H-1B visa category allows employment for individuals in a specialty occupation (a position normally requiring a bachelor's degree or its equivalent). As long as the position is one that requires a bachelor's degree, and the foreign national meets the requirements of the position, employment is granted initially for up to a three-year period of stay. Extensions are granted for an additional two-year period. Spouses and children of the H-1B visa may enter the United States on an H-4 visa. If in the United States, the spouse and child can apply to change status to H-4 status. There exists a six-year limitation in H-1B status. Extensions beyond the six year limitation are allowed if a labor certification or employment-based immigrant petition is filed at least 365 days prior to the expiration of the current period of H-1B status.

### **2. L-1 Nonimmigrant International Manager or Executive**

An international executive or manager, or a person with specialized knowledge, can obtain a visa to work in their respective capacity with an affiliated business in the United States. Some of the more important qualifications for an L-1 visa include: (1) the manager or executive must have worked abroad for the overseas company for a continuous period of one year in the preceding three years; (2) the company for which the employee has worked for a year abroad is related to the United States company in a specific manner; (3) the executive or manager was employed abroad in an executive or manager position; and (4) the employee is coming to the United States on an L-1 visa for an initial period of up to three years. A non-profit, religious or charitable organization can petition for an international manager or executive as long as the organization and beneficiary met the requirements for the L-1 visa or status. An international executive or manager may remain in L-1 status for a maximum period of seven years, but only five years are allowed for L-1 specialized knowledge personnel. This category allows for a relatively easy transition to permanent resident status. Spouses of L-1 can now obtain authorization to work in the United States.

### **3. F-1 Student Visas**

An individual desiring to study in the United States may obtain a student visa allowing study at an accredited college or university. This visa also allows study at a seminary. The prospective student must establish the following: (1) has sufficient funds to study in the United States without working; (2) does not desire to immigrate to the United States; (3) will not abandon the residence abroad; and (4) has a valid passport. The prospective student must meet all admissions requirements of the college or university and maintain a full course of study. Many colleges and

universities also require the prospective foreign student to take the Test of English as a Foreign Language (TOEFL) as part of the application process, unless the student is from a country where English is the native language.

Once the prospective student is accepted for admission, the school issues an I-20, which is proof the school has admitted the student and the student has sufficient financial resources to study full-time without working illegally. There are a number of specific types of employment that F-1 students can engage in without violating immigration laws. The college or university can assist the student in determining employment opportunities that may be available to foreign students wishing to work in the United States while studying. The spouse and children of the F-1 student can enter the United States in F-2 status. However, in many developing countries it is very difficult for spouses and children to enter on an F-2 visa because of a belief by United States consular officers that the student will have no reason to return home.

In order for a prospective foreign student to obtain an I-20 from a public grade school or high school he/she must first agree to pay educational costs to the public school board or entity. This requirement to pay educational costs applies only to students who enter on an F-1 visa. Additionally, the public grade school or high school student can only enroll for a one-year period and then must return home. This restriction applies only to those students entering on F-1 visas and enrolling in public schools. Private schools are exempt from the restriction. Also, the restriction does not apply to children of parents entering in another visa category, such as H-1 or L-1 visas.

After the events of 9-11-01, the government established very strict reporting requirements for individuals entering on F-1 visas or obtaining F-1 status in the United States. It is absolutely essential for F-1 students to comply with all reporting requirements to maintain F-1 status.

## **C. Three Options for Obtaining Permanent Residency**

### **1. Marriage to a U.S. Citizen or Permanent Resident**

One of the more common methods for obtaining permanent residency is through marriage to a U.S. citizen or permanent resident. Since there are an unlimited number of visas for spouses of U.S. citizens, marriage to a U.S. citizen allows the foreign national spouse to obtain permanent resident status without an extended wait for visa. However, marriage to a permanent resident will require a wait of approximately five to seven years, depending on country of birth, before the U.S. consulate will issue a visa. Children of the foreign national can also obtain permanent resident status based on the marriage to a U.S. citizen or permanent resident.

Eligibility for permanent residency based on marriage to a U.S. citizen requires proving the validity of the marriage to the USCIS (i.e., the marriage was not entered into for the purpose of evading our immigration laws.). An immigration officer will conduct an interview of the married couple to determine the validity of the marriage. If the marriage between the petitioner and beneficiary is not in existence for two years at the date of the interview, the alien spouse will be granted conditional permanent resident status, valid for a 2-year period. A petition to remove the conditional status must be filed within ninety days prior to the two-year anniversary of the grant of conditional status. If the couple is divorced, the petitioner can seek a waiver of the requirement to file a joint petition based on certain exceptions.

### **2. Offer of employment**

Another frequently used option to obtain permanent resident status is through an offer of employment by an employer. There are numerous employment-based categories that an individual may use to seek permanent residency. Many employment-based petitions require an approved labor certification issued by the Department of Labor. This

process is quite lengthy and, therefore, requires the individual seeking the benefit to have another temporary status (such as an H-1 Status) while the labor certification process winds its way to completion.

There are some employment-based categories for which an offer of employment is not required. In some categories, the individual must establish that his or her employment will provide substantial benefit to the United States. Generally, these categories are reserved for individuals who are highly recognized in their field and can show significant contributions to their field of employment. Because a labor certification is not required in these categories, the individual can normally obtain permanent residency more quickly than through the labor certification process. As with other temporary and permanent visa options listed above, immediate family members of the principal applicant are also eligible for permanent resident status. The requirements that must be satisfied for each employment-based category are numerous and complex, and must be clearly established to obtain the visa or permanent residency in the U.S.

### **3. Asylum**

An individual who has suffered past persecution or has a credible fear of persecution if returned to his or her home country may file for asylum. A claim for asylum must be based on one of the five grounds listed in the statute: political opinion, religious association, nationality, race, or membership in a particular social group. If a fear of persecution or past persecution is established, the individual is eligible for a grant of asylum. Spouses and children who are in the United States and listed on the application will also be granted asylee status. Spouses and children of asylees living abroad can enter the U.S., but petitions for each beneficiary must be filed for within two years of the grant of asylum. One year after the grant of asylee status the individual applicant, spouse and children may apply for permanent resident status.

### **D. Conclusion**

The above are just a few of the most frequently used visa categories or statuses for individuals seeking to enter the United States or to change their status while in the United States. There exist numerous other categories for those seeking to enter the United States or to change or adjust their status while in the United States. A close examination of the facts surrounding an individual's case will determine the most appropriate visa or status to pursue.

Immigration law is a very specialized area, requiring knowledge of countless statutes and regulations. Violation of these laws or regulations can produce serious consequences, including denial of entry, 3-year, 10-year and permanent bars to reentry, or removal from the U.S. Therefore, it is important to contact an attorney experienced in immigration law to determine eligibility and to ensure the above immigration benefits are obtained.

If you are in need of a referral to an attorney specializing in immigration, one available resource is the American Immigration Lawyers Association's Immigration Lawyer Referral Service. You may also obtain information by calling 1-800-954-0254.

The Office of the General Assembly, pursuant to an action of the 216<sup>th</sup> General Assembly (2004), contains the Office of Immigration Issues. Julia Thorne serves as the Manager of Immigration Issues/Immigration Counsel. She communicates with middle governing bodies, Presbyterian Church (U.S.A.) entities, and ecumenical agencies on immigration issues and policies. She also provides regular updates and advice and counsel to presbyteries and pastors whose members have immigration questions or issues. More information regarding the Office of Immigration Issues may be found at [www.pcusa.org/immigration](http://www.pcusa.org/immigration) and Julia may be reached at [Julia.thorne@pcusa.org](mailto:Julia.thorne@pcusa.org) or (888) 728-7228, ext. 5347.

## **Section 8: Taxation**

The material in this Taxation Section deals with various federal taxation issues, such as these:

- Federal Taxation of Ministers (income and self-employment, i.e., Social Security)
- Group Federal 501(c)(3) Tax Exemption
- Unrelated Business Taxable Income
- Substantiating and Reporting Charitable Contributions

Some state-related tax issues are also discussed.

Throughout this Section and the entire Manual generally, you will see references to Richard Hammar's *Church & Clergy Tax Guide* (Hammar's *Tax Guide*). This is a useful resource we highly recommend. It is written for non-lawyers and lawyers alike. It is updated each year to include the latest changes in the federal law. If you want more detailed information regarding the subjects discussed in this section, we advise you to consult Hammar's *Tax Guide*. In addition, you may wish to share it with your attorney, accountant, or tax provider. For copies call (800)222-1840 or visit the "Bookstore" at ChurchLawToday (<http://www.churchlawtoday.com/>). Copies are \$39.95 each.

### **A. Federal Taxation of Ministers**

**While this section provides helpful information on the taxation of ministers, the Board of Pensions offers a service to answer the individual federal tax questions of active ministers and lay employees of the Plan. Call Employee Assistance Program (EAP), offered through Cigna Behavioral Health, at (866) 640-2772 to be connected to trained tax professionals for assistance. Cigna Behavioral Health works with Consolidated Legal Services, which provides telephone access to advice and information on call areas of legal and financial issues.** The Board of Pensions also publishes and distributes a very helpful resource titled *Tax Guide for Ministers & Churches*. If you do not have a copy, contact the Board of Pensions at (800) 773-7752 (800-PRESPLAN) or at the Board of Pensions Web site (<http://www.pensions.org/portal/server.pt>).

This section, Federal Taxation of Ministers, covers a wide variety of topics that can be grouped into two main categories: **self-employment taxation** (i.e., Social Security) and **income taxation**. It is vital to remember that these taxes and the rules and regulations under which they are administered are **separate**. Definitions used for income tax purposes are not the same as the definitions used for self-employment tax purposes.

However, the rules discussed in this section pertain to ministers as defined by the Internal Revenue Code ("Code"), and this definition **is** the same for both self-employment and income taxation purposes. A "minister" is one who:

1. administers sacraments;
2. conducts religious worship;
3. has management responsibility in a local church or religious denomination;
4. is ordained, commissioned, or licensed; and
5. is considered to be a religious leader by his or her church or denomination.

The Tax Court, in 1989, ruled that only the fourth factor is required and that a balancing test should be applied with respect to the other factors. (See Hammar's *Tax Guide*.) In addition, if a church or denomination ordains some ministers and licenses or commissions others, anyone licensed or commissioned must be able to perform substantially all of the religious functions of an ordained minister to be treated as discussed in the remainder of this section. This statement begs a discussion of whether the Presbyterian Church (U.S.A.)'s Commissioned Lay Pastors ("CLPs") are "ministers" as defined by the Code and, therefore, qualify for the special tax treatment outlined by the Code.

In December 1998, the United Methodist Church secured a Private Letter Ruling ("Methodist Private Letter Ruling") from the Internal Revenue Service ("IRS") pertaining to its ordained deacons. A copy of the Methodist Private Letter Ruling is can be found at Appendix J. In it, the IRS concludes the three deacons discussed are "ministers" as defined by the Code and applicable case law.

You will see from reading the Methodist Private Ruling Letter that a private letter ruling only applies to the taxpayers who requested it. However, it is common for taxpayers and their tax advisers to rely on private letter rulings because they are a good indicator of how the IRS would respond in an audit or tax proceeding with regard to a particular question presented. It is for this reason we provide a copy of the Methodist Private Letter Ruling for your review.

What does this Private Letter Ruling mean for CLPs? As outlined in PC(USA) Polity Reflections Note #24, written by the Office of the General Assembly's Office of Constitutional Services, it appears that CLPs who perform substantially all of the duties allowed pursuant to the *Book of Order* are similarly situated to the three Methodist deacons discussed in the Methodist Private Letter Ruling because they are (1) commissioned and (2) perform similar functions as that of a Methodist minister (See . <http://www.pcusa.org/constitutionalservices/musings/note24.pdf>). **Therefore, it appears that CLPs performing services such as those outlined in the Methodist Private Letter Ruling and Note #24 would be defined as "ministers" pursuant to the Code and should be treated the same as Ministers of the Word and Sacrament are for federal tax purposes.** As used in the remainder of this Tax section, the term "minister" refers to those who meet the Code's definition of a minister.

Each tax year, the Office of Legal Services is questioned concerning the tax issues of individual ministers. The first step is to clarify which tax the minister is questioning, self-employment or income, and to be sure the minister does not assume that self-employment tax regulations apply to her or his federal income tax status. We will discuss these two taxes and explore the impact of the 1995 Weber decision as it pertains to Presbyterian ministers. Other income taxation topics are also addressed.

## **1. Self-Employment Tax**

For self-employment (i.e., Social Security) tax purposes, all ministers are defined by statute as self-employed. (Internal Revenue Code §§ 1402(c), 3121(b)(8)). The self-employment tax is a funding mechanism for the Social Security system, analogous in part to employer and employee Social Security (FICA) tax payments. The self-employment rate and the combined employer-employee (FICA) rate are the same — 15.3 percent of income. (In 2009, self-employed persons will pay 15.3 percent on income up to \$106,800 and 2.9 percent of income over \$106,800 for Medicare taxes. The base may change each year thereafter.) The minister can deduct one-half of her or his self-employment tax payments from taxable income for federal income tax purposes. This deduction is available whether or not the minister itemizes deductions on Schedule A.

Ministers with net earnings from self-employment of \$400 or more are subject to self-employment tax. The definition of "net earnings from self-employment" is the gross income from a person's trade or business less allowable deductions attributable to the trade of business. In relation to ministers, compensation received for services performed

in the exercise of their ministry is considered to be self-employment income for purposes of the self-employment tax (i.e., Social Security tax). The Internal Revenue Service guidelines state that the following services by a minister subject her earnings to self-employment tax:

1. Conduct of religious worship or of sacerdotal functions (Holy Communion, baptism, etc.). This conclusion is reached even where worship is conducted or sacraments performed for a nonreligious organization, such as an educational institution.
2. Services performed for a qualifying integral agency of the religious denomination, such as a governing body or agency.
3. When a minister is assigned to perform services for an organization that is neither a religious organization nor operated as a religious agency, these services are nonetheless considered to be qualifying services for self-employment tax purposes. Though no sacerdotal functions are performed and no religious worship is conducted, this result is reached because the minister is assigned to perform these services by her or his presbytery.

**Note:** Qualifying services do not include services performed by ministers who are employees of any governmental agency, such as armed forces or prison chaplains, though they are performing sacerdotal services. Their services are considered performed as government employees rather than as self-employed persons within a religious denomination.

Estimated tax is the method used to pay income and self-employment taxes. You can determine your estimated tax by using the worksheet Form 1040-ES. The minister will be allowed to deduct one-half of her self-employment payments from taxable income for federal income tax purposes. **Internal Revenue Service Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers (<http://www.irs.gov/pub/irs-pdf/p517.pdf>), is useful in addressing general and specific filing questions. IRS forms and publications are also available by calling (800) 829-3676.**

Ministers serving as teachers or administrators often have a difficult time determining whether or not they are performing qualifying services. If they are assigned to their duties in furtherance of their ministry by their presbytery, their services are considered qualifying whether they perform sacerdotal functions or not. If they are not assigned to those duties by their presbytery, then whether they perform sacerdotal functions becomes critical. In other words, a professor of mathematics at a university that is considered an integral part of the denomination would be performing qualifying services and would be receiving self-employment income. However, a professor of mathematics at a secular university who is not assigned there by her presbytery and does not perform qualifying services is not receiving self-employment income. In the latter case, her employer, the university, would withhold Social Security taxes, as it would for any employee. However, a minister who works for a non-denominational university as a chaplain and who devotes her entire time to the duties of a chaplain, including conducting worship, performing sacerdotal services, counseling students, or perhaps teaching a course in religion, would be considered to be performing qualifying services and receiving self-employment income. She would pay the self-employment tax and the university would not withhold Social Security taxes from her salary.

Examples cited above are derived from past IRS Revenue Rulings. These rulings are issued on areas of broad interest from a representative fact situation. The scope of the ruling is limited, however, to similar fact patterns. **Because each fact situation is different, a minister with a particular problem may be well advised to seek an opinion of**

**competent legal counsel based on the facts of her or his case. The IRS has ceased issuing Private Letter Rulings on these issues.**

Net earnings of ministers from self-employment to which the self-employment tax rate is applied include the fair rental value of any manse furnished to a minister or the rental allowance (and utility allowance) paid to the minister, though these are excluded from gross income for Federal Income Tax purposes by Internal Revenue Code § 107. Ministers are also required to include for self-employment tax purposes the value of meals and lodging furnished for the convenience of their employer, again, though Internal Revenue Code § 119 permits exclusion of the value to these meals and lodging for calculating Federal Income Tax. All deductions attributable to a minister's work must be claimed in the minister's calculation of his or her net earnings subject to self-employment tax. These deductions would include such items as home office expenses, subscriptions to professional journals, and travel expenses.

Prior to 1968, Social Security coverage for ministers, which is funded by the self-employment tax, was elective. If coverage were not elected, Social Security coverage was not provided. **However, for all years since 1967, clergy are automatically covered under Social Security unless they receive an exemption from the IRS. IRS Form 4361 must be filed by those seeking the exemption.** Form 4361 includes a statement that the applicant is either conscientiously opposed, or opposed because of religious principles, to acceptance of any public insurance, including Social Security benefits, based on her services as a minister. In order to seek the exemption, persons in ministry prior to 1968 and newly ordained ministers since 1968 have until the due date for their second tax return that included more than \$400 of net earnings from self-employment, some of which were from the ministry, to file Form 4361.

In view of the 198th General Assembly's (1986) approval of a *Pastoral Letter to Candidates Regarding Social Security*, which strongly supports participation in the Social Security program, it will be difficult for Presbyterian Church (U.S.A.) ministers to meet these requirements in order to secure the exemption. They must rely solely on personal grounds of conscience when applying for exemption. **The Legal Office does not recommend seeking exemption from Social Security.** Loss of access to Social Security disability payments (and other death benefits), the increased cost of Medicare participation if one must buy one's way back into Medicare, and the fact that Board of Pensions benefits plans within the denomination assume receipt of Social Security benefits as part of one's retirement package suggest that the long-term financial risks of nonparticipation in Social Security are significant. Opting out of Social Security can also create a hardship on a surviving spouse when the minister dies.

Once obtained, this exemption from Social Security coverage is irrevocable. (A limited exception to irrevocability was previously available to those ministers choosing to file the required form and to pay self-employment tax for 1986 and/or 1987, but that period of availability ended for nearly all on April 15, 1988. The Ticket to Work and Work Incentives Improvement Act of 1999 provided another revocation opportunity. Under the law, a minister was able to revoke her prior exemption by filing an application no later than the due date of the federal income tax return for her or his second taxable year beginning December 31, 1999 (i.e., April 15, 2002). It is unknown whether Congress will again provide such an opportunity to revoke one's exemption from Social Security coverage.

Those seeking to be excluded from Social Security must file Form 4361 as soon as possible (within two years) after beginning work as a minister and should never discard the original filing or any Internal Revenue Service responses. There can be serious problems if these documents are unavailable in the future. A detailed explanation of the exemption process is set forth in Internal Revenue Service Publication 517 as well as in Hammar's Tax Guide. In addition, the Board of Pensions has a release form, Form ENR-900, which must be completed. You should contact your Board of Pensions representative to secure a copy of this form. Again, the Legal Office does not recommend seeking exemption from Social Security.



## 2. Federal Income Tax

### a. Status of Ministers (Employee vs. Independent Contractor)

While ministers are **always** deemed to be self-employed for Social Security tax purposes, they may or may not be employees for income tax purposes. An evaluation of the minister's position must be conducted to determine whether she is an employee. We will present three separate views on this subject:

1. Hammar's *Tax Guide*,
2. the United Methodist Church's case decided by the 4th Circuit Court of Appeals in 1995, *Weber v. Commissioner*, 60 F.3d 1104, and
3. a Constitutional Musing issued by the Office of the General Assembly's Office of Constitutional Services (<http://www.pcusa.org/constitutionalservices/musings/note24.pdf>).

In his *Tax Guide*, Richard Hammar advises "that most clergy should report their federal income taxes as employees, since:

1. the value of various fringe benefits will be non-taxable,
2. audit risk is much lower,
3. reporting as an employee avoids the additional taxes and penalties that are often assessed against clergy who are reclassified as employees by the IRS,
4. the IRS considers most clergy to be employees, and
5. most clergy are employees under the tests applied by the IRS and the courts." (Hammar's *Tax Guide*)

We advise you consult Hammar's *Tax Guide* for his extensive discussion of the tests applied by the IRS and the courts.

In 1995, the 4th Circuit Court of Appeals issued *Weber v. Commissioner*, 60 F.3d 1104. That case addressed the issue of whether United Methodist clergy at the local church could file as self-employed for income tax purposes and use Schedule C. While this opinion did not involve a Presbyterian minister, it provides helpful information regarding the issues the court found to be important in making a decision regarding ministers and employee versus independent contractor status for income tax purposes. The Weber court found the seven following points significant in determining Weber an employee:

1. the degree of control exercised over the details of the work by the "employer,"
2. which party invested in the facilities used in the work,
3. the opportunity of the "employee" for profit or loss,
4. whether the "employee" could be discharged by the "employer,"
5. whether the work was part of the "employer's" regular business,
6. the permanency of the relationship between the parties, and

7. the relationship the parties believed they were creating.

Presbyterian ministers in local churches may wish to compare their employment situation to Weber's employment situation.

Finally, the Office of Constitutional Services has issued Note 69 (September 9, 1992) in its *Polity Weekly* series which discusses the issue of who is the employer of a Presbyterian minister in a local church setting. In it, they determine the session is the employer of the minister. A copy of this note is included at the end of this Taxation section for your reference.

**It is important to remember the rules pertaining to self-employment (i.e., Social Security) taxation of ministers have nothing to do with the rules on income taxation of ministers. Different rules, regulations, and definitions of status are used in the two systems.** Confusion will result if one mixes self-employment tax definitions with income tax definitions. For purposes of federal income taxation, the determination of one's status as either employee or self-employed person is left to the individual, although ministers serving at a local church are advised to file as employees in light of the above-discussed *Polity Weekly* note, Hammar's advice, and the *Weber* decision. Remember that for self-employment (i.e., Social Security) tax purposes, ministers are defined as self-employed by statute. No comparable statute exists for the determination of income tax filing status.

#### **b. Housing or Manse Allowance**

While the basic rules surrounding the manse allowance have not changed since the first edition of the Legal Manual, there was much activity in the federal courts and Congress surrounding manse allowances earlier in the decade. An overview of the activity will first be given after which the law as it currently stands will be outlined.

Prior to 2002, section 107 of the Internal Revenue Code ("Code") stated:

In the case of a minister of the gospel, gross income does not include — (1) the rental value of a home furnished to him as part of his compensation or (2) the rental allowance paid to him as a part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

In 1971, the IRS issued Revenue Ruling 71-280 which held that the manse allowance of ministers who owned their homes could not exceed the fair rental value of the furnished home plus utilities. The result of this Revenue Ruling was to limit the manse allowance to the lesser of the following three amounts: (1) the amount designated in advance by the minister's employer, (2) the actual cost of providing a home, or (3) the fair rental value of the furnished home plus utilities. Many tax professionals and ministers understood the Revenue Ruling to be an interpretation of what Congress meant in enacting section 107 of the Code, and a large group of ministers, therefore, filed their taxes in accordance with this understanding and further limited the amount excluded from income by the fair rental value of their furnished home plus utilities.

However, a minister named Rick Warren adopted a more aggressive position regarding the amount allowable as housing allowance by asserting that the revenue ruling's further limitation on the allowable manse allowance did not apply. He, therefore, excluded from his income the lesser of the designated amount or the amount actually spent providing a home. The Internal Revenue Service audited the Rev. Warren's returns and challenged the amount he claimed as manse allowance. The Tax Court sided with Warren stating that the annual "fair rental value" test the IRS adopted in 1971 was not a valid limitation on manse allowances. *Warren v. Commissioner*, 114 T. C. 23 (2000). The

Internal Revenue Service appealed this decision to the Ninth Circuit Federal Court of Appeals in California. The Ninth Circuit then did something no other court has done in a manse allowance case. In a decision of a three-judge panel, it issued an order which, in part, asked a third-party, a law professor, to provide a brief outlining whether the manse allowance provided in the Code is constitutional, signaling that the court had determined the manse allowance might be unconstitutional.

Congress responded quickly to this threat to the manse allowance by enacting the Clergy Housing Allowance Clarification Act of 2002. The effect of this act was to codify the further limitation of the manse allowance to include the fair market rental value of the furnished home including utilities. Therefore, section 107 of the Code currently states:

Two requirements must be met by ministers in order to qualify for the income exclusion as defined above. First, one must be a "minister." (See discussion at the beginning of this section.) Second, a properly established housing allowance must be set up for expenses used to rent or to provide a home for the minister.

The allowance giving the use of the manse or setting a specific amount **must be designated in advance by the employing body; retroactive designation of a housing allowance is prohibited and in such cases the exclusion will be disallowed.** Expenditures for such things as rent, down payment, mortgage installment payments, closing costs, mortgage interest, real estate taxes, special assessments for such purposes as streets and sewers, garbage removal, utilities, repairs and maintenance, fire, theft and accident liability insurance, and home furnishings may be qualifying "costs of providing a home." If any of these expenses are larger than the amount designated, the excess amount may not be excluded. Any part of the housing allowance spent in connection with business or income property owned by the minister, in addition to his or her home, does not qualify for the exclusion and must be included in gross income. Any part of the allowance spent on items not directly related to renting or providing a home, such as the purchase of food, clothing, or maid service, is not excludable from gross income. **Unless the amount designated as housing allowance is actually used for the intended purpose, it is not excludable from gross income.**

The allowance amount permitted to be excluded from gross income also **may not exceed the fair rental value of the property.** The fair rental value is defined in Revenue Ruling 71-280 as the amount of rent that an unrelated party would pay for the home, including furnishings and related structures, such as garages, plus utility costs. Internal Revenue Service Publication 517 states:

If you own your home and you receive as part of your pay a housing allowance, you may exclude from gross income the **smallest** of the following:

- The amount actually used to provide a home,
- The amount officially designated as a rental allowance, or
- The fair rental value of the home, including furnishings, utilities, garage, etc.

For example, if the housing allowance is \$500 per month and the fair rental value of the furnished home plus utilities is \$400 per month, only \$400 a month may be excluded from gross income pursuant to § 107. The excess \$100 a month must be included in gross income, even though it had been designated as housing allowance.

The church can document the required advance designation of housing allowance in a contract, minutes, budget resolution, or any other appropriate instrument evidencing an **official action** designating a specified amount for the

housing allowance in advance of payment of the allowance. Suggested forms for this procedure are included in Appendix K. Hammar's Tax Guide has additional samples. If a church has more than one minister, the qualification of each for the exclusion is determined on an individual basis. A specific designation is required for each minister rather than a general designation for all the ministers. This requirement has been affirmed in the Tax Court case of *Boyer v. Commissioner*, 69 T.C. 521 (1977).

Other specific points of interest relating to housing allowances are:

1. It is immaterial whether the housing allowance is paid separately or as part of the overall compensation for the minister, providing the allowance is properly designated in advance. In other words, one check may be used to pay the minister's salary and her or his housing allowance and the allowance will be excludable from her or his gross income if the allowance was properly designated in advance.
2. Designation of a minister's entire salary as a housing allowance will not necessarily permit exclusion of her or his compensation from income tax. Only the amount the minister **actually spent** for providing a home (up to its fair rental value as described above) may be excluded from gross income for federal income tax purposes.
3. **Persons not specifically ordained, licensed, or commissioned by the denomination do not qualify for the housing allowance exclusion.** Religious workers such as a "minister of music" or "minister of education" who are not ordained, perform no sacerdotal functions, and who are not commissioned to conduct worship in a congregation do not qualify for the exclusion.
4. The overall amount that is designated for the housing allowance exclusion must be reasonable. Remember that "fair rental value" includes furnishings and utilities. Where a furnished manse with paid utilities is provided, there still may be some "costs of providing a home" (such as furniture provided by the minister) that are out-of-pocket expenses. Remember, however, items that could be designated as personal (e.g., a video game machine and toiletries), rather than related to the home, are unlikely to withstand audit scrutiny.

**Note:** Interest and taxes paid by the minister on her or his owned primary residence qualify as itemized deductions from income in addition to the housing allowance exclusion. A minister may use her designated allowance to purchase, rather than rent, a home and then deduct interest and taxes paid on her personal residence as itemized deductions on her tax return, as well as having the housing allowance excluded under Internal Revenue Code § 107. Internal Revenue Service Ruling 83-3 attempted to eliminate this "double benefit," but it was restored in the 1986 Tax Reform Act.

Retired ministers may qualify for the housing allowance exclusion if they satisfy the same requirements as active ministers. **If the employing church or other qualifying organization provides a retired minister with a rent-free home or a housing allowance in recognition of her past services, Revenue Ruling 63-156 makes the exclusion available to him or her.** The exclusion is available only to retired ministers themselves and is not transferable to other persons, such as surviving spouses. **In addition, Internal Revenue Service Publication 517 states, "Pension payments or retirement allowances you receive for your past service" are not included in gross income when calculating your net-earnings from self-employment.** Retired Ministers who receive benefits from the Board of Pensions will be eligible, in most cases, to have some or all of their benefits designated in advance as a housing allowance. (See the Board of Pensions *2003 Tax Guide for Ministers & Churches* distributed in early 2003, p. 10.)

Further, the Small Business Job Protection Act of 1996 has confirmed that the portion of a minister's retirement distribution from a church plan, properly designed as a housing allowance, is not subject to self-employment taxes. In addition, this law allows a minister who works in certain "non-church" jobs fulfilling his or her ministry, such as chaplain, to now participate in a church retirement plan.

## **B. The Presbyterian Church (U.S.A.) Group Federal 501(c)(3) Tax Exemption**

The initial Group Ruling was granted to the Presbyterian Church (U.S.A.) on January 31, 1964 by the IRS, and the IRS has reaffirmed the Group Ruling periodically with respect to the Presbyterian Church (U.S.A.) and its related entities. The related entities entitled to the use of the Group Ruling include synods, presbyteries, local congregations, and their unincorporated affiliates. The Legal Office, in conjunction with the Office of the General Assembly, submits to the IRS an annual filing regarding covered organizations within the Group Ruling. **If your church or middle governing body needs a personalized letter certifying its status as a covered entity within the Group Ruling, it can be obtained by calling Legal Assistant/Office of Legal Services. Her number is (888) 728-7228 ext. 5377. Normally, such letters are requested as evidence of**

1. federal tax-exempt status by state revenue departments (in assessing applications for state income and sales tax exemptions)
2. U.S. Postal Service (in relating to application for third-class bulk mailing permits)
3. grant-making foundations or attorneys for estates (in order to be sure that the grant or bequest is going to a federally tax-exempt entity)
4. real estate taxing jurisdictions (to help determine the taxable status of church-owned real property)

**The Group Ruling issued by the IRS has two important benefits for the Presbyterian Church (U.S.A.). First, all churches, governing bodies, and included related entities are exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and from federal unemployment tax (FUTA). Second, contributions to such organizations are deductible for federal income, gift, and estate tax.** Please note, however, that states may impose an unemployment tax. The Group Ruling does not control excise taxes or state or local income, sales, or property taxes. Additionally, all entities in the Group Ruling must pay taxes under the Federal Insurance Contributions Act (FICA) for each lay employee who is paid \$100 or more unless they have obtained an exemption. **Also, the Group Ruling exempts churches and middle governing bodies from the Form 990 filing requirement imposed upon other nonprofits (unless unrelated business income on which tax is due has been earned during the year, in which case Form 990T must be filed).** Please remember, however, that the Group Ruling does not in and of itself establish exemption from state and local taxes. The relevant state statutes should be reviewed to determine the information and filing requirements at the state (income and sales taxes) and local (sales and real property taxes) levels. See later in this chapter the section titled **“State-Related Tax Issues”**. As stated above, the Legal Office, in conjunction with the Office of the General Assembly, annually submits a report to the IRS listing covered groups. Thus, **a covered entity is not required to file any type of report with the IRS concerning its tax-exempt status.**

The following is a list of those understood to be automatically included in the Presbyterian Church (U.S.A.) Group Ruling. These groups need not take any additional action to be included within the denomination's Group Ruling:

- The particular churches, congregations, sessions,

- The presbyteries,
- The synods,
- The General Assembly,
- The first or primary corporation of any of the above (e.g., First Presbyterian Church, Inc.), and
- The unincorporated programs or functions of any of the above.

Other incorporated bodies are not automatically included. Examples are:

The second, third, and fourth corporations created by governing bodies. Typically, these are camp/conference center corporations, campus ministry corporations, etc.

These organizations desiring inclusion in the Group Ruling that are separately incorporated but controlled related entities of a synod, presbytery, or local church must apply with the Office of Legal Services and follow certain guidelines as developed by the Office of the General Assembly and the Office of Legal Services. The major criteria for determining if such a corporation is to be included are as follows:

1. The group applying must have an affiliation with a governing body of the Presbyterian Church (U.S.A.).
2. The group must independently meet the qualifications for exemption under Section 501(c)(3) of the Internal Revenue Code.
3. The affiliated governing body must exert control over the group applying. Examples include control by the governing body in the areas of finances, policies, the group's programs, and electing a majority of the board.

**A copy of these guidelines can be secured by calling the Legal Services Department at (888) 728-7228 ext. 5377.**

**The general exemption number listed on the Group Ruling granted to the Presbyterian Church (U.S.A.) is 1617.** Every entity that is incorporated has a separate employer identification number (a nine-digit number). Synods, presbyteries, or local congregations that are incorporated or have employees should have separate employer identification numbers. For purposes of the federal Group Ruling, synods, presbyteries, and local churches should use the Presbyterian Church (U.S.A.)'s general exemption number (1617) in conjunction with their own employer identification number. An employer identification number can be obtained by completing IRS Form SS-4/Application for Employer Identification Number. This form can be obtained from the IRS. The telephone number for IRS forms and publications is (800) 829-3676. IRS forms are available at IRS's Forms and Publications page (<http://www.irs.gov/formspubs/index.html>). See the end of this Section for other easy resources to obtain IRS forms.

### **Issuance of Publication 4573, Group Exemptions**

In December 2006, the IRS issued Publication 4573, *Group Exemptions* (<http://www.irs.gov/pub/irs-pdf/p4573.pdf>), which is available on the IRS website. (The specific link follows at the end of this outline.) Publication 4573 describes the basic group ruling process in a question and answer format. Page 4 is particularly important for church group ruling subordinates, since it addresses two important issues for their donors: (1) How do I verify that an organization is included as a subordinate in a group exemption ruling? And (2) How do donors verify that contributions are deductible pursuant to Code section 170 with respect to a subordinate organization in a section group exemption ruling?

The responses to these questions verify that donors may rely on either the official subordinate listing approved by the central organization that holds the group ruling, here Presbyterian Church (U.S.A.), or by contacting the central organization directly for verification. Publication 4573 makes clear that group ruling subordinates do not need to be listed in Publication 78 or the Exempt Organizations Business Master File in order to qualify for deductible contributions and that group ruling subordinates do not receive their own determination letters.

In addition, Publication 4573 states that “churches are not required to file annual updates notifying the IRS of changes in the composition of the group,” which reflects a deviation from the general exemption requirement for annual updates in Rev. Proc. 80-27, 1980-1 C.B. 677.

## **C. Intermediate Sanctions**

The Taxpayer Bill of Rights 2, enacted by Congress in 1996, contained a provision that allows the IRS to assess "intermediate sanctions" (an excise tax) against "disqualified persons" who receive compensation of an excessive amount from a charity. This includes churches and other organizations exempted from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code. In 1998, the IRS issued regulations to clarify the application of these intermediate sanctions. These regulations confirm that the sanctions apply to churches and also specify that the protections of the Church Audit Procedures Act apply. On January 23, 2002, the IRS released the final regulations on Intermediate Sanctions. (67 Fed. Reg. 3076)

### **1. Intermediate Sanctions Summary**

1. The IRS can assess excise taxes against any officer or director of a tax-exempt organization who receives an excess benefit and on any participating organization manager.
2. The assessment is in lieu of revocation of the organization's tax-exempt status, but both can be imposed.
3. Generally, an excess benefit transaction is one that provides unreasonable compensation to an officer or director of an exempt organization.
4. Applies to transactions on or after September 14, 1995.
5. **Unreasonable compensation is compensation above what would ordinarily be paid for like services by like organizations under like circumstances.** Compensation will include cash and noncash compensation, forms of deferred compensation, and benefits whether or not included in income for tax purposes. Revenue-sharing arrangements may be excess benefit transactions if the organization does not receive proportional benefit for the additional compensation to the individual.
6. There is a rebuttable presumption of reasonableness if:
  - A. Compensation was approved by a board or committee comprised entirely of persons not having a conflict of interest;
  - B. Board or committee relied on objective comparability information such as:
    - i. Compensation paid by similar organizations both taxable and tax-exempt for comparable positions
    - ii. Independent compensation surveys by nationally recognized independent firms

iii. Actual written offers from similar institutions trying to recruit the officer or director

C. Board or committee adequately documented the basis for the decision

7. A conflict of interest exists if the person:

A. Is a disqualified person

B. Is a relative of a disqualified person

C. Is in an employment relationship subject to direction or control of any disqualified person participating in the transaction

D. Is receiving compensation subject to approval of disqualified person

E. Has a material financial interest affected by the compensation transaction

F. Approves a transaction providing economic benefit to any disqualified person who in turn had approved or will approve such a transaction for this board or committee member

8. Penalties are severe but it is believed they will be assessed only in the extreme case (the case that makes the front page).

A. Twenty-five percent of the excess benefit, assessed against the disqualified person

B. Additional penalty of 200 percent of excess benefit if they fail to correct the excess benefit within the taxable period

C. Additional 10 percent penalty against organization manager who knowingly participates (actively or inactively through silence for example) unless not willful and due to reasonable cause, \$10,000 maximum

9. A disqualified person is any person and their family who was in a position to exercise substantial influence over the affairs of the organization at any time during the five-year period ending on the date of the transaction. Persons serving on governing bodies with the right to vote, president, CEO, COO, and treasurer or CFO and highly compensated individuals (earn over \$110,000 in 2009) are presumed to exercise substantial influence over the organization. Whether a person is deemed to be disqualified depends on the circumstances. The following are examples of circumstances that would tend to show substantial influence:

A. Person founded the organization

B. Person is a substantial contributor

C. Person receives compensation based on revenues

**What should an exempt organization do to ensure compliance with the intermediate sanctions regulations?**

1. Ensure those approving compensation do not have a conflict of interest as defined by the regulations.

2. Ensure that the Compensation Committee and others in a position to make compensation decisions are made aware of these rules and the related intermediate sanctions.



3. Make any necessary revisions to the organization's Conflict of Interest Policy and review with employees, officers, and directors.
4. Ensure the compensation is reasonable by securing community information and compensation survey information before setting compensation for disqualified persons (president, CEO, COO, CFO, treasurer, or other highly compensated individuals).
5. Ensure contracts benefiting disqualified persons are reasonable by securing competitive bids.
6. Adequately document the basis for the decision.

For more information on this subject, see Hammar's *Tax Guide*. One helpful resource is a concise summary of these issues, "Taxes On Excess Benefit Transactions (Intermediate Sanctions)" (<http://counsel.cua.edu/FEDLAW/Intermed.htm>)

## **D. Disclosure Regulations**

The IRS issued final regulations relating to the public disclosure requirements of section 6104(d) of the Code. These regulations were effective June 8, 1999. Section 6104(d) sets forth the obligations of organizations exempt under 501(c) of the Code. The Presbyterian Church (U.S.A.) and its related entities are subject to the section 6104(d) regulations. The regulations include various ramifications for religious organizations. This summary will focus only on the issues that affect entities that fall under the Presbyterian Church (U.S.A.)'s Group Ruling (see above discussion).

The initial Group Ruling was granted to the Presbyterian Church (U.S.A.) ("PCUSA" on January 31, 1964 and has been reaffirmed by the IRS periodically since that time. The related entities entitled to the use of the Group Ruling include the particular churches, presbyteries, synods, the General Assembly, and their unincorporated affiliates. Additionally, there are subordinate units of the PCUSA that are entitled to the Group Ruling. All of the entities entitled to the Group Ruling are listed in the Statistical Volume of the PCUSA General Assembly Minutes, Volume II ("Statistical Volume"). The Office of Legal Services, in conjunction with the Office of the General Assembly, submits an annual filing to the IRS of covered organizations within the Group Ruling. By virtue of the Group Ruling, PC(USA) and its related entities are tax exempt under 501(c)(3) of the Code and are not required to file a Form 990.

**Under the public disclosure requirements of section 6104(d), organizations exempt under section 501(c)(3) are required to permit inspection and provide copies of their exempt status application material (Form 1023 or Form 1024) and Form 990s.** Organizations, however, whose applications were filed before July 15, 1987 and did not possess a copy of the application on that date are exempt from providing a copy of the application. **The PC(USA) does have a copy of its application. You may secure a copy of it by calling April Davenport, Associate General Counsel, at (888) 728-7228 ext. 5350.** As stated above, PC(USA) and its related entities are not required to file a form 990. Therefore, this portion of the regulation does not apply to the PC(USA) or its related entities.

With the above in mind, **PC(USA) and its related entities covered under the PC(USA) Group Ruling are required to provide for inspection or copying only the page of the current Statistical Volume on which it appears as well as a copy of its exempt status application.** If an organization does not have a copy of these materials, it has two weeks in which to obtain a copy of the appropriate page and application in order to comply with the provisions of section 6104(d). The most recent Statistical Volume should be available at your presbytery or synod office. It is also available by calling Kris Valerius, Manager for OGA Records in the Office of the General Assembly

at (888) 728-7228 ext. 5427. The following is a sample disclosure statement for your reference. The following should be revised as needed.

### **1. Sample Section 6104(d) Disclosure Statement**

First Presbyterian Church is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code by virtue of its inclusion in the group tax exemption (GEN #1617) of the Presbyterian Church (U.S.A.) ("PC(USA)"). Because of its inclusion in the PC(USA) Group Ruling, First Presbyterian Church did not file an application for exemption, Form 1023. A copy of the PC(USA) Group Ruling letter and its application for exempt status can be obtained by calling the Legal Assistant at (888) 728-7228 ext. 5377.

As provided in section 301.6104(d)-3(f) of the Regulations, First Presbyterian Church will provide for public inspection and copying the pages of the current edition of the Statistical Volume of the PC(USA) General Assembly Minutes, Volume II ("Statistical Volume") on which it appears.

Under the provisions of section 6033(a)(2)(A)(I) of the Code, First Presbyterian Church is not required to file an annual information return, Form 990. Accordingly, there is no Form 990 subject to public inspection under section 6104(d).

Compliance with section 6104(d) is required independently by each organization that is a separate legal entity under civil law. Thus, for example, if a church has a day care center that is separately incorporated and not listed separately in the Statistical Volume, then the day care center is under a different set of compliance rules if it is not under the PC(USA)'s Group Ruling. Private legal counsel should be consulted in those situations. Additionally, the above disclosure would not apply in these situations.

If an organization does not have a copy of the Statistical Volume, it can be obtained by calling Kris Valerius of the Office of the General Assembly at (888) 728-7228 ext. 5427, or a copy of the pertinent page of the Statistical Volume can be obtained by contacting the Office of Legal Services at (888) 728-7228 ext. 5377.

### **E. Restrictions on Political Activity and Lobbying**

Church organizations, as a condition of the Group Ruling Exemption under Internal Revenue Code section 501 (c)(3), must be engaged in activities that further exclusively charitable purposes. Churches may not participate in political activities, and a substantial part of their activities may not attempt to influence legislation.

IRS Publication 1828, Tax Guide for Churches and Religious Organizations (<http://www.irs.gov/pub/irs-pdf/p1828.pdf>), which you can secure by calling the Internal Revenue Service at (800) 829-3676 or by downloading it from the Web site, states:

All IRC section 501 (c)(3) organizations, including churches and religious organizations, are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise tax.

It is important to distinguish between political activity and witnessing/lobbying. Political activity typically involves a candidate for office or political party. Witnessing/lobbying involves a public issue or legislation. Political activity is strictly prohibited. Lobbying is merely limited. What constitutes a "political activity" versus "lobbying"? Political activity includes endorsements and statements of opposition of particular candidates, parties, or political action committees; provisions of financial and other support; provisions of mailing lists; sponsoring of political action committees; and distributions of partisan campaign materials. The political activity prohibition does not prevent candidate forums being held in or sponsored by a church. As long as such activities are evenhanded, nonpartisan, and demonstrate no favoritism for a particular candidate (or opposition to a particular candidate), they are allowed.

Witnessing/lobbying, on the other hand, includes contacting or urging the public to contact members of the legislature or the executive for the purpose of proposing, supporting, or opposing legislation or advocating the adoption or rejection of legislation. Witnessing/lobbying may be engaged in as long as it does not constitute a substantial part of the organization's total activities. While neither the Code nor the Regulations define what is substantial, a few cases suggest that the line between what is insubstantial and substantial lies somewhere between 5 percent and 15 percent of an organization's total activities as measured by time, effort, expenditure, and other relevant factors. The Legal Office advises your governing body or church to keep such expenditures at the lower end of the spectrum.

For more information concerning these issues, the following websites provide very helpful additional information:

1. The Pew Forum's article titled *Politics and the Pulpit 2008* (<http://pewforum.org/Church-State-Law/Politics-and-the-Pulpit-2008.aspx>)
2. The Internal Revenue Service's news release, *IRS Continues Program on Political Campaign Activity by Charities* (<http://www.irs.ustreas.gov/newsroom/article/0,,id=123922,00.html>).
3. The Internal Revenue Service's publication 1828, *Tax Guide for Churches and Religious Organizations* (<http://www.irs.ustreas.gov/pub/irs-pdf/p1828.pdf>)
4. The United States Conference of Catholic Bishops' guidance titled, *2007 Political Activity Guidelines for Catholic Organizations* (<http://www.usccb.org/ogc/guidelines.shtml>).

## **F. Unrelated Business Income Tax**

When a church engages in income-producing activities that are unrelated to its tax-exempt purpose, the net income from such activities is subject to the federal unrelated business income tax (UBIT), and the church must file a Form 990-T (Exempt Organization Business Income Tax Return). In order for a church's activity to be classified as subject to the tax on unrelated business income, the following three (3) conditions must be met:

1. The activity must be a trade or business.
2. It must be carried on regularly.
3. It must not be substantially related to the church's exempt purposes.

These three conditions must be met in order to find a church's income is subject to the unrelated business income tax. If one of these conditions is not present, the tax is not due.

Even where all three of the above conditions are met, there are still circumstances in which the tax may not be imposed:

(a) substantially all of the work in operating the trade or business is performed by volunteers; (b) the activity is conducted by the organization primarily for the convenience of its members; or (c) the trade or business involves the selling of merchandise substantially all of which was donated. If any of these exceptions apply, the income from the activity is not treated as unrelated trade or business income. Further, in general, rents, royalties, capital gains, dividends and interest are not subject to the unrelated business income tax unless financed with borrowed money. *Tax Guide for Churches and Religious Organizations*.

Internal Revenue Service Publication 1828, *Tax Guide for Churches and Religious Organizations* (<http://www.irs.ustreas.gov/pub/irs-pdf/p1828.pdf>), has a more complete explanation of UBIT. Also, see Hammar's *Tax Guide* for further explanation and examples. Another very good UBIT review is found at 39 Cath. Law 7. This is a law review titled *The Catholic Lawyer*, and the article is titled "Show Me the Money: Legal and Prudential Considerations for Religious Organizations Participating in Fund Raising Ventures." This article cannot currently be found on the Internet. However, you may use the cite provided above to find the article at a law school library or by using a fee-based computerized legal research system such as Westlaw or Lexis.

## G. Excise Taxes

An excise tax is a tax imposed by the United States on the manufacture, sale, consumption, or use of specified commodities, as well as on the privilege to carry out certain activities. Excise taxes are based on the commodity's price. Examples include, but are not limited to, the following: retailers' excise tax, manufacturers' excise tax, communications excise tax, and wagering excise tax. The communications and retailers' excise taxes are the two types of excise taxes most commonly assessed against religious organizations. Normally, the only exemptions for these two types of excise taxes are certain nonprofit educational activities and nonprofit hospital services. Local legal counsel should be obtained to evaluate a particular activity of an entity and its relationship to the exemptions available.

## H. Substantiating and Reporting Charitable Contributions

**Donors who make a contribution of \$250 or more must have a "contemporaneous written acknowledgment from the donee organization."** A written document from the church (including the church's name or on church letterhead) should be provided to meet this requirement. A canceled check will no longer be sufficient to substantiate a contribution of this size.

### 1. Substantiation

The substantiation document must include:

1. The name of the donor.
2. A listing including each individual contribution of \$250 or more (churches are not required to aggregate smaller contributions that add up to \$250 or more in order to trigger these requirements).
3. A statement that no goods or services were provided to the donor in exchange for the contribution. We suggest all church statements reflecting money contributions, such as quarterly giving reports, state the following:

Pursuant to *Internal Revenue Code* requirements for substantiation of charitable contributions, \_\_\_\_\_ Presbyterian Church provided no goods or services in return for these contributions. (You may wish to add "except intangible religious benefits".)

4. A description (but not the value) of noncash property (if any) contributed.
5. The name of the church.
6. The date of the contribution.

The written acknowledgment must be in the donor's hands prior to the date on which the donor's tax return is filed, or prior to the due date for filing, whichever is earlier.

**For the typical Sunday morning contribution of cash or check of less than \$250, there are no reporting changes or substantiation changes for the taxpayer.** The canceled check or receipt from the donee church showing the church name and the amount and dates of the contribution are still sufficient for this type of contribution.

Here are two typical examples:

- Mrs. Jones contributes \$100 a week in an envelope in the Sunday morning collection plate; the church is not required to give her a written receipt.
- Mrs. Smith contributes one check each month of \$400, which she puts in an envelope on one Sunday morning each month; the church is required to give her a written receipt.

**Some individuals who serve as volunteers, committee members, and directors of church organizations may incur out-of-pocket expenditures in those activities that may qualify for charitable deductions if all substantiation acknowledgment requirements are met.** Volunteers travel to do a work project bringing their own supplies. Their travel and other actual expenses may qualify for a charitable deduction contribution. The IRS has indicated that the volunteer may satisfy the substantiation requirement if: (1) adequate records of expenditures are kept; (2) the church organization furnishes a written acknowledgment that services were performed that required the expense (i.e., travel away from home); and (3) the acknowledgment states no goods or services were provided to the volunteer or provides a good faith estimate of the value of such services.

## **2. Quid Pro Quo Rules**

Where goods or services (other than "intangible religious benefits") are provided in return for **contributions exceeding \$75**, the law requires donors to be provided a written statement "in connection with the solicitation or receipt of the contribution." The church's written acknowledgment of such gifts should include a statement like the following:

In accordance with Internal Revenue Code requirements, we are required to inform you that the amount of your contributions that is tax-deductible is limited to the amount of the contribution you made less the value of any goods or services we provided in return. The law requires us to furnish you this statement and a good faith estimate of the value of goods and services provided to you in connection with this gift. The value of the goods or services provided to you is \$ \_\_\_\_\_.

The **only** exceptions are where the goods are token gift items (such as pens, pencils, and so on) bearing the church name and having a cost of \$9.10 or less, or where the value of the goods or services is **less than the lesser of \$91** or 2 percent of the amount of the contribution (these dollar amounts apply to 2009 and may be adjusted in future years).

Some examples illustrate the requirements: At a church fund-raising sale a person buys a chair for \$300 which has a value of \$40. This must be reported because it is not a token gift bearing the church name and the value is more than

\$6 (2 percent of the \$300 contribution). If a person buys a book for \$120, which has a value of \$2, the church has no reporting requirement because the \$2 value of the book is less than 2 percent of the \$120 paid for it.

If the contribution is less than \$75, the donor may only deduct the amount of the donation less the value of the item received, but the church does not have a reporting requirement.

## **New Developments**

### **A. 2006 Changes to Federal Substantiation Rules**

The Pension Protection Act of 2006 (“PPA”) included a number of changes of interest to churches and other tax exempt organizations. One such change involves the necessary substantiation of cash gifts. Cash, checks, and credit card donations fall into this category. Effective for contributions made in 2007, no charitable deduction will be allowed with respect to a gift of cash unless the donor maintains either a bank record (i.e., a cancelled check) or written communication from the done charity showing the name of the charity and the date and amount of the contribution. (See PPA section 1217.)

### **B. Contributions of Clothing and Household Items**

PPA Section 1216 amends section 170(f) of the Internal Revenue code to disallow a charitable contribution deduction with respect to clothing or household items unless such items are in good condition or better. In addition, the Treasury Department is authorized to issue regulations denying charitable deductions for contributions of clothing or household items having minimal monetary value. These amended provisions do not apply to any contribution of a single clothing or household item for which a deduction of more than \$500 is claimed if the taxpayer includes, with his income tax return, a qualified appraisal with respect to the donated property. These section 1216 amendments apply to contributions made after August 17, 2006. Food, paintings, antiques, objects of art, jewelry and gems, and collections are excluded from this provision.

See Hammar's *Tax Guide* for a more detailed explanation of the rules for substantiating and reporting charitable contributions.

## **I. State-Related Tax Issues**

### **1. Sales and Use Taxes**

A sales tax generally refers to taxes imposed by a state on the intrastate retail sale of tangible personal property. A use tax is imposed upon the use, storage or other consumption — but not the sale — of tangible personal property either purchased or acquired outside the taxing state. The sales and use tax is imposed at two levels. The first is that of a buyer. The second is that of a seller. The actual burden of paying a sales tax falls upon the buyer. It is, however, the seller that must actually collect the tax and pay the tax to the state. **In numerous states there is an exemption for religious organizations for the purchase and sale of goods. Hammar's *Tax Guide* contains state sales tax exemption information in the form of a state-by-state chart located at the end of Chapter 12, "Taxation of Churches." Generally, where an exemption is available, the church must apply to the state and secure a tax exempt certificate.** We advise churches and middle governing bodies to do this to save money on purchases. Some presbyteries may have secured presbytery-wide tax exempt certificates that cover all of the churches in that presbytery. Check with your presbytery. Finally, local legal counsel should be obtained to evaluate a particular activity of an entity and its relationship to the exemptions available in that state.

## 2. Property Taxes and Related Matters

The real property owned by a local church is generally exempt from property taxes only to the extent that such property is used exclusively to carry out the purposes or ministry of the local church. The specific wording of your state's statutes needs to be carefully reviewed. In the event any portion of the property is not used exclusively for the purpose of the ministry of the local church, that portion may not be exempt. A local church that elects to lease a portion of its property may find itself in the position of having only a portion of its property exempt because it leases the other portion of its property to a non-church organization. Churches should check local laws before entering into such leases.

Generally, all states provide a tax exemption to buildings that are used as places of religious worship. However, the state laws concerning other church-owned property vary. The following are categories of church-owned properties that have been subject to property taxes in various jurisdictions: surrounding grounds of a place of worship, rental property owned by a religious organization, property under construction, manses, church-owned vacant land, church-owned campgrounds, retirement homes, and property being used for religious publishing. Some states will provide exemptions for such properties; other states will deny exemptions. This is why it is very important to check the law in your particular state and consult with your local attorney. Do not risk running afoul of these laws and losing all or part of your property exemption. **Hammar's Tax Guide, at the end of Chapter 12, "Taxation of Churches," has a state-by-state chart property tax exemptions for all fifty states.**

### a. Challenges to Church Property Tax Exemptions

In recent years, the taxation of real property owned by local churches has become an extremely sensitive area in the overall church and state relationship. The ever-increasing cost of government services has focused the attention of local taxing authorities on properties held by religious organizations and other nonprofits. While church property tax exemptions previously were nearly automatic, these exemptions are now coming under close scrutiny by state legislatures, local taxing authorities, and tax assessors. The following are examples of recent challenges to property tax exemptions in various states:

- *Appeal of Mount Shepherd Presbyterian Church (U.S.A.) Camp*, 462 S.E. 2d 229 (NC 1995); Presbyterian Church camp found exempt.
- *Nebraska Annual Conference v. Scotts Bluff County Board*, 499 N.W. 2d 543 (NE 1993); district superintendent parsonage found exempt.
- In 1996, Colorado voters were asked to repeal the property tax exemptions on land and buildings owned by churches and most charities. After a concerted effort by churches and other nonprofits, the amendment did not pass.
- In 1995, the City of Philadelphia issued a "payments in lieu of taxes policy." The policy "is asking all nonprofits to voluntarily contribute payments in lieu of taxes equal to 40 percent of what they would have to pay in property taxes were they to lose the privilege of their tax exempt status." The fee was reduced if any of the qualifying organizations entered into an agreement by a given date (reduced to 33 percent). The application of the "payments in lieu of taxes policy" did not include "any nonprofit institution that is a purely public charity as defined by the Pennsylvania Constitution and relevant case law."

- In 1996, a resident taxpayer in Kimball County, Nebraska, asked the Nebraska Tax Equalization and Review Commission to review the tax exemptions granted to parsonages owned by churches. The matter was appealed by several religious denominations and was dismissed in favor of the churches.

- In Maine, a campground owned by a religious organization was requested to pay property taxes on its property because most of its clients were not state residents. The case went to the U.S. Supreme Court in October of 1996 and it was determined that such a practice was unconstitutional because it violated the Constitution's commerce clause. *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine, et. al*, 520 U.S. 564.

- *Palm Beach Community Church v. Nikolitis*, 835 So. 2d 1274 (FL. App. 2002); vacant land acquired by a church for a future sanctuary was not exempt.

Tax challenges such as these can take away a very important benefit to churches and other charities. **If your church or governing body encounters such a challenge, call Associate General Counsel, April Davenport at (888) 728-7228 ext. 5350 for advice and assistance.**

#### **b. Taxes vs. Assessments**

A distinction should be drawn between taxes and assessments. Taxes are imposed on the inhabitants of the taxing area to finance government purposes without reference to particular benefits to particular owners of properties. On the other hand, assessments are levied for improvements that are especially beneficial to certain individual owners of property. For example, assessments may be levied for streetlights or sidewalk repairs. Assessment levies are assigned to property owners proportionally based on the benefit accrued by each property. Real estate taxes are levied on the basis of a certain valuation of real property by an assessor or her or his agent. **In most jurisdictions, local churches are liable for the payment of special assessments but not required to pay real estate taxes.**

#### **c. Local Taxing Requirements**

In most localities, the administration of the property tax system is handled by an administrative body operating in response to legislative formulas for the setting of tax rates. Tax legislation provides procedures to appeal the tax or assessment amount and to apply for outright exemption from the tax or assessment. The local church board of trustees should become familiar with the property tax statutes, administrative rulings of the tax authorities, and the procedures to be followed to appeal local tax assessments. Local church trustees also should analyze the uses of the church's property for the tax status of the local church property. Local counsel should be obtained to render advice and to file the necessary actions for local taxes and assessments.

**Local churches should be especially diligent about making the periodic filings with the property tax authority in order to remain tax-exempt. Failure to return forms requesting verification of property use and location can lead to loss of tax-exempt status with the only recourse then being to reestablish that status.** Churches should avoid the tedious and difficult task of establishing the exempt status anew by responding promptly to correspondence from their local tax authority (usually the tax assessor or the county tax board). Know the requirements for maintaining the church's property tax exemption and be aware there often are short deadlines for such responses.

#### **J. Tax Resources**

IRS phone number for forms and publications: (800) 829-3676



IRS Forms and Publications Web site (<http://www.irs.gov/formspubs/index.html>)

*Church and Clergy Tax Guide* by Richard R. Hammar. A new edition is published each year. To order, call Church Law Today at (800) 222-1840 or visit the "Bookstore" at [ChurchLawToday.com](http://ChurchLawToday.com).

Cigna Behavioral Health: (866) 640-2772. This is a benefit provided through the Board of Pensions of the Presbyterian Church (U.S.A.) to active ministers and lay employees of the plan.

*Tax Guide for Ministers & Churches* by Richard R. Hammar and distributed by The Board of Pensions of the Presbyterian Church (U.S.A.) each year. Call (800) 773-7752 for copies.

*Federal Reporting Requirements for Churches* by Richard R. Hammar and distributed by The Board of Pensions of the Presbyterian Church (U.S.A.) each year. Call (800) 773-7752 for copies.

Internal Revenue Service Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers* (<http://www.irs.ustreas.gov/pub/irs-pdf/p517.pdf>)

Intermediate Sanctions issues information (<http://counsel.cua.edu/FEDLAW/Intermed.htm>)

Internal Revenue Service Publication 1828, *Tax Guide for Churches and Religious Organizations: benefits and responsibilities under the federal tax law* (<http://www.irs.gov/pub/irs-pdf/p1828.pdf>) . This plain-language resource has been referred to several times in this Section. While not a comprehensive overview of the tax law as it applies to churches and religious organizations, it is an excellent resource of basic information drafted by the IRS for churches. It covers topics such as tax-exempt status, inurement and private benefit, political activity and lobbying, unrelated business taxable income, employment taxes, compensation of ministers, employee business expenses, record keeping and filing requirements, charitable contribution substantiation, and audit rules. The IRS considers this publication a "living document" and will revise it to take into account future developments and feedback.

The Pew Forum article *Politics and the Pulpit 2008* ( <http://pewforum.org/Church-State-Law/Politics-and-the-Pulpit-2008.aspx>).

## **Section 9: Risk Management and Insurance**

This Section includes a discussion of the types of insurance churches and middle governing bodies should secure; leading companies that offer insurance; and, recommended minimum standards. Various helpful checklists appear at the end of the Section.

### **A. Insurance**

**The *Book of Order* directs all churches, synods, and presbyteries to obtain adequate property and liability insurance coverage to protect the facilities, programs, and officers including members of session, staff, boards of trustees and deacons, and elected and appointed officers (G-12.0306, 11.0308, and 10.01020, respectively). While there are many risks that must be considered and a wide array of insurance types, securing insurance is not an impossible task. Working with agents and other resources, a board of trustees, session, or middle governing body can ensure it has adequate coverage in place.**

Along with this Manual a copy of *Risk Management for Churches* is provided. This helpful and easy to use resource is authored by Richard Hammar, J.D., L.L.M., CPA and published by Christian Ministry Resources. Additional copies

may be purchased by calling (800) 222-1840. The price is \$9.95 per copy, plus shipping and handling. **Do not copy *Risk Management for Churches* or any excerpts from it. No permission has been secured to make copies.**

Insurance policies should be reviewed annually for adequacy and completeness. Coverages should be adjusted upward as property values increase. As costs increase, churches often find themselves underinsured because coverages have been held steady while inflation has increased property values. Periodic appraisals of the property can help to update the coverage to reflect current values. Coverage that increases automatically by a set inflation factor is also available. Casualty (liability) coverage should be reviewed periodically as well. Should a change in use be implemented, such as opening a day care center, school, or other new program, be sure to review potential liability insurance needs with the church's insurance agent and to adjust coverages accordingly. **Give the agent at least 30 days notice before an event or starting a new program.** This will give the insurance company time to review the new risk, give a response, and provide a quote on any additional charges. It is important that a binder or endorsement be obtained before the event or program begins. You may wish to contact your agent within ten days of the original notification to ask for an update.

The reasons why insurance coverage should receive high priority and review include the following:

- the recognition of the varied risks faced by the church, with special attention to fund-raising events, acquisition of new property, leased property, counseling services, and fiduciary responsibilities
- increase in building costs and the purchase of new property
- the need for specialized coverage for day care and counseling
- fluctuating annual premium costs
- expanding ministry of many churches

The following should be used as a guideline for establishing insurance practices:

- an annual review of the church's insurance program
- an annual safety inspection of the buildings with fire officials to identify hazards that may cause personal injury, fire, or other loss of property. Check with your local fire department. Typically, they are happy to assist you with a voluntary inspection and ideas to prevent fires
- a detailed inventory of all furniture and equipment, kept current with additions and deletions of items. A photographic inventory of all furniture, equipment, and rooms of the church is an excellent inventory record. Videotapes have been used effectively by some churches. All inventory reports should be kept off the church property in a bank safe-deposit box or similar secure location
- a periodic building appraisal to update the value of all property, at least every three years
- at least two quotations when purchasing or renewing insurance coverage. Contact your agent at least ninety days prior to the expiration of your policy to provide quotes.
- a determination of actual annual premium costs for budget development.

## **1. Types of Insurance**

## **a. Property Insurance**

Property insurance is designed to cover buildings and personal property for loss or damage. The property policy may be amended to include the following coverages: newly acquired property, property in transit, stained glass windows, valuable papers, loss of business income, extra expense, computer equipment and boiler and machinery. This is just a partial list of coverages that may be available, check with your insurance agent for a complete list of coverages.

Property insurance limits on your policy should be adjusted upward as property values increase. Churches often find themselves underinsured because coverages have been held steady while inflation has increased property values. To prevent underinsured losses, periodic appraisals of the property can enable the church to update the coverage to reflect current values. Property insurance limits can also be automatically set by an inflation factor. Check with your insurance agent about this option.

## **b. General Liability**

Casualty (general liability) coverage is designed to protect the insured from losses in which they are legally liable arising out of the ownership of property or activities from your premises. General liability policies should be reviewed periodically and should include coverage for slips and falls and other bodily injuries, property damage of others, products liability, completed operations, libel and slander, false arrest, employee benefits liability, contractual liability, and other types of claims usually covered by this policy. It is important to verify that employees, directors, trustees, officers, and volunteers are covered under this insurance policy. Most general liability policies restrict coverage to the United States, its territories, and Canada. For any travel outside of these areas, contact your insurance agent prior to the start of the trip.

The general liability policy is usually provided on an occurrence basis as opposed to a claims made basis. This is preferred because the occurrence is covered under the policy in force at the time of the accident, regardless of when the claim is reported or the suit is filed. Some coverages, however, are traditionally provided on a claims made basis, such as directors and officers coverage and employee benefit liability. Under claims made coverage, the claim must be reported during that policy period or any extended reporting period specified by the policy. The extended reporting period, commonly referred to as a "tail," frequently is for one year following the policy term. When claims made and coverage is provided, it is important to have a "retroactive date" that covers previous time periods in addition to the current policy term. Review the claims made coverage option with your insurance agent.

As changes occur in use of church property, such as opening a day care center, school, or other new program, the church's insurance agent should be notified of the changes in exposure. The new uses of property may result in new liability risks that will need to be addressed. Contact the insurance agent at least thirty days in advance of the event or new program. This will give the insurance company time to review the new risk, give a response, and provide a quote on any additional charges. **It is important that a binder or endorsement be obtained before the event or program begins.**

## **c. Sexual Misconduct Liability**

Most general liability policies exclude sexual abuse or molestation and pastoral professional liability. Both coverages can be purchased by endorsement or on a separate policy. Check with your insurance agent for availability of these coverages. It is wise to secure these coverages. It is a good practice to review your general liability policy's exclusions and limitations with your insurance agent to avoid uninsured claims.

## **d. Pastoral Professional Liability**

Pastoral Professional Liability is designed to cover liability for pastoral counseling services. The church should be included in the definition of the named insured as well as the pastoral professional and any other professional staff. There are many definitions of coverage under this form. Review with your insurance agent definitions as well as the exclusions in the contract carefully.

#### **e. Workers' Compensation**

The purpose of workers' compensation insurance is to give greater protection and security to the worker in case of injury, illness, or death occurring in the course of employment. Worker's compensation provides, as a matter of right, for the payment of benefits to employees injured on the job. The amounts paid are set by state law for covered occupational injuries or disease. The compensation award is, in nearly all situations, the covered employee's exclusive remedy against the employer. The laws in most states provide for fixed awards to employees or their dependents upon a showing of employment-related injury. Payment for injuries or illness is not based on determination of fault or negligence, with a few exceptions, on the part of the employer. Some states go beyond simple establishment of the right to worker's compensation and provide insurance systems, either under state supervision or otherwise. Under these laws, methods are usually prescribed that allow employers and workers to accept or reject the compensation system. Several states have provided workers' compensation funds that coincide with the coverage required by law. In most states, employers who refuse to come within the provisions of the workers' compensation law are denied the customary defenses to actions for injury by the injured employee.

It is not the purpose of this Manual to compare the workers' compensation laws of the various states, other than to point out that these laws differ not only in detail but in major features as well. In evaluating considering workers' compensation coverage, the following considerations are particularly important:

1. Persons covered and type of employment
2. Injuries and diseases covered
3. Benefits provided
4. Civil law and administrative requirements and options — including limitations on the ability of injured parties to sue the employer for damages
5. Method of securing benefits

The workers' compensation laws of every state require the employer to secure payment of compensation benefits. Jurisdictions may require either the purchase of insurance with a state fund, a private insurance company, or a qualified self-insurance program. Workers' compensation insurance is provided through a Workers' Compensation and Employer's Liability Policy. Two types of basic coverages are afforded by this type of policy: one provides actual worker's compensation benefits, and the other insures the employer for liability when employees or dependents are able to sue for such problems as employer negligence and unsafe working conditions. The combination of these two coverages is intended to provide the employer with protection against liability that may arise out of the employee-employer relationship due to occupational injury and disease. Supplementary coverages are available to cover the needs of employers that are not satisfied by the basic coverage. Ask your insurance agent about the supplemental coverages available and to identify the supplemental coverages required by your state.

#### **f. Umbrella Liability**

Consider purchasing an umbrella (excess) liability policy, which provides excess limits over the primary general liability, auto liability, and the employer's liability section of workers' compensation policies. An umbrella policy will be activated when the underlying primary limits are exhausted or exceeded by a single loss. Umbrella policies are issued with an aggregate limit, which is the most the policy will pay during a one-year policy term, regardless of the number of claims. Umbrella policies are purchased in coverage multiples of \$1 million increments. All churches are encouraged to purchase umbrella policies especially those with owned vehicles, day nurseries, or schools.

#### **g. Minister's Personal Liability**

Many ministers live in manses furnished by and insured by the local church. If a homeowner's policy is provided with the church named as additional insured, the policy should be written to protect the minister and her or his family for both personal liability and damage to their personal property. Even when the manse and personal property is insured under the church policy, there is still a need for a tenant's homeowner policy for the minister and her or his family. For example, family events/activities would not be covered under the church policy unless the activity was considered part of the minister's responsibilities. Ministers who own or rent homes should consult an insurance agent regarding the coverages needed.

#### **h. Employee or Volunteer Dishonesty**

Employee dishonesty coverage provides protection against employee theft. Employee dishonesty coverage provides for losses of money, securities, and other property caused by theft or forgery of an employee of the insured, acting alone or in collusion with others. Make sure to check with your insurance agent to ensure that volunteers are covered under your employee dishonesty policy. It is recommended to include volunteers.

The *Book of Order* provides a minimum standard of financial procedures (G-10.0401) for local sessions that can help to prevent employee dishonesty claims. The procedures are listed below.

- A. The counting and recording of all offerings by at least two duly appointed persons, or a fidelity bonded person;
- B. The keeping of adequate books and records to reflect all financial transactions, open to inspection by authorized church officers at reasonable times;
- C. Periodic reporting of the financial activities to the board or boards vested with financial oversight at least annually, preferably more often;
- D. A full financial review of all books and records relating to finances once each year by public accountant or public accounting firm or a committee of members versed in accounting procedures. Such auditors should not be related to the treasurer (or treasurers).

Other ways to minimize your exposure include:

- At least 2 individuals should be responsible for taking up the collection. The collected monies should be held in a secure area until counted and deposited.
- Counting should be done by at least 3 unrelated individuals in a secure area.
- Individuals responsible for collecting, counting and depositing monies should be rotated on a weekly basis.

- Responsibilities and function of monies should be divided so that no one person has control over all functions of the monies transaction. For example, the individual who makes the bank deposit or pays invoices should not be responsible for reconciling the bank statement.
- Check books should be stored in a secure place.
- Bank statements should be reviewed on a regular basis.
- Authorized signer of checks should not be the same person who reconciles the accounts.
- Reporting of financial records to congregations should be done at least quarterly. Congregations should be informed on how their money is being spent.

Terminology in this section is meant to provide general guidance and is not intended to require or not require specific audit procedures or practices as understood within the professional accounting community. Also see the section titled “Suggestions for Accounting Procedures to Reduce Susceptibility to Loss,” later in this Section.

#### **i. Suggestions for Handling Employee Theft**

1. Report loss to church’s insurance carrier and legal counsel immediately. Follow procedures as set forth by both. Your insurance carrier may have specific protocol in this type of loss.
2. Report the loss to local authorities for investigation, so that appropriate charges can be brought.
3. Inform session in a closed meeting of the outcome of the investigation.
4. Once investigation has been concluded, inform the congregation of the outcome of the investigation. This should be in a closed meeting as well. By keeping the session and congregation informed of the process will help to keep the trust within the church community.

#### **j. Automobile Liability**

Automobile liability provides coverage to the insured for bodily injury and property damage claims arising out of the ownership, maintenance, use, loading or unloading of church-owned vehicles. Physical damage coverage for owned vehicles is insured separately. In many cases, the pastor and/or volunteer uses his or her own vehicle for church activities. In the event of an accident, the policy covering the vehicle provides the primary coverage, but it is very important for the church to have non-owned automobile liability coverage. The church's non-owned auto liability policy may also provide excess coverage if the automobile owner's coverage is not adequate. Hired car coverage is for the same coverage if a rental vehicle is used. Non-owned and hired car coverages are separate coverages that must be requested at issuance of the automobile liability policy. Issues involving rental vehicles can be very complex; consult your insurance agent prior to renting the vehicle.

#### **k. Directors and Officers**

This coverage protects the officers, directors, and trustees of the organization against damages from claims resulting from negligent or wrongful acts in the course of their duties subject to the terms and conditions of the policy and the circumstances involved. However, directors and officers coverage does not provide coverage for third party bodily injury or property damage claims because these would be covered by other policies. The insuring agreement, named insured, and exclusions should all be reviewed thoroughly when purchasing a policy. The directors and officers policy may be extended to cover the organization itself (entity coverage) and to cover employment practices liability. Both

of these additions are recommended. Directors and officers coverage is almost always written on a claims made form with defense costs inside the limits of protection.

### **l. Business Travel Accident Insurance**

Churches who have individuals that travel at the church's request both domestically and internationally should consider purchasing business travel accident insurance. This coverage provides accidental death and dismemberment insurance for individuals traveling on church business. The policy should also address the needs for travel outside the United States such as repatriation of remains and medical evacuation. This insurance can be purchased in various amounts of coverage and options. Check with your insurance professional to determine your business travel accident needs.

### **m. Insurance for Travel Abroad**

As more and more churches sponsor trips abroad, insurance needs to be factored into the trip. While the trips have educational and spiritual value, they are not done without risks. One way to offset some this risk is through travel accident insurance. The insurance is an accidental death and dismemberment policy that should also include repatriation of remains and medical evacuation while traveling outside the United States. Depending on your trip other coverage may be necessary for travel abroad. Some additional insurance coverage to consider are: foreign commercial liability, commercial foreign automobile liability and foreign workers compensation and sickness insurance. Always check with your personal health care provider before traveling outside your policy area. Please contact your insurance professional to discuss your travel plans and to determine your insurance needs.

### **n. Employment Practices Liability**

Employment practices liability provides coverage for employment related issues arising out of employee hiring, termination, or employment. Contact your insurance agent to discuss if these coverages are available under your directors and officers policy or whether they can be purchased under a separate employment practices liability policy. Employment litigation is one of the fastest growing areas of the law and this coverage is recommended.

### **o. Comparison of insurance companies**

This is a general comparison through information supplied by the three insurance companies or programs that provide coverage to at least 10 percent of the Presbyterian Church (U.S.A.) churches. For additional information regarding the insurance companies or programs, please contact the individual representatives.

#### **Church Mutual Insurance Company**

Martin F. Heyne - Director Group Sales

Church Mutual Insurance Co.

P. O. Box 357

Merrill, WI 54452

(715) 536-5577

#### **GuideOne Insurance Company**

Jim Bonney

1111 Ashworth Rd.

W. Des Moines, IA 50265

[www.guideone.com](http://www.guideone.com)

(515) 267-5193

Fax: (515) 267-5250

It is not the intent of Presbyterian Church (U.S.A.) Office of Risk Management Services to limit your search for insurance to the three listed insurance companies or programs. Many good insurance companies and programs exist throughout the insurance industry. (*see* <http://gamc.pcusa.org/ministries/risk/>)

## **2. Recommended Minimum Standards of Property and Liability Insurance for Churches, Presbyteries, and Synods**

The 1999 survey of presbyteries also reflected various amounts of insurance coverage purchased by presbyteries and revealed a significant number of presbyteries do not have minimum standards of coverage for their member churches. After reviewing the information gathered in the 1999 survey, a Joint Insurance Committee established recommended minimum standards of property and liability insurance. **These recommended minimum standards should be used as a general guideline only. As always, an insurance professional must be used to evaluate the insurance needs of each church and middle governing body.** Insurance needs as well as alternate ways to reach their insurance goals should be discussed with an insurance professional. One possible alternative is the use of higher deductibles, which could lower insurance premiums. Ask your insurance professional about this and other cost-saving options.

### **a. Property**

1. Buildings and Contents at Appraised Replacement Cost as an agreed value endorsement.

A. Eighty percent Coinsurance: an alternative to agreed value, offered by some companies as a percentage of appraised value, providing coverage up to fixed limits.

B. Special Form: the broadest coverage available, normally including fire, vandalism, sewer back-up, theft of property, and so on, unless specifically excluded, or deemed not necessary by an insurance professional.

2. Supplemental Coverage: off-premise coverage, newly acquired property, debris removal, rebuilding to code requirements, necessary demolition of building, personal property of ministers and others, stained glass, organ, other musical instruments, art work, valuable papers, loss of business income, and related extra expenses.

3. Boiler and Machinery: as boiler and machinery types require, including all related expenses, spoilage, and similar costs.

4. Earthquake, where appropriate for geographical area, is written separately unless specifically stated in policy.

5. Flood, where appropriate, is also written separately, and may be offered with state or federal assistance.

**Note:** Churches should be inspected periodically because of policy exclusions, such as mold, lead paint, and asbestos for which many insurance companies may not provide coverage.

### **b. Liability**

1. **General Liability:** \$1,000,000 per claim/occurrence, \$2,000,000 aggregate; covers most risks, including products; bodily injury; property of others; \$10,000 no fault medical payments including volunteers, and athletic activities; contractual liability; fire legal liability at \$100,000 limit; day nursery/child care; pastoral professional liability and sexual misconduct coverage at \$1,000,000 limit.



2. **Umbrella Coverage:** \$10,000,000 per occurrence or aggregate, in excess over primary limits of general and automobile liability; review of coverage by insurance professional for additional excess limits.
3. **Automobile:** \$1,000,000 per occurrence or aggregate, including uninsured and underinsured motorist protection; \$10,000 medical coverage; personal injury protection in states where applicable; hired and non-owned coverage to policy limits.
4. **Workers' Compensation:** As required in each state, including pastors and all employees.
5. **Directors and Officers:** \$1,000,000 per claim/occurrence, or aggregate, for corporate protection of session, deacons, trustees, officers in performance of regular duties.
6. **Employment Practices Liability:** \$250,000 per claim, or aggregate for claims related to employment, benefits, termination, and sexual harassment.
7. **Crime Coverages:** \$50,000 per claim or occurrence for protection from employee dishonesty, theft or loss of money or securities, depositor's forgery; volunteers with access to church funds in any way should be covered.
8. **Foreign liability:** This coverage provides protection for incidents that occur outside the United States in which the church or individual would be legally obligated to pay. If your church sponsors mission trips outside the United States, consider purchasing this coverage. Analysis of your exposure should be done by your insurance professional.
9. **Repatriation of Remains:** In case of death, this coverage will cover the expense of returning remains to the United States. Consider this coverage if your church is sponsoring mission trips outside the United States.

## **B. Suggestions for Accounting Procedures to Reduce Susceptibility to Loss**

- All operations should be audited by qualified individual annually.
- All checks over \$250 should require two countersignatures.
- All bank accounts should be reconciled by an individual who is not authorized to make deposits or withdrawals from those accounts.
- New employees should complete and sign employment applications with releases for reference and background checks.
- All securities should have joint control of two or more individuals.

Also see the minimum financial procedures set out at G-10.0401 in the *Book of Order*. These standards are detailed in the "Employee or Volunteer Dishonesty" section, above.

If embezzlement is suspected or discovered, the insurance company and presbytery should be notified immediately. They can provide access to accountants and attorneys.

## **C. Suggestions for Property Lease Procedures to Reduce Loss**

1. The tenant should sign a lease spelling out the rights and liabilities of the parties. As part of that lease, there should be an indemnification and a hold harmless agreement in favor of the church. The church should carefully draft the

lease in conjunction with its legal counsel so that the church's requirements and needs become lease obligations of the tenant.

2. As part of its duties under the lease, the tenant should be required, prior to occupancy, to submit a current certificate of insurance from the tenant's liability insurer naming the church as an additional insured under that policy. If the lease is a multi-year agreement, a new certificate should be submitted each year. The certificate of insurance should show general liability and property coverage. It should also show property insurance for the tenant's contents. If the tenant is conducting a business such as a day care, the certificate should show workers' compensation insurance for their employees. A copy of all insurance certificates should be sent to the church's insurance agent for review.

3. There should be an inquiry made in writing to the church's current insurance company to make sure coverage is provided for any liability resulting from the proposed rental. Also check with your insurance agent for possible increases in premium or for possible exclusions that may apply. Any increase that is incurred may be offset by adjusting the terms of the lease or requiring the tenant to pay for the increase. The church also may wish to review the adequacy of its own insurance policy limits in light of any new activity. If supplemental or specialized coverages are needed, they should be obtained prior to lease execution and property occupancy. Ask the insurance agent to send you a binder or endorsement showing coverage is in effect for the new occupancy. The lease should not be signed until you receive written confirmation from your agent. If any insurance claim or lawsuit should arise, give immediate written notice to your agent and the insurance company.

#### **D. Federal Bus Regulations**

Churches that use buses or vans to transport passengers across state lines may be subject to federal safety regulations for motor coaches and buses (effective January 1, 1995). The new regulations apply to any interstate transportation of "business private motor carriers of passengers" and "nonbusiness private motor carriers of passengers" as these terms are defined by the Federal Highway Administration (FHWA) of the Department of Transportation (DOT). The FHWA has stated that churches in general either will be exempt from the federal regulations altogether or will fall within the definition of regulated nonbusiness private motor carriers of passengers. A church that owns or leases a bus or van will be a "nonbusiness private motor carrier of passengers" if: (1) the bus or van has a gross vehicle weight of 10,001 or more pounds or is designed to transport more than 15 passengers (including the driver), and (2) the bus or van is "involved in interstate transportation of passengers," which basically means taking the bus or van outside of the state in which the church is located.

Local churches are exempt from the regulations if:

- they do not take the bus or van outside of the state in which the church is located, or
- they do not own or lease a bus or van with a gross vehicle weight of 10,001 or more pounds and do not own or lease a bus or van that is designed to transport more than fifteen passengers (including the driver).

For example, a local church that is located in a town at a state line and has a van or bus that carries sixteen passengers (including the driver) and crosses the state line to transport people to church every Sunday is subject to the federal regulations (regardless of the gross weight of the vehicle or number of passengers it holds). On the other hand, a 20,000 pound bus designed to hold fifty passengers that is never used to cross state lines is exempt from the federal regulations. A 14,000 pound van that is designed to hold eighteen passengers and occasionally crosses state lines is subject to the new regulations. The same van that is never used to cross state lines is exempt from the new regulations.

If the regulations apply to your church, here are the requirements for nonbusiness private motor carriers of passenger:

- The driver must have a commercial driver's license (issued by the state).
- The vehicle must be marked on both sides with the motor carrier's name or trade name; city and state of the church; and motor carrier identification number preceded by "USDOT."
- The driver must be in good health, be at least twenty-one years of age, speak and read English well enough to do his or her job and respond to official questions, be able to drive the vehicle safely, be able to determine whether the vehicle is safely loaded, know how to block, brace, and tie down cargo, have only one valid driver's license, and not be disqualified to drive a commercial motor vehicle.
- The driver must comply with the following safety requirements: be sure the vehicle is safe and properly working before each trip and must ensure that emergency equipment is in place, buses must stop at all railroad crossings, the parking brake must be set when a driver leaves a vehicle unattended, and emergency warning devices must be activated in an emergency, headlights must be used from one-half hour before sunset to one-half hour after sunrise (or anytime there is not enough light to see clearly 500 feet away), drivers who are involved in an accident must stop immediately and assist injured persons and take steps to prevent additional accidents at the scene, drivers must not smoke when the vehicle is being fueled, and written permission from the owner of the vehicle is necessary for passengers to ride.
- The vehicle must be properly equipped with: adequate lighting devices, reflectors, and electrical equipment, brakes, certain specified glazing and window construction, coupling devices and towing methods, emergency equipment, protection against shifting or falling cargo, and appropriate frames, cab and body components, wheels, steering and suspension systems. The vehicle's fuel system must be maintained to the original manufacturer's standards, and certain specified miscellaneous parts and accessories may be required.

The driver must not drive more than ten hours following eight consecutive hours off duty; must not drive after being on duty for fifteen hours; must not drive after being on duty more than sixty hours in any seven consecutive days. A driver log is a helpful way to comply with this particular regulation. (Note: The purpose of this requirement is to prevent driver fatigue; be careful about the requirement when your driver is also a professional driver for another organization, because the time is cumulative).

The vehicle must be regularly inspected, repaired, and maintained, and all vehicle parts and accessories must be in a safe and proper working order at all times; push-out windows, emergency doors, and emergency door marking lights in buses must be inspected at least every ninety days.

For more information about the regulations, call the FHWA at the DOT office in your state or the national FHWA office in Washington, D.C. (202-366-4009 or 202-366-0834). A Federal Motor Carrier Safety Regulations Pocketbook is available for a small fee from J.J. Keller & Associates (1-800-327-6868) (publication 19-ORS). The price is \$3.50 plus shipping and handling. You should also check to be sure your own state has no regulations that would affect the church's use of vans or buses.

## **E. Arson and Bombing Attacks on Churches**

Since the mid-1990s, there has been an outbreak of arson and bombing incidents against local churches. While the problem seems to be decreasing, there is cause for concern, and incidents are still being reported. Churches are easy targets for the arsonist. Most of the time they are unoccupied and schedules of activities are predictable. Arson is

often an afterthought to cover up another crime or a crime of emotion. Whatever the reason for the increases, the federal government has taken an aggressive stance against these acts. In 1996 the government established the National Church Arson Task Force. For more information on arson and bombing attacks on churches you can contact the Bureau of Alcohol, Tobacco, and Firearms:

Bureau of Alcohol, Tobacco, and Firearms: (800)800-3855 (<http://www.atf.gov/>)

ATF National Arson Hotline: (888)ATF-FIRE

ATF National Bomb Hotline:& (888)ATF-BOMB

### **1. Arson Prevention**

Arson is the nation's leading cause of property damage. While in some cases there is nothing that can be done to prevent a determined person from committing such acts of violence, there are measures that can be taken to decrease the potential for an arson attack.

### **2. Arson Prevention Checklist**

Helpful guidelines (*see* Appendix L).

## **F. Insurance Resources**

### **1. Insurance Pamphlets and Brochures**

#### **Church Mutual**

Church Mutual offers an array of free videos, booklets, posters, newsletters and other safety information. (<http://www.churchmutual.com/index.php/choice/risk/page/intro/id/21>)

#### **GuideOne**

Please visit the GuideOne Center for Risk Management Website (<https://www.guideone.com/center.htm>)

### **2. Other Useful Risk Management/Insurance Forms**

- a. Church Contents Inventory (*see* Appendix M)
- b. For Your Records (*see* Appendix N)
- c. Safe Conditions and Practice Survey: A Self-Inspection Guide (*see* Appendix O)

## **Section 10: Estates and Planned Giving**

This Section is divided into two major subsections. The first subsection provides a brief listing of the many services offered by the Presbyterian Church (U.S.A.) Foundation. The second subsection covers estates, trusts, and wills law generally.

### **A. Presbyterian Church (U.S.A.) Foundation**

The Presbyterian Church (U.S.A.) Foundation (<http://www.presbyterianfoundation.org/>) has served the church and individual Presbyterians for over two hundred years. Through its services of planned giving, wills and bequests,

socially responsible investments, and investment accounts, the Foundation has generated millions of dollars for the mission of the Presbyterian Church (U.S.A.). At the same time, individual Presbyterians benefit from their planned giving, tax benefits, and the joy of giving to the mission of the Presbyterian Church.

The Foundation has regional development officers located throughout the country. These individuals are available to serve individual Presbyterians, churches, middle governing bodies, and Presbyterian-related institutions. **Call the Foundation at (800)858-6127 ext. 8919 to secure the name and contact information for the development officer in your region.**

Below is a brief listing of the services The Presbyterian Church (U.S.A.) Foundation offers.

#### Individuals

- Gift Annuities
- Deferred Payment Gift Annuities
- Pooled Income Funds
- Permanent Funds
- Revocable Life Income Funds
- Annuity Trusts
- Unitrusts
- Wills and Bequests

#### Churches, Presbyteries, Synods, and Related Institutions

- Planned Giving Consultations
- Training and Educational Programs
- Seminars and Workshops
- Investment Accounts
- Endowment Building

#### Socially Responsible Investment Services

- Professional Investment Allocation and Management
- Family of Five Mutual Funds

## **B. Foundation Publications**

**These excellent resources are available by calling the Foundation at (800) 858-6127 ext. 8919 or visiting the Foundation's Web site (<http://www.presbyterianfoundation.org/>).**

#### Individuals

- Giving that Gives Back — life income plans
- Personal Record Book
- Guide to a Christian Will

#### Presbyteries, Synods, and Related Institutions

- Legacy of a Lifetime — planned giving and wills emphasis program resources
- Endowments: A Vision for any mission
- A Plan for the Present — a guide to generating gifts
- Boudinot Covenant Society — a donor recognition program
- Institutional Services

#### Socially Responsible Investment Alternatives

New Covenant Funds (<http://www.newcovenantfunds.com/>)

## **C. Law of Trusts, Wills, Estates, and Gifts**

### **1. Trusts**

An express trust is specifically established in written form. The writing is to meet the requirement of the Statute of Frauds that requires certain transfers of property to be made in writing. No specific language or particular words are necessary in establishing a trust, but the intent of the settlor (the person or entity establishing the trust) to create a trust must be clear and unmistakable. The trust property and the beneficiaries must be described with certainty but no particular words or phrases need be used in these descriptions. The settlor must have legal capacity to create the trust. Consequently, persons who are mentally impaired or not of legal age may not create trusts due to their lack of capacity.

*Inter vivos*, or living trusts are those trusts, established by individuals during their lifetime that take effect prior to their death. Trusts created during the settlor's lifetime may be an irrevocable trust when the settlor has no power to revoke the trust or a revocable trust in which the settlor has retained the power to change or revoke the trust. Settlers wishing to pass a property interest to a trustee and beneficiary at the settlor's death may also do so in a duly executed will. Such trusts are known as testamentary trusts. Testamentary trusts are revocable by the creation of a subsequent will revoking the will in which the trust is created. This revocability is because such a trust is not considered operative until the settlor dies.

There is no requirement that a settlor receive consideration for the creation of a trust. However, a promise to create a trust is governed by the law of contracts. This promise may be enforced against the promisor if the promisor received consideration for making the promise. In evaluating any trust it is necessary to determine whether a trust has actually been created by an individual or whether that individual simply promised to create a trust. If a promise were made, a further investigation should be made to determine whether there was consideration for the promise.

### **2. Trustee Duties**

Trustees of a trust are charged with three primary duties:

1. To follow the settlor's directions about the administration of the trust and the distribution of the trust income to the beneficiaries.
2. To act with prudence and care in administration of the trust assets.
3. To act with a high degree of loyalty to the interests of the beneficiary or beneficiaries.

The trustee-beneficiary relationship is a fiduciary relationship. The trustee is held at a very high standard of loyalty toward the beneficiary. A disloyal trustee may be required to restore the trust as it would have been had his disloyalty not taken place, such as a situation in which the trustee invests improperly to advance his own interests rather than those of the beneficiary. However, a legal and competent beneficiary may ratify a disloyal act of the trustee and if she does so, she will not be permitted to take further action against the trustee if she were fully aware of the trustee's disloyal act. Great care must be taken to see that the duty of care and the duty of loyalty are fulfilled in the administration of any assets for which the church is acting as trustee. The trust instruments should be examined by legal counsel to ascertain how the church may be sure to fulfill whatever legal obligations are placed upon it for administration of the trust.

Churches are often designated as beneficiaries of trusts rather than as trustees. As beneficiaries, churches are entitled to hold the trustees accountable for their actions and may bring a cause of action against the trustees should the trustees act in a disloyal or careless manner contrary to their duties of care and loyalty to the beneficiaries.

As stated above, trusts may be irrevocable or revocable. In the case of an *inter vivos* trust, the settlor may retain a power of revocation in the trust. The duration of the trust is determined by the terms of the trust instrument. It can be a specific term of years, the lifetime of a named individual, or whenever the purposes intended by the settlor to be accomplished by the trust are completed. Neither the death of the trustee nor of a beneficiary terminates a trust unless their lifetimes are the measure of the duration of the trust. Where a trust is created to fulfill a specific purpose, the interested parties generally petition the court for a decree of termination of the trust when the purpose of the trust has been fulfilled. A decree of termination also may be obtained should the beneficiary acquire legal title to the trust assets from the trustee or her successors. In any case, the courts look first to the trust instrument to determine that the intentions and desires of the settlor have been followed before granting a termination decree.

### **3. Charitable Trusts**

Trusts whose beneficiaries are the public or a reasonably large class of the public (such as the church) are designated charitable trusts. Certain legal restrictions on the duration of trusts, embodied in the Rule Against Perpetuities, are not operative in the case of charitable trusts.

If the purposes of a charitable trust cannot be carried out by designation of the funds to the organization named in the trust, perhaps due to the dissolution of that organization or the impossibility of fulfilling the direction, the courts will apply the cy pres doctrine, which calls for fulfillment of the purpose of the settlor of the charitable trust as nearly as possible by designating a similar beneficiary or similar charitable purpose.

Acceptance of trustee responsibilities, assets, and/or income should be undertaken only after thorough examination by legal counsel of all relevant documents. Each trust is unique, and trust restrictions and other legal requirements should be examined carefully with the assistance of a competent legal adviser. Informed decisions about acceptance of trust

income or responsibilities require assessment of the benefits of acceptance against the costs of trust administration in accordance with the settlor's wishes.

#### 4. Wills

Wills are the legal instruments whereby testators direct the disposition of their property after their death. The form of the will is of little consequence so long as it is executed with the formality required by state statutes, comes into effect only after the death of the testator, and clearly expresses the testator's intent. Unlike other legal instruments, there is no such thing as an irrevocable will. A will may be revoked simply by the creation of a subsequent will revoking the provisions of the previous will. **The testator should exercise great care in the preparation and execution of the will. Legal counsel should be engaged to assist in preparation and execution of the document.** Persons whose wills are found defective, or persons who die without a will, have their property distributed according to state law that may not reflect their own wishes. If there is no will, each state has a law whereby the property of the deceased is distributed to any relatives he or she has according to a formula set forth in the statute. If there are no relatives and no valid will, the property will go to the state.

All jurisdictions have enacted statutes that require compliance with certain formalities if a will is to be valid. The purpose of these formalities is to provide clear evidence of the testator's intent, as well as to prevent fraud. The following are the typical required formalities:

1. A valid will must be in writing. The only exceptions are oral wills of personal property made as a dying declaration or oral wills by soldiers and sailors. A memorandum may be incorporated in a will by reference with the existence of the following conditions: (a) it must be written; (b) it must be in existence upon execution of the will; (c) it must be adequately described in the will; (d) it must be described in the will as being in existence. Simply stated, a memorandum can be used to further define and ascertain beneficiaries previously named in the will, but it cannot be used to name beneficiaries not previously named in the will.
2. Wills must be signed by the testator and executed in accordance with local law. Signatures should appear at the end of the will after all provisions.
3. A written will must be attested by witnesses as required by state statute. It is considered sound practice to have one more witness attest a will than the number required by law. The function of the witnesses is to attest to the testator's requisite intent and capacity. It is imperative that the testator sign first and in the physical presence of all of the witnesses; witnesses should subsequently sign in the presence of each other. (Some states allow unsigned, handwritten wills also known as holographic wills. While such wills may be valid within certain states, this practice is not ideal.)

Witnesses are considered qualified providing they have no interest in the will. If witnesses with an interest under the will are used, two consequences may occur:

1. Disqualification as witnesses of those witnesses who are beneficiaries under the terms of the will (which could invalidate the will if not enough qualified witnesses attested it); or
2. Voiding the share of the interested witness under the will (or converting the share to that which may have passed to the beneficiary without a will pursuant to state law), thereby making him a disinterested and qualified witness. Any person may be named as executor of the will and may serve as witness. The attorney who drew up the will also may serve as witness. If a church is named as beneficiary, members generally are



not considered to be interested so as to be disqualified as a witness. In the interest of caution, however, it is recommended that no witnesses have a connection with the beneficiary institution.

A valid will is created only with requisite testamentary intent; any document purporting to be a will that manifests an intent other than the testator's is invalid. Undue influence, fraud, and mistake are elements that may bear on the validity of the testamentary intent of the testator. In the case of undue influence on the testator, such influence must be directed specifically to the act of making a will. Fraud applies in the case of misrepresentation made with the intent that the testator rely on it. The burden of proof in contests involving fraud and undue influence rests with those who make the allegation and challenge the will. The courts are less stringent about mistakes in a will resulting from stenographic error or drafting.

#### **a. Revoking, Renouncing, and Amending Wills**

A will is generally revocable at the option of the testator prior to the time of her death. Most jurisdictions delineate by statute the following methods of partial or total revocation or amendment:

1. Deliberate destruction or alteration of the will; no substitutions or additional bequests are effective without re-execution and re-attestation.
2. A first will may be revoked only to the extent that a second will is inconsistent with the first. A declaration in the second will that all former wills are revoked will serve to revoke all former wills completely. In some jurisdictions, a statement to this effect in a subsequent document, though the document does not meet the requirements of a will, is sufficient to sustain the revocation of a former will.
3. A rule of law also may revoke a will; that is, a marriage generally revokes portions of a will executed prior to the marriage due to the common law provisions for surviving spouses and children.
4. Children born after the execution of a will may revoke the will so far as the after-born child is concerned. Such a child is entitled to receive the portion of the estate to which he or she would be entitled had the testator died without a will.
5. A surviving spouse, according to most statutes, retains the right to renounce the will and elect the option of receiving a statutory interest in a decedent's estate instead of under the will. The right to renounce a will is absolute: upon renunciation, the law determines the share of the estate awarded to the spouse and beneficiaries.
6. Changes in a will may be accomplished by use of written amendments (known as codicils) that may explain, qualify, alter, revoke, delete, or add to certain provisions in a will. For purposes of determining the intent of the testator, codicils and the will are regarded as a single instrument. Codicils must be prepared, executed, and witnessed according to the formalities required for a valid will to be considered valid portions of the will.

#### **b. Abatement and Ademption**

Abatement and ademption are two occurrences that most frequently carry serious implications and result in unfortunate situations involving wills. Abatement occurs when the value of the estate of the testator is reduced after the execution of the testator's will. Abatement primarily affects residues and remainders of an estate that are reduced after specific legacies are paid. A percentage distribution based on the net assets of the estate is a hedge against

abatement because it ensures that the proportions distributed under the will to the various beneficiaries will be consistent. For example, a testator with a \$50,000 estate who makes a specific bequest of \$5,000 each to five members of her family and leaves the rest to her local church may intend to divide the estate in half between the family and church. If, at the testator's death, the value of the estate has fallen to \$30,000, the specific beneficiaries still each receive \$5,000 and the local church receives the remaining \$5,000, only 16.67 percent of the estate instead of 50 percent of the estate as may have been the testator's original intent. This situation can be overcome by basing the bequests on a percentage distribution of the net assets of the estate. In other words, if the testator intended her testamentary scheme to hold no matter what the size of the estate in the above example, she would divide the estate in half, divide one-half into fifths for the specific beneficiaries, and leave the other half to the church. In that case, if the estate had fallen to \$30,000, each specific beneficiary would receive \$3,000 and the church would receive \$15,000.

Ademption occurs when a testator fails to change a will containing provisions that have been rendered impossible of performance owing to altered circumstances. For example, the testator in a will leaves a piano to A but sells the piano before she dies. Disputes may arise over whether A is entitled to anything in this circumstance. In general, A's interests and the bequest are considered to have been adeemed or canceled by the testator's action.

### c. Nontraditional Wills

Two special types of wills that are sometimes encountered are:

1. **Nuncupative wills** are oral declarations made before witnesses without writing and in contemplation of death. If authorized by state law, they will be valid only if made in contemplation of death with intent to make a will.
2. **Holographic wills** are written in the handwriting of the testator: these wills may not require attestation, providing they are written in strict compliance with statutory provisions covering such wills. These provisions exist in only a few states. This is not an ideal manner to create a will. It is recommended that wills be prepared by legal counsel to ensure they meet statutory provisions and will thereby carry out the testator's intentions.

### d. Probate

The procedure of administering and distributing the estates of decedents is referred to as probate. The following steps comprise the procedures of probate administration:

1. Determination of existence of a will
2. Approval or appointment of an executor or administrator by the court
3. Posting of bond, if required, by the executor or administrator
4. Proof of will in court by witnesses; succeeded by a decree admitting the will into probate
5. Proof of heirship
6. Issuance of letters of administration; filing of estate inventory by executor or administrator

7. Publishing of notices regarding proof of claims, opening of bank accounts for the estate, settlement of financial obligations, that is, collection of assets, payment of debts and taxes, and disbursement of the remainder
8. Settlement of the "widow's share" (that amount determined by state law to be given to the surviving spouse as an alternative, if the spouse so chooses, to the provisions of the will)
9. Winding up receipts on distribution, distribution of assets, approval and filing of final inventory.

## **D. Personal and Real Property — Gifts**

The local church's primary involvement with personal property concerns title to personal property transferred to the church by gift. A gift is generally defined as a voluntary transfer of personal property **without** consideration. The essential elements of a gift are:

1. the competence of the donor,
2. the intention of the donor to make a gift,
3. the completed delivery of the gift, and
4. the acceptance of the gift by the donee.

Gratuitous promises to make a gift at some future point are not binding on the promisor. A donor may, however, make a gift of property and retain the right of income from it until the donor's death. In practice, most gifts are absolute and take effect immediately upon delivery of the property to the donee. Testamentary gifts are those made via wills. Gifts causa mortis are gifts conditioned upon the donor's death and are considered revocable either by outright cancellation of the gift by the donor or by nonoccurrence of the conditional event, that is, the donor's death.

An important difference between a gift and a trust is in the location of legal title. In the case of a gift, legal title and beneficial ownership of property are both vested in the donee. In the case of a trust, beneficial or equitable ownership passes to the beneficiary and the legal title is transferred to a third party or retained by the donor to be administered for the benefit of the beneficiary. Prior to agreeing to accept a gift, the board of trustees should ascertain the terms upon which the gift is being transferred and received. Such a determination would include the stated intent of the donor, any conditions about conveyance, and any conditions or restrictions on the use of said property.

The church's insurance agent should be notified immediately when a gift of real estate or fine art is received so that the property can be added to the church's insurance policy. Each insurance policy has restrictions on the number of days new property can be covered before it has to be reported to the insurance company. The number of days can range from 30 to 120 days. The normal limit is 30 days; additional days will need to be endorsed onto your policy. Remember, once this time is up the property will be uninsured. If your church receives numerous real estate or fine art gifts, you may consider increasing the new property reporting period.

### **1. Charitable Deductions**

Donors sometimes raise questions concerning the tax-deductibility of gifts to their church. Outright gifts of cash or property to the church will generate charitable deductions to the donor. The deduction will be the fair market value in the case of donated property.

Where the gift is not given to the church outright, but instead is conditioned upon the church transferring it to a designated non-charitable beneficiary, no deduction is available to the donor, because her donative intent will not have been sufficiently established and the donation is not actually made to a charity. For example, Donor A gives the church \$5,000 to be used to send two specific children within the congregation to college. Initially, a church should not accept such a gift and certainly should not issue any receipt for tax purposes. Donor A would not get a deduction in this case because the gift is really to the two students, not to the church. Where such a gift is given to the church for scholarships with **no** conditions set about whom the church designated as a recipient, then the deduction would be available, the donor having **relinquished control** of the gift to the church. Absent the donor relinquishing **all** control over the gift, sufficient donative intent to a charitable recipient will not have been established and any charitable deduction taken by the donor would be subject to being disallowed.

There are certain tax requirements when accepting noncash gifts worth more than \$500. The donor must file Internal Revenue Service Form 8283 — "Non-Cash Charitable Contributions." Under that form, the church must acknowledge receipt of the gift, entering its name, employer identification number, and the signature of an appropriate board representative. Should the church decide to sell securities within two years of the date of receipt, it is necessary to file Internal Revenue Service Form 8282 — "Donee Information Return," and to send a copy to the donor. An exception exists for publicly traded securities. See Section 8: Taxation and Hammar's *2000 Tax Guide* for information on IRS requirements for receipt of charitable donations, including information on the IRS requirements for substantiating donations and gifts of \$250 or more.

## **2. Gift Restrictions and Encumbrance**

It is always prudent for donees to determine what restrictions, if any, are attached to a gift. Depending on the nature of the restrictions and the cost, difficulty, and willingness to enforce such restrictions, the church may choose to refuse the gift or request that the restrictions be removed. It is an excellent idea for the board of trustees to develop a policy for acceptance and administration of gifts. When accepting gifts of real property, it is important to consider if there are any mortgages or liens encumbering the property, as well as the costs of possible sale or maintenance and upkeep if the property is retained. Another potential liability in accepting real estate is the presence of building or housing code violations.

**One of the most significant problems involved in the acceptance of real estate is possible environmental hazards and liabilities on the gift property. Owners of property, even a church that has received a gift of real property, could become liable for cleanup costs and removal of any hazardous wastes on the site.** It is important to consider all of these factors when evaluating the acceptance of a gift of real estate. An environmental audit or title insurance rider insuring against liability should always be obtained. Should the audit indicate that there might be hazardous waste contamination on the property, the best way to prevent potential liability is to exercise the right to disclaim the gift or bequest. Similarly, a church may wish to reject an offer to donate a heavily mortgaged property or property in serious disrepair.

## **Section 11: Other Resources**

### **A. Legal and Risk Management Services Office**

Martha E. Clark, General Counsel

(888)728-7228 ext. 5390

[Martha.clark@pcusa.org](mailto:Martha.clark@pcusa.org)

April Davenport, Associate General Counsel  
(888)728-7228 ext. 5350  
[April.davenport@pcusa.org](mailto:April.davenport@pcusa.org)

Michael Kirk, Associate General Counsel  
(888) 728-7228 ext. 5278  
[Mike.kirk@pcusa.org](mailto:Mike.kirk@pcusa.org)

Rebecca Rayner, Paralegal  
(888)728-7228 ext. 8021  
[Rebecca.Rayner@pcusa.org](mailto:Rebecca.Rayner@pcusa.org)

Kris Baker, Associate for Risk Management  
(888)728-7228 ext. 5549  
[Kris.baker@pcusa.org](mailto:Kris.baker@pcusa.org)

Legal Assistant  
(888)728-7228 ext. 5377

Linda Wright, Legal Assistant  
(888)728-7228 ext. 5378  
[Linda.wright@pcusa.org](mailto:Linda.wright@pcusa.org)

Sandra Charles, Risk Management Assistant  
(888)728-7228 ext. 5530  
[Sandra.charles@pcusa.org](mailto:Sandra.charles@pcusa.org)

The Office can provide general information on various legal and risk management topics:

- Incorporation: Corporate Articles and Bylaws
- Church Insurance
- State Sales and Use Taxes
- Litigation
- Federal Tax Exemption: 501(c)(3) Tax-Exempt Letters
- Corporate
- Intellectual Property: Copyright, Trademark
- Personnel Issues
- Church Loan Documents
- Tax Issues

- Structural Matters
- Real Estate
- National Church Insurance Program
- Travel Insurance
- Americans with Disabilities Act
- Risk Management
- Landmarking
- First Amendment
- Worker's Compensation
- Wage and Hour Issues

**Note: Because laws vary from state to state, the attorneys and staff in our office can only provide general advice or guidance. Your local attorney should be consulted for specific legal advice on the pertinent facts and the law applicable in your jurisdiction.**

## **B. AIDS/HIV**

U.S. Department of Health and Human Services (General Web site for the U.S. Department of Health and Human Services) (<http://www.hhs.gov/>)

Public Health Service (<http://www.usphs.gov/>)

Centers for Disease Control (<http://www.cdc.gov/>)

National Prevention Information Network (NPIN) (<http://www.cdcnpin.org/scripts/index.asp>)

CDC National AIDS Clearinghouse (<http://www.cdcnpin.org/scripts/index.asp>)

(800)458-5231

Deaf Access/TDD: (800)243-7012

P.O. Box 6003

Rockville, MD 20849-6003

**Note:** The CDC National AIDS Clearinghouse will do a database search for information about AIDS/HIV; for example, they will do a database search for information on how to address the situation of a child with HIV in a child-care setting.

## **C. Disabilities**

Resources and Referrals for Persons with Disabilities

**National Ministries Division and Presbyterian Disabilities Concerns**

A network of PHEWA

(888)728-7228 ext. 5800

<http://www.pcusa.org/phewa/pdc.htm>

People contacting this number will be directed to a variety of resources that will assist ministers and congregations in their efforts to make their worship services and church programs more inclusive for all of the children of God, but especially for those with disabilities. These resources include:

- Disabilities resources
- Policies of the Presbyterian Church (U.S.A.) on disabilities
- Americans with Disabilities Act (ADA) Information
- Access Sunday Awareness Packet materials
- Suggestions on Making Meeting Places Accessible
- Architectural Design for an Accessible Sanctuary
- Low Interest Loans Available to Make the Church More Accessible

**Job Accommodation Network** (<http://askjan.org/>)

A service of the President's Committee on Employment of People with Disabilities

(800)ADA-WORK or (800)526-7234

**U.S. Department of Justice**

ADA Information Line 1(800)514-0301

**D. Arson and Bombing Attacks on Churches — Assessment and Prevention**

Bureau of Alcohol, Tobacco, and Firearms (<http://www.atf.gov/>)

Church Threat Assessment Guide: (800) 800-3855

ATF National Arson Hotline: (888) ATF-FIRE

ATF National Bomb Hotline: (888) ATF-BOMB

**E. Church Internal Disciplinary Process and Polity**

**Office of the General Assembly Constitutional Services**

Laurie Griffith (888)728-7228 ext. 5432

Doska Ross (888)728-7228 ext. 5434

Mark Tammen (888)728-7228 ext. 5433

**F. Church Loan Programs of the General Assembly**

Ben Blake

(888) 728-7228 ext. 1047

## **G. Copyright**

*The Essential Guide to Copyright Law*, by Richard R. Hammar, J.D., LL.M., CPA, 2010. (800)222-1840.  
<http://store.churchlawtodaystore.com/index.html>.

*The Church Musician and the Copyright Law*, Church Music Publishers Association, P. O. Box 158992, Nashville, TN 37215. (615)791-0273.

### **Presbyterian Publishing Corporation**

100 Witherspoon Street  
Louisville, KY 40202  
Robin Howell, Manager, Rights and Permissions  
rhowell@wjkbooks.com

**Church Music Publishers Association** (<http://www.cmpamusic.org/html/main.isx>)

Answers to common copyright questions

**United States Copyright Office** (<http://www.copyright.gov/>)

**Augsburg Fortress Copyrights & Permissions**  
(<http://www.augsburgfortress.org/copyrights/index.asp?PageID=666>)

Guide to copyright law by the publishing house of the Evangelical Lutheran Church in America

**The Motion Picture Licensing Corporation** (<http://www.mplc.com/>)

Information about the use of videos. See, in particular, the very helpful questions and answers in the FAQ section.)

## **H. Discrimination and Harassment**

Human Resources Office  
Lisa Robbins, Director of Human Resources  
100 Witherspoon Street  
Louisville, KY 40202  
(888) 728-7228 ext. 5710

## **I. Employment Matters**

*Pastor, Church & Law Volume 3: Employment Law*, by Richard R. Hammar, J.D., LL.M., CPA, 2007. Published by Your Church a service of Christianity Today International. (800) 222-1840.

Presbyterian Church (U.S.A.) Employee Handbook, Human Resources Office, 100 Witherspoon Street, Louisville, KY 40202, (888) 728-7228 ext. 5710. (This handbook is primarily written for General Assembly Mission Council-level employers).



## **J. Insurance**

### **Legal and Risk Management Services Office**

Information about recommended minimum insurance coverages and companies that offer insurance to churches and middle governing bodies. *See Section 9: Risk Management and Insurance.*

Kris Baker, Risk Manager  
1-888-728-7228 ext. 5549  
Risk Management & Insurance

Sandra Charles, Risk Management Assistant  
(888)728-7228 ext. 5530

Recommended minimum insurance coverages and a profile of major church insurance companies/programs (*See* section of this Manual on Risk Management)

*Risk Management for Churches*, by Richard Hammar, J.D., L.L.M., CPA. Published by Your Church a service of Christianity Today International. (800) 222-1840 (an easy checklist for church risk and insurance issues)

## **K. Presbyterian Church (U.S.A.) Office of the General Assembly**

100 Witherspoon Street  
Louisville, KY 40202  
(888) 728-7228  
<http://www.pcusa.org/oga/>

Gradye Parsons, Stated Clerk  
Loyda Aja, Director, Office of the Stated Clerk  
Tom Hay, Director of Operations  
Mark Tammen, Director, Department of Constitutional Services  
Laurie Griffith, Manager/Judicial Process and Social Witness  
Doska Ross, Manager, Polity Guidance & Training

The Office of the General Assembly posts various publications on the Internet. These include the PCUSA Constitution, Minutes of the General Assembly, Judicial Resources, General Assembly Resolutions and Study Papers, Ecumenical Resources, Forms and Certificates, and many other resources (<http://www.pcusa.org/oga/publications.htm>).

## **L. Presbyterian Church (U.S.A.) General Assembly Mission Council**

100 Witherspoon Street  
Louisville, KY 40202  
(888) 728-7228  
<http://www.pcusa.org/gamc/>

Linda B. Valentine, Executive Director

Curtis Kearns, Executive Administrator  
Jill Hudson, Coordinator, Middle Governing Bodies  
Karen Schmidt, Deputy Executive Director for Communication and Funds Development  
Roger Dermody, Deputy Executive Director for Mission  
Joey Bailey, Deputy Executive Director for Shared Services and CFO

### **M. Board of Pensions of the Presbyterian Church (U.S.A.)**

2000 Market Street  
Philadelphia, PA 19103  
(800) 773-7752  
<http://www.pensions.org/portal/server.pt>

Robert W. Maggs, Jr., President/CEO

Jean Hemphill, General Counsel

The Board of Pensions has regional service teams located throughout the nation. Phone (800) 773-7752 to get contact information for your regional service team.

### **N. Presbyterian Church (U.S.A.) Investment and Loan Program, Inc.**

100 Witherspoon Street  
Louisville, KY 40202  
(800) 903-7457  
<http://www.pcusa.org/pilp/>

James Hudson, President/CEO ext. 5878  
James Rissler, Sr. VP/COO/Treasurer ext. 5618  
Ben Blake, VP/Sales & Marketing ext. 5865

### **O. Presbyterian Church (U.S.A.) Foundation**

200 E. Twelfth Street  
Jeffersonville, IN 47130  
(800) 858-6127  
<http://www.presbyterianfoundation.org/>

Tom Taylor, President/CEO  
Angela Duffy, Counsel  
Gregory Rousos, Chief Operating Officer  
President, CEO New Covenant Trust Company

The Foundation has development officers located throughout the nation. Phone (800)858-6127 ext. 8919 to secure the contact information for the development officer in your area.

## **P. Presbyterian Publishing Corporation**

100 Witherspoon Street  
Louisville, KY 40202  
(888)728-7228 ext. 5020  
<http://www.ppcbooks.com/>

Marc Lewis, President/Publisher

## **Q. Minister Assistance**

### RESPONSE

A benefit of the Board of Pensions

(800)455-5129

RESPONSE offers a wide variety of free services to those (both clergy and lay) covered by the Board of Pensions. Simply call the toll-free number to access any of the following services:

- Counseling (depression, family or marital problems, stress, anxiety, grieving, alcohol and substance abuse, career transition)
- Legal advice (family law, property, estates, evictions, landlord/tenant)
- Financial matters (tax, bankruptcy, financial counseling, foreclosures)

The RESPONSE program provides access to lawyers, accountants, counselors, and other professionals.

### **The National Clergy Support Network/PASTORCARE, Inc.**

P. O. Box 52044  
Raleigh, NC 27612  
(919)787-7024

The National Clergy Support Network/PASTORCARE, Inc. serves ministers and their families. Clergy from all denominations are eligible for the free services. Services include prayer intercessors, vacation getaways, interim employment, legal assistance, physical health needs, counselors, and mentors.

## **R. PresbyNet**

PresbyNet (<http://presbynet.ecunet.org/>) is a service of the Office of Communication. PresbyNet members share information and communicate with others around the world. There are hundreds of public and private meetings on a myriad of subjects. Contact PresbyNet at (800)733-2863 for more information and how to join. A few sample ways to use PresbyNet:

- set up a support network for Christian educators or pastors of rural churches
- create your own network in support of mission
- share worship materials

- reduce face-to-face meetings while still keeping people involved and informed
- have access to most staff at the Presbyterian Center in Louisville, and staff at dozens of middle governing bodies

## **S. PresbyTel**

PresbyTel is another service of the Office of Communication. PresbyTel is a direct link to one of the most complete databases of information on topics of interest to Presbyterians. You can receive quick and efficient answers from trained consultants by calling (800)UP2DATE/872-3283.

Any person linked to PresbyNet can submit questions to PresbyTel Online, an electronic meeting during which staff can answer your questions online. Individuals can also send a note directly to the PresbyTel inbox. Finally, PresbyTel has a fax line available for those who wish to send their questions via this method. The fax number is (502)569-8099. After receiving your fax, a PresbyTel consultant will research your request and then respond by either return fax or telephone, whichever you choose. Individuals may also send questions after business hours. A consultant will respond to the request on the following business day.

## **T. Sexual Harassment and Misconduct**

Clergy Discipline and Church Polity  
Office of the General Assembly  
Constitutional Services  
Laurie Griffith, Manager of Judicial Process  
(888)728-7228 ext. 5432

Harassment and misconduct should be reported to the minister and clerk of session at the church where it occurred. If the harassment or misconduct was perpetrated by a minister, report it to the presbytery (both the presbytery executive and the stated clerk) of which the minister is a member.

## **U. Stewardship**

Stewardship and Mission Funding  
  
Jon Brown  
Director, Mission Interpretation  
(888) 728-7228 ext. 5194

## **V. Useful Web Sites**

Presbyterian Church (U.S.A.) (<http://www.pcusa.org/>)

Presbyterian Church (U.S.A.) Foundation (<http://www.presbyterianfoundation.org/>)

Board of Pensions of the Presbyterian Church (U.S.A.) (<http://www.pensions.org/portal/server.pt>)

Presbyterian Church (U.S.A.) Investment and Loan Program, Inc. (<http://www.pcusa.org/pilp/>)

Presbyterian Publishing Corporation (<http://www.ppcbooks.com/>)

Church Ministry Resources (<http://www.churchlawtoday.com/>)

Order and subscription information for the very helpful resources produced by Richard Hammar and James Cobble. Resource topics include copyright, employment, tax, background checks, and abuse prevention.

American Bar Association (<http://www.abanet.org/>)

Comprehensive links to legal sites on the Internet. LawLink is a list of legal research starting points selected by the ABA. Be sure to check out "site-tation" for highlights of what is new on the Internet from a legal perspective.

Cornell Law School (<http://www.law.cornell.edu/>)

Best legal resource site on the Internet. U.S. Supreme Court decisions [which can be distributed to you on the day of the decision via e-mail at no charge], important federal and state statutes, and international treaties.

Indiana University School of Law (<http://www.law.indiana.edu/>)

Another site serving as a one-stop legal reference site. This site provides users access to and descriptions of a wide variety of law-related Internet information.

Internal Revenue Service (<http://www.irs.ustreas.gov/>)

User-friendly, popular tax site. Includes links to "Tax Regs in English," tax information for business, "What's Hot," forms and publications.

Thomas (<http://thomas.loc.gov/>)

A service of the U.S. Congress, this site features legislative information on the Internet. Site includes federal legislation, tax bills, and more.

U.S. Courts ([http://www.uscourts.gov/court\\_locator.aspx](http://www.uscourts.gov/court_locator.aspx))

Find federal courts information

Department of Labor (<http://www.dol.gov/>)

The Homepage of the U.S. Department of Labor.

Federal Trade Commission (<http://www.ftc.gov/>)

Information about the Children's Online Privacy Protection Act.

U.S. Securities and Exchange Commission (<http://www.sec.gov/>)

Contains links to SEC databases, including the Edgar database of corporate information. Search Edgar for corporate filings with the SEC.

Supreme Court (<http://www.oyez.org/>)

A unique site that provides information on major constitutional cases heard and decided by the Supreme Court of the United States. At this site, you can listen to oral arguments made in numerous Supreme Court cases.

Altavista (<http://www.altavista.com/>)

One of the general search engines used to locate sites on the Internet. Allows user-friendly searches of the Internet and news groups.

Corporate Financial Information (<http://finance.yahoo.com/>)

Current stock quotes, foreign exchange currency rates, corporate profiles and the latest business news.

Findlaw (<http://www.findlaw.com/>)

This site is actually several sites in a single location. The index contains a listing of Internet legal resources that can be searched by topic or keyword. The LawCrawler expands search capability to additional databases.

Hieros Gamos (<http://www.hg.org/>)

Comprehensive list of legal resources available on the Internet.

Law.com (<http://www.law.com/jsp/law/index.jsp>)

Contains a great deal of relevant law news, offers connections to law firms online, classified ads and an employment center. Daily highlights of current, newsworthy events as well as major stories from The National Law Journal, The NY Law Journal, and Law Technology Product News.

Online Newspapers (<http://www.newspaperlinks.com/home.cfm>)

Quick access to hundreds of newspapers from around the country with user-friendly interface. Many newspapers allow you to search their archives.

Senior Law (<http://www.seniorlaw.com/>)

Access information on elder law, Medicare, Medicaid, estate planning, trusts, and the rights of the elderly.

U.S. Supreme Court Decisions (<http://www.law.cornell.edu/supct/>)

kept very current.

Federal Court Decisions (<http://www.uscourts.gov/Home.aspx>)

U.S. Code (<http://www.law.cornell.edu/uscode/>)

Search federal statutes.

## **W. Do's and Don'ts When a Lawsuit Is Filed — And Until It's Over**

### **1. When the Papers Arrive**

- a. Do not sign anything other than a simple messenger's receipt that acknowledges your receipt of court papers;
- b. Keep the envelope or wrappers that the papers arrived in;

- c. On the first page write the date and time the documents were received and the method by which they were received (hand-delivery by a court official; mail; other — be specific);
- d. Immediately call your attorney for instructions, note the date and time of the call;
- e. Immediately call your insurance broker or agent; forward a copy of the papers to your broker/agent, with a dated cover letter (save a copy of the cover letter too);
- f. Determine whether your organization has a policy already in place for what to do when a lawsuit is filed; make sure you follow the requirements outlined in such a policy, if it exists;
- g. Deliver a copy of the papers to other leaders in your organization, as appropriate (for example, the chair of the committee, the minister, the treasurer, the clerk of the session);
- h. Notify your IT department or the employee in charge of your computer system to protect e-mail and electronic documents which may have any relevance to the lawsuit;
- i. If the complaint names the Presbyterian Church (U.S.A.) or the General Assembly as a defendant, please contact the Legal Services Office immediately. Martha Clark, General Counsel, (888)728-7228 ext. 5390; or Michael Kirk (888)-728-7228 ext. 5378.

## **2. The Next Step...**

- a. Sit down immediately with your attorney and a small group of leaders (the group will vary depending on the nature of the lawsuit) and decide key strategy issues:
  - Prepare for possible media interest and a press statement, if necessary;
  - Decide who is going to be the up-front person on the lawsuit to handle inquiries, to assist counsel, to follow what's happening, and so on. (Note: This person should be someone who has excellent follow through skills, knows how to keep information in strict confidence, and who consistently uses good judgment about delicate matters.); ensure that this person gets the training that s/he needs on what is appropriate to say, when and to whom;
  - Discuss contacting all employees and members who might have documents and records relevant to the litigation and ask them to deliver their documents to the employee who is the principal contact with your lawyer;
  - Ensure that a good file of all documents is maintained; decide who is going to maintain that file and be responsible for it;
  - Decide whether the congregation needs to be informed of the lawsuit, as applicable (again, be careful — seek legal advice);
  - Decide whether any local church pastoral care will be needed and develop a plan to address these needs;
  - Decide whether pastoral care will be important for anyone else — including yourself!
  - If the lawsuit is based on some type of misconduct of a pastor, determine whether there has been an internal disciplinary action filed and, if so, what is its status; if not, decide whether it would be appropriate to pursue

such an action at this time (again, be careful — seek legal advice). Consult with the pastor's presbytery of membership.

- b. Make sure an attorney is hired immediately to file the appropriate response to the lawsuit; if your insurance agent/broker is not able to give you the name, address, and phone number of the attorney assigned to the case within several days of your receipt of the papers, you will need to have your own attorney obtain an extension of time for the filing of appropriate papers. (Note: There are important, short deadlines for the filing of responses in lawsuits; and, filing the wrong response can result in significant legal problems down the line; it is crucial an attorney be on the alert immediately to protect your interests);
- c. Preserve notes, correspondence, or files that relate to the matter;
- d. Do not talk with anyone about the lawsuit, except your attorney and the small group of leaders who work together to develop a strategy for what to do next; determine if the Session as a whole should be informed as the lawsuit progresses;
- e. Do not call the plaintiff, his or her attorney, or anyone else who might be on the other side in this matter and do not accept calls from them, if they call refer them to your attorney;
- f. Do not call, write, or visit with the judge, at any time, for any reason;
- g. Ask your attorney before you act;
- h. Remind yourself, your attorney, and others that this is a church and that a church is different from other parties in a civil lawsuit; it is important for the church to act as a church at all times. While this does not mean you are free to do what you want, when you want, or that you will be free and clear of liability, the role of the church should remain in mind at all times.

### **3. When You Meet with Your Attorney...**

- a. Be completely open, truthful, and forthright; your attorney cannot help you if you hide information; do not try to decide what information is important or unimportant — let your attorney be the judge of that — tell everything you know;
- b. Bring a copy of all documents, writings, and things that may have anything to do with the lawsuit; keep the originals;
- c. Talk with your attorney about your insurance coverage;
- d. Remind your attorney that she or he represents you, not your insurance carrier;
- e. Listen to your attorney and follow his or her advice; if you disagree with something that she or he says, tell him or her that you disagree and iron out the issue right then and there;
- f. Educate your attorney about the Presbyterian Church (U.S.A.) denomination; make sure that she or he understands the importance of the structure of the Church; tell your attorney there are lawyers at the General Assembly Mission Council who may have legal research, briefs, and other helpful materials that would be of assistance in understanding the structure of the Church (contact Martha Clark at (888)728-7228 ext. 5390 or Michael Kirk at ext. 5278);



g. If you receive a "reservation of rights" letter — or a "denial of coverage" letter from your insurance carrier, you should obtain an opinion from a special insurance coverage attorney about whether there are steps you should take to protect your legal rights under the insurance policy(s).

#### **4. As the Case Progresses...**

- a. Remember the do's and don'ts from above!
- b. Call your attorney immediately if you receive any additional official papers related to the lawsuit;
- c. Make sure your up-front person is continually updated about the status of the case and has access to independent legal counsel to help answer questions about legal strategies and maneuverings and address concerns regarding insurance coverage or actions being taken in the lawsuit by your attorney or others;
- d. Try to be patient: the court system is often very slow and cumbersome; it may seem like it's taking forever for your case to progress to resolution.

## **X. Church News Publications**

**Horizons** — A bimonthly magazine published by Presbyterian Women that provides information, inspiration, and education from the perspective of women committed to Christ, the church, and faithful discipleship. To order call: (800)524-2612 (<http://www.pcusa.org/horizons/>).

**Presbyterian News Service** — The Presbyterian News Service (PNS) is the official news agency of the Presbyterian Church (U.S.A.). Its job is to gather and disseminate news and information about the denomination and its work to church members, church officials, religious and secular media and the public. For more information call: (888)728-7228 ext. 5493 (<http://www.pcusa.org/pcnews/index.htm>).

**Presbyterians Today** — The general-interest magazine of the Presbyterian Church (U.S.A.). It contains feature stories and news about people and congregations, analysis of current issues from a Christian perspective, up-to-date information about the Presbyterian Church (U.S.A.) and its mission around the world, Bible study, and practical assistance for daily living. For more information call: (800)524-2612 (<http://www.pcusa.org/today/>).

## **Y. Social and Civil Policy Statements of the General Assembly**

The General Assembly of the Presbyterian Church (U.S.A.) has made many statements on social policy. In addition to the minutes of the annual General Assembly meeting, there are two excellent publications — the Social Policy Compilation and God Alone Is Lord of the Conscience.

### **1. Social Policy Compilation**

This resource is produced by the Advisory Committee on Social Witness Policy (<http://www.pcusa.org/acswp/>). A new edition is published each January. Phone Presbyterian Distribution Services at (800)524-2612 to order a copy; the PDS order number is U68-600-00001. The price is \$30. General Assembly social policy statements back to 1946 are reviewed. Chapters include the Church and Society, International Affairs, War, Peace and Conscience, Human Rights, the Created Order, Economic Issues, Race and the Rights of Minorities in America, the Status of Women in Church and Society, Issues in the Life of the Nation, Sexuality and Human Values, and Health.

\$30.00

PDS #U686000001

## **2. God Alone Is Lord of the Conscience**

In 1988, the 200th General Assembly adopted a major policy statement and recommendations regarding religious liberty. This document is titled God Alone Is Lord of the Conscience. It is available for \$2.00 by calling Presbyterian Distribution Services at (800)524-2612. The PDS order number is OGA-88107. This excellent publication sets out the history, rationale, and current status on a wide variety of religious liberty issues. While we recommend the entire document (just over one hundred pages) for all the background information, immediately below are the pertinent affirmations adopted by the 200th General Assembly:

\$2.00

PDS #OGA88107

### **a. The Right of Church Autonomy and Government Regulation of Church Activity**

1. Churches have a right of autonomy protected by the Free Exercise clause of the First Amendment. Each worshiping community has the right to govern itself and order its life and activity free of government intervention.
2. The government must assert a compelling interest and demonstrate an imminent threat to public safety before the right of autonomy may be set aside in specific instances and government permitted to interfere with internal church activities. The need to separate business activity from residential areas is not sufficient neither to justify use of zoning regulations to prevent prayer meetings in private homes nor to prohibit the use of the church building as a shelter for the homeless.
3. Churches have a fundamental right to be free of government infiltration. Court-approved wiretaps and searches of church premises can only be made on a showing that evidence of crime endangering public health or safety will be removed or destroyed and that no other less intrusive means exist to satisfy the need to preserve such evidence.
4. We concede the appropriateness of some governmental regulation of church activities in the interests of public health and safety. Fire and earthquake regulations, sanitary and building codes may properly be made applicable to churches, provided that they do not entail unreasonable cost, are genuinely health and safety related, and are appropriate to the pattern of church activity rather than a supposed secular analog. A church kitchen used a few hours a month for church groups is not the same as a public restaurant.
5. The government may not require a congregation to maintain a church structure because of its historical significance or subject it to proceedings in eminent domain in order to preserve a church structure. The church should make every effort to cooperate with efforts to preserve esthetic and architectural character but must finally itself be the judge of what religious life and mission require concerning property and its use.
6. Internal disputes within churches, including disputes over church property, should be decided by the highest ecclesiastical authority recognized by both sides before the dispute arose. The application of so-called "neutral principles of law" by civil courts violates the right to autonomy of hierarchical and connectional churches.
7. Those who consent to be governed by a church, including its employees, should not be subject to governmental regulation. We reject the notion that minimum wage laws or other labor regulations may properly be applied to church organizations.

8. As a matter of faith and witness, the church has a moral duty to provide adequate compensation and safe working conditions for its employees and to offer employment without discrimination. The church should voluntarily meet or exceed the standards and practices required by law for nonreligious employers.
9. Courts and public agencies called upon to assess the bona fides of a claim to protection under the First Amendment should not base their decision on traditional notions of religion but should give substantial deference to the self-understanding of that group, looking to the three considerations described in this statement.

#### **b. Conduct Motivated by Conscience**

1. Individuals should be excused from obeying laws of general application that violate their conscience except when "the gravest abuses endangering paramount interests give occasion for permissible limitation."
2. The legal defense of freedom of conscience must be conceived broadly enough to include freedom for the nonreligious conscience.
3. The protection of religious conscience should not be limited to actions stemming from beliefs shared by all members of one's religious group or to what is required by the creed or order of one's religious group. It includes practice that may be regarded as voluntary by one's religion as well as that which is individually derived.
4. The right of adults to refuse medical treatment for themselves on religious grounds should be upheld; but not their right to withhold medical care for their minor children when such treatment is deemed necessary to prevent death or permanent injury.
5. The diversity of understandings of different religious groups about what constitutes health should be respected.
6. The right to observe the Sabbath and other days of religious obligation should be protected, but not to the significant material disadvantage of co-workers whose days of religious obligation are different or those who are not religiously affiliated.
7. The present selective service law, which requires that conscientious objectors be opposed to all wars, should be changed to allow exemption as well for those opposed only to participation in particular wars on the ground that they are unjust.
8. Not all employment discrimination can be reached by laws. The church should be prepared to expose, analyze, and confront cases of discrimination in public or private employment based on religious conviction or status, as well as on grounds of race, religion, nationality, sex, or sexual orientation, and to provide aid and comfort to the victims.
9. Claims of Christian conscience should not be lightly or cynically made, and should be tested to the maximum extent possible by the counsel of the Christian community.

#### **c. Government Support for Religious Institutions**

1. Government payments on behalf of individuals, under programs such as Medicare, Medicaid, and scholarship assistance, should without exception be available to clients and students at church-sponsored agencies and institutions on exactly the same terms as if those patients or clients were receiving their services from secular entities.
2. Government should not discriminate against religious institutions and agencies in the expenditure or administration of public funds when the public purpose can be achieved by the religious group in a way that does not support or

advance religion. When public funds are made available to private agencies to meet welfare and social service needs, religious programs and agencies should not be excluded provided that:

- a. the service is open to the public without discrimination on the basis of race, age, sex, religion or national origin;
  - b. the service is administered without religious emphasis or content, or religious preference or other discrimination in employment or purchase of services;
  - c. no public funds are used by religiously controlled organizations to acquire permanent title to real property. (Where existing religiously owned property requires minor modifications to meet specific requirements of the particular program and there are public funds expressly available for such purpose, they may be used by the church also);
  - d. the religious organization or agency is subject to the same provisions for safety, general standards and licensing, qualifications of personnel, and financial accountability as other private agencies.
3. Since each state guarantees the right to a free public elementary and secondary education and maintains universally accessible institutions for that purpose, we oppose as a matter of public policy the use of substantial public funds to support private educational systems, including tax deductions or credits and use of educational vouchers.
4. Where government provides non-curricular services to both public and private schools that involve the itineration of public employees to the institutions, schools sponsored by religious organizations should not be excluded.
5. Tax deductions for contributions to religious agencies, or for payments to religious schools should they be enacted, should not be viewed as support or aid for religion. A policy decision by the state to refrain from taxing is not equivalent to a decision to appropriate public revenues.
6. Service ministries operated by or related to Presbyterian governing bodies, whether or not they receive public funds, should offer all services without restriction based on race, sex, religion, ethnic origin, or sexual orientation, and should conform to requisite health and safety requirements and standards regarding licensing and personnel qualifications. Where such programs are expected to continue for considerable time, placing them under the control of independent community-based bodies should be carefully considered.
7. In light of the division within the religious and public life of this nation concerning government aid for religious schools and the great significance of quality education for all our children, we urge continuing study and reflection on the whole subject at every level of the church. The child benefit, purchase of service, and equal treatment approaches in particular merit careful analysis, both in ongoing constitutional interpretation and in public policy considerations.

#### **d. Taxation and Religious Organizations**

1. The state may not use its power to tax or to exempt from taxation, to restrict, or place conditions on the exercise of religion.
2. The state may not tax the central exercise of religion or property essential to the core functions of religion. We hold that the application of the restrictions in Section 501(c)(3) of the Internal Revenue Code to the speech of the church and its leaders are an unconstitutional limitation on a central exercise of religion.

3. We support exemption of other church property and income as a matter of legislative policy. Such exemptions do not "establish" religion.
4. We concede that some properties and operations of religious organizations may be subjected to taxation by legislative act; but we will resist all efforts to do so by administrative determination, in the face of statutes that exempt churches from taxation, that some properties or activities wholly controlled and operated by the church as part of its mission are "nonreligious."
5. We affirm the legitimacy of taxing unrelated business income and property used to generate such income.
6. Particular taxes or exclusions from taxes should treat religious organizations equally with charitable and nonprofit organizations; religious organizations should not be singled out for either penalty or privilege except for the exemption of property essential to the core functions of religion.
7. Special tax exemptions or burdens for the property and income of ministers or other church employees are inappropriate. They should be phased out over a period long enough to accommodate the reliance of many churches on existing exemptions.
8. Payments to government for specific services billed separately to all property owners are not "taxes" and may legitimately be required of religious organizations at the same rate as for other property owners.
9. Churches should feel no obligation to make voluntary contributions in lieu of taxes, and all such contributions should be truly voluntary. They are not a quid pro quo for tax exemption.

#### **e. New Religions and Threats to Conversion**

1. The right to choose one's own religion, and to change that choice, is the most fundamental religious liberty. This right must be vigorously protected from governmental intrusion or physical coercion, either by those seeking to convert or by those seeking to prevent conversion. This right should also be protected from fraud, but courts cannot evaluate claims of religious faith.
2. The church should be tolerant of other religions and respect their right to proselytize and practice their beliefs in accordance with the tenets of their faith.
3. We oppose judicial and legislative efforts to interfere with freely chosen and maintained religious commitments by legal adults, whether based on attempts to define legally undesirable "cult" religion, the use of conservator and guardian procedures, or reversal through legally authorized deprogramming.
4. We further oppose the use of civil law by persons disaffected or disenchanted with their religious experience, unless plausible allegations of physical coercion or fraudulent claims related to empirical facts are present. The right of religious freedom carries responsibility for its exercise and the risk of disenchantment.
5. The church should provide counsel, education, and support for the family members and friends of those who have converted to a new faith or undergone a powerful religious experience, and indicate understanding and continued openness to those who have converted.

#### **f. Religious Expression in Public Places**

1. Government must be neutral in matters of religion. It may not show preference of one religion over others, for religion in general, or for religion over non-religion. While contact and conversation between public officials and

religious leaders on public policy issues are certainly appropriate, official institutional ties between government and religion are not. For that reason, we continue to oppose the appointment of ambassadors to the Holy See of the Roman Catholic Church.

2. Government may not engage in, sponsor, or lend its authority to religious expression or religious observance. We continue to oppose any constitutional amendment to permit public schools to sponsor prayer.
3. Religious speech and assembly by private citizens and organizations, initiated by them, is protected both by the Free Exercise of Religion and Free Speech clauses of the Constitution and cannot be excluded from public places.
4. The display of religious symbols in connection with private speech and assembly in public places is appropriate and legal. We oppose the permanent or unattended display of religious symbols on public property as a violation of the religious neutrality required of government.
5. Religious speech and assembly in public places may be regulated by government as to time, place, and manner, but only in a neutral manner and not to any greater extent than nonreligious expression.
6. Statutes permitting "moments of silence" in public schools are not inherently unconstitutional but should not be enacted because they are subject to misuse through pressures to allow state-sponsored prayer or endorse religion.
7. If a public secondary school permits genuinely extra-curricular student-initiated group activities in non-instructional time, religious expression should be permitted, subject to the same regulations and restrictions.
8. Public schools may constitutionally teach their students about religion in a neutral way. The incorporation of factual and objective references to the role of religion when teaching history, social studies, art, and literature is essential to a comprehensive and balanced education and should be encouraged and assisted in every possible way.
9. Presbyterians should be particularly vigilant to protect the right to public religious expression for new and unpopular minority faiths, and be sensitive to the faith and feelings of others in their own public expressions of faith.

#### **g. Religious Participation in Public Life**

1. The corporate entities and individual members of the Presbyterian Church (U.S.A.) are obliged by the religious faith and order they profess to participate in public life and become involved in the realm of politics.
2. Pastors and officials of the church, as well as lay members, have the right and responsibility to stand for and hold public office when they feel called to do so.
3. The "free exercise of religion" must be understood to include and protect the right to practice faith in public and private as well as the right to believe; and thus to include participation in public affairs by the individuals and church bodies for which such participation is an element of faith.
4. As part of the church's participation in public life, governing bodies of the Presbyterian Church (U.S.A.) at every level should speak out on public and political issues, taking care to articulate the moral and ethical implications of public policies and practices.
5. We recognize that speaking out on issues will sometimes constitute implicit support or opposition to particular candidates or parties, where policy and platform differences are clearly drawn. Since such differences are the vital core of the political process, church participation should not be curtailed on that account; but we believe that it is

generally unwise and imprudent for the church explicitly to support or oppose specific candidates, except in unusual circumstances.

6. We reject and oppose any attempts on the part of the church to exercise political authority or to use the political process to achieve governmental sponsorship of worship or religious practice.

7. We oppose attempts by government to limit or deny religious participation in public life by statute or regulation, including Internal Revenue Service regulations on the amount or percentage of money used to influence legislation, and prohibition of church intervention in political campaigns. We will join with others, as occasion permits, to seek repeal of such regulations and statutes, or a definitive ruling by the Supreme Court on their constitutionality.

### **3. Nonprofit Standard Mail Rate**

The United States Postal Service (USPS) offers certain nonprofit and other organizations reduced standard mail bulk rates. This is an important benefit for churches and governing bodies. For information, go to the USPS site (<http://www.usps.com/>). In the search box, enter -- Special Rates for Nonprofit Mailers. The publication can be printed.

Note: If your church body is at the stage it needs to prove its federal tax exempt status, call the Legal Assistant at (888) 728-7228 x5377. She can provide you with the tax exempt letter for your governing body.

## APPENDIX A

Advisory Opinion

Note #11

April 2, 2004

### Church Property

#### Church Property Topics

- A. Overriding Principles, G-1.0200, G-4.0103, G-4.0104, G-7.0401, G-8.0201
- B. Mortgages and Encumbrances, G-8.0501
- C. Leases, G-7.0304a, G-7.0401, G-8.0502, G-10.0102o
- D. Exception, Excuse from Certain Provisions, G-8.0701
- E. Government Regulations

#### **A. OVERRIDING PRINCIPLES, G-1.0200, G-4.0103, G-4.0104, G-7.0401, G-8.0201**

##### 1. Church Property is at Service for Mission (G-1.0200 - Great Ends)

"The great ends of the church are the proclamation of the gospel for the salvation of humankind; the shelter, nurture, and spiritual fellowship of the children of God; the maintenance of divine worship; the preservation of the truth; the promotion of social righteousness; and the exhibition of the Kingdom of Heaven to the world." (G-1.0200)

a. A "particular church" and its corporation are not one and the same (G-4.0103).

"A particular church consists of those persons in a particular place, along with their children, who profess faith in Jesus Christ as Lord and Savior and who have been gathered for the service of God as set forth in Scripture, subject to a particular form of church government." (G-4.0103)

A particular Presbyterian Church is an unincorporated association (of believers) created by or received into the PCUSA (G-4.0104).

"Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution. Its officers are ministers of the Word and Sacrament, elders, and deacons. Its government and guidance are the responsibility of the session. It shall fulfill its responsibilities as the local unit of mission for the service of all people, for the upbuilding of the whole church, and for the glory of God." (G-4.0104)

b. The corporation of a particular church is a civil body created by the state (G-7.0401).

"Whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained. Only members on the active roll of the particular church shall be members of the corporation and eligible for election as trustees. The elders in active service in a church who are eligible under the civil law shall, by reason of their office, be the trustees of such corporation, unless the corporation shall determine another method for electing its trustees. Any such alternate method shall provide for a nominating committee elected by the corporation, and for terms for trustees the same as are provided for elders. Any particular church which is not incorporated may select trustees from the members on the active roll of the church. The power and duties of such trustees shall not infringe upon the powers and duties of the session or of the board of deacons. (G-10.0102, G-6.0402)" (G-7.0401)

2. The purpose of the Trust Clause (G-8.0201) is to support the purposes and mission of the particular church as a part of the Presbyterian Church (U.S.A.) operating under the Constitution of the Church.



"All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)." (G-8.0201)

## **B. MORTGAGES AND ENCUMBRANCES, G-8.0501**

The present rule in G-8.0501 on selling, encumbering and leasing church property was adopted in stages in 1936, 1942 and 1947 in the former Presbyterian Church in the U.S.A. The requirement for presbytery approval of a church mortgage was proposed in an overture from the Presbytery of Cincinnati in 1934. The problems it was intended to solve are those resulting from overbuilding and the financial crises of the Great Depression. The intention was to provide the presbytery an opportunity to help the congregations in their property and financial planning, and to protect the credit of the whole denomination.

An encumbrance to real property, in addition to a mortgage, may be a lease, an easement, or a condition in the deed which limits the right to use the property. If a church accepts a donation of land on which there is an unpaid tax obligation, or a hazardous waste condition which must be corrected, the land is encumbered until these conditions are satisfied. The property may also become encumbered if a creditor such as a contractor files a lien to secure an unpaid account. Session may not encumber the property or accept property subject to an encumbrance, without a vote of the congregation and approval of presbytery.

When the session seeks presbytery approval for a mortgage, easement or other encumbrance the presbytery must evaluate each application on its own merits. What is sound financial planning and affordable varies from place to place and over time. The rule is not an invitation to the presbytery to go into the property management business or to use its permission giving powers to decide whether the congregation should build a children's day-care center instead of buying an organ. The presbytery is intended to consult with the session representatives to ensure the church has sound architectural, engineering and legal advice, and has been made aware of the Church Financial Campaign Service and the services available from the office of Evangelism and Church Development. The presbytery may assist a congregation in finding alternatives (such as the Presbyterian Investment and Loan Corporation) that reduce costs, increase funds available up front, or divide a project into more affordable parts.

The presbytery's interest is in the financial soundness of the project and the protection of the congregation from unwisely giving up more than it intended in its haste to get income by leasing part of the building. If what is proposed is basically reasonable and the congregation can afford it, they should be granted permission without difficulty. Congregations which have voted to be exempt from this requirement may nevertheless be willing to accept helpful consultation if they are approached pastorally by representatives of the presbytery.

In the event of default, the presbytery is liable for whatever it has legally contracted for. For instance, the presbytery is required to guarantee loans to congregations from Mission Financial Resources. Commercial lenders vary in their requirements and in their assessment of the borrower's financial strength. In reviewing applications to mortgage real property, the presbytery should recognize a moral obligation to lenders and to the reputation for creditworthiness of all of its churches. This might mean that even if the presbytery is not legally liable to a lender it would repay a portion of a loan or take the initiative to renegotiate the terms with the lender.

## **C. LEASES, G-7.0304a, G-7.0401, G-8.0502, G-10.0102o.**

When a congregation wishes to rent or lease the use of its building or land, there are a variety of legal, tax, zoning and practical issues that should be considered. Time, space, purpose and other local circumstances will, of course, determine what kind of lease or written agreement is appropriate and which of the matters listed here will apply.

#### Church Polity:

Among the responsibilities and powers of a session is "to provide for the management of the property of the church, including determination of the appropriate use of church buildings and facilities" (G-10.0102o). The business to be transacted at a congregational meeting includes "matters related to buying, mortgaging, or selling real property" (G-7.0304a).

If the real property being leased is that used for purposes of worship, or if any real property is to be leased for more than five years, the session must secure written permission of the presbytery, G-8.0502. "Used for worship" means the sanctuary and nearby rooms that are closely related to the congregation's own needs. It would not apply to a separate building or, in a large building, to space that has a separate entrance which a tenant could use without interfering with the owner congregation's needs.

The session may permit others to use the facilities of the congregation without vote of the congregation, and without needing permission of the presbytery for uses and purposes that will not greatly interfere with the congregation's worship and programs. Somewhere on a range between weekly evening use of the church hall by an Alcoholics Anonymous group and exclusive use of half of the education wing for a daytime elder-care center is a "tipping point" beyond which the wise session will want to lay its plans before the congregation for information or approval. The session should consider whether the tenant's uses will require the congregation to "move over" - how far?

The point at which presbytery approval is required is also related to prudent judgment rather than precise definition. The rule was introduced in 1947, added to sections on selling and mortgaging real property adopted during the Depression. The idea was to ensure that the presbytery would have an opportunity to help sessions facing financial difficulties and changing neighborhoods.

The presbytery's approval should be sought when the use proposed might significantly curtail the congregation's normal uses and opportunity for ministry. The session and the presbytery ought to consider physical interference with the congregation's needs, whether theological doctrine and liturgical practices would be problems and whether the tenant's use poses any significant risk of liabilities for the safety and security of the church members or the tenant's clients. The lease should ordinarily be for a non-profit use consistent with the purposes of the church.

Where there is a board of trustees separate from the session, with responsibilities for determining use of property, the same procedures and practices should be observed, keeping in mind that trustees hold and manage property for the worship and mission purposes of the congregation as determined by the session (G-7.0401).

#### Tax, Building Codes and Zoning Laws:

Presbyterian congregations are exempt from federal income tax under the denomination's group exemption under Internal Revenue Code 501(c)(3). Rental uses not related to the religious purposes normally do not affect this exemption unless they become "substantial." This means that holding a sale of goods offered by SERV is not a problem. If the proposal is to permit a retail outlet to be operated full time, the session should consult a tax attorney. The session should also check with current IRS regulations regarding unrelated business income.

Property tax exemptions, building codes, land use and zoning laws, and historic district designations are state and municipal laws which may limit the church's use of its property. In some states a church is permitted to rent space to any non-profit user. Others mandate "exclusive religious use." A church that opens a school or rents to a school, or a meal service, may find it is now subject to different building code and zoning requirements for a new or changed use. Sessions should be cautioned to check local regulations for restrictions and required variances or permits. Think carefully about the benefits and the restrictions involved in seeking or accepting the honor of being a "Historic Site."

Lease or Written Agreement:

The rights and responsibilities of the session and the tenant organization should be spelled out in writing. The following are points to be considered:

1. An indemnification and "hold harmless" agreement in favor of the church for activities of the tenant.
2. A certificate of insurance from the tenant's insurer, naming the church as an additional insured. Check with the church's and the tenant's insurer to determine that coverages are adequate and there are no problems of coverage being created by the lease.
3. Duration of the agreement: How long? Conditions of renegotiation and renewal? How will disputes be resolved? Termination provisions.
4. Spaces and equipment: What rooms? Exclusive use or shared use? Additional storage space? Furniture and equipment to be used, or not used. What hours? What days?
5. Alterations to the building or equipment. At whose expense? Permission of the church required. Specify that attached improvements become the property of the church.
6. Responsibilities for: Set-up and take-down? Opening and closing the building? General cleaning? Regulate heating and cooling? General security during activities? Repair of damage?
7. Policy for requests for special additional uses now and then? Who speaks for the session and for the tenants? Dispute resolution?
8. Agreements regarding symbols and displays that may be put up or must be taken down.
9. Rent? Direct cost repayment? Services in exchange for use?
10. If the tenant is a service program in which the church is also a sponsor or participant, what is the linkage? Is there to be a session appointed person on the tenant's board or committee?
11. In neighborhoods where there is plenty of space, sharing the parking lot with a neighbor may pose no problems. In a city neighborhood the number of parking spaces available, responsibility for opening and closing the gate, cost of snow removal, and assurances about high use times of the week may call for a written agreement.

#### **D. EXCEPTION or EXCUSE from CERTAIN PROVISIONS, G-8.0701**

The eight year period for a congregation to vote to be exempt from a provision of Chapter VIII, The Church And Its Property, to which it was not subject prior to reunion, expired on June 10, 1991.

It is important for each presbytery having exempt congregations to make adequate records for future use as personnel change and memory fades. The stated clerk should preserve a list of the names of the exempt congregations with the date of the action and a copy of Book of Church Order, Presbyterian Church in the United States, Chapter 6 Church Property, as amended June 15, 1982.

The practical effect of the exemption is to excuse the congregation from the requirements of section G-8.0500 Selling, Encumbering, or Leasing Church Property. Some congregations continue to be apprehensive about the effect of reunion on their ownership and use of real estate

The entire chapter 6 should be incorporated into the certificate or referred to in it and then attached to it. The presbytery should avoid adopting or certifying any paraphrase or restatement of the property rights. The presbytery cannot act in violation of the *Book of Order*. There is no reason for presbytery not to give reassurance that it will respect the property rights of the congregation, but it should be expressed in words that avoid even the suspicion that the Presbytery is promising more than the *Book of Order* permits.

**Article 13 of the Articles of Agreement that implemented the Reunion of the PCUS and the UPCUSA provided a window of years whereby PCUS congregations could vote to leave the new PCUSA. That provision expired in June of 1991 and is no longer an option available to such congregations.**

Other questions asked from time to time are whether a church that has registered its exception from the sales, mortgage and leases paragraph loses the exception if it merges with a congregation that does not have an exception, or relocates to another property. The General Assembly, when asked these questions replied that the exception survives both merger and relocation to a different property. (Minutes, 1991 p 392, and 1998 p 164).

## **E. GOVERNMENT REGULATIONS**

Like any other organization, group, or business, churches are subject to land restrictions that can greatly limit the ways in which property can be used. These restrictions can come in many different forms, the most common of which are listed here.

### 1. Easements

Some churches use roads or driveways across adjoining property to access the church property. At times, a church may only have an oral agreement with the adjoining property owner to use the land or a recorded easement with a set expiration date that is never extended or renewed, but the church is still allowed to use the road or driveway. Consequently, when the adjoining property owner sells the property, the new owner may not wish to honor the arrangement. This results in many churches having to sue in order to have the easement preserved. Whether or not the church prevails often hinges on whether the church has any other means of access to its grounds.

### 2. Restrictive Covenants/Deed Restrictions

Many churches find that they are limited in the use of their land because the land is subject to a restrictive covenant or a deed restriction. These restrictive covenants or deed restrictions generally prevent land from being used for anything other than a private residence or a commercial retail business. These restrictions can come from neighborhood associations, the property deed itself, or from the conditions imposed on bequeathed property, among other places.

### 3. Landmarks/Historical Districts

Churches may be prevented from demolishing or modifying a structure on their property because the structure is either landmarked or because the structure is part of a historical district.

#### 4. Zoning Restrictions

As property is generally subject to zoning laws, churches must be certain that their use of land conforms to the existing zoning laws. For example, churches are often not allowed in zones labeled residential.

#### 5. Special Use Permit

Whenever a church seeks to use its grounds for means beyond that which would ordinarily be expected of a church, when a church's desired use of land is prohibited by ordinance, statute, zoning law, etc., and in other varying situations such as church expansion, a church must often obtain a special use permit in order to use or modify the property in the way so desired.

#### 6. Changes in Use of Existing Facilities

When a church decides to expand the use of its facilities for new programs, conflicts often arise in conforming with the additional property requirements that must be met in order to participate in the new program. Examples include adding a daily child care center in that additional safety requirements must be met, starting a soup kitchen as health codes must be met, and operating a thrift store since additional business laws will then apply.

The limitations placed on the use of church property are subjects of growing concern. Unfortunately, churches, particularly those located in suburban areas, are often no longer viewed as enhancements or even draws to the surrounding community. Instead, they are becoming viewed with increasing contempt for such reasons as the added traffic they bring and because fewer community members attend the churches as church membership rolls continue to decline. Consequently, land use laws are being applied more stringently to churches than ever before, and in some instances, laws have been passed that specifically target churches. As a result, churches are not only faced with the added cost and/or inconvenience associated with the increasing applicability of property laws, but churches are also faced with the restrictions on religious liberty that can occur when a church is either unable or unwilling to conform to the existing property requirements. Although this may be a trend that reverses itself in the near future, church property problems will never completely disappear. Consequently, churches must be aware of the potential property issues they face and must do everything within their power to minimize the burdens these property laws will impose.

The 211th General Assembly (1999) approved a policy that encourages the Stated Clerk to assist presbyteries with the legal expenses that may be faced in relation to the ownership, control and uses of church property in the free exercise of religion without excessive government regulation. The policy says, in part:

3. Authorize and direct Stated Clerk to provide financial and technical support, including advice and counsel, and appearance in legal proceedings to:
  - assist any presbytery which determines to resist efforts by a local congregation attempting to withdraw from the Presbyterian Church (U.S.A.) and to take church owned or controlled property with it;
  - assist in protecting the property rights of congregations, institutions, or organizations to use their property in conformity with the Constitution of the Presbyterian Church (U.S.A.).

**APPENDIX B**

**Sample Form for the Property of a Dissolved Church**

Name and Number of Church: \_\_\_\_\_

Address: \_\_\_\_\_

County: \_\_\_\_\_

Phone: \_\_\_\_\_

Local Church Contact Person

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

I. Obtain Legal Counsel

Have legal counsel issue an opinion about the existence of any reversion, possibility of reverter, right of reacquisition or similar restrictions to the benefit of any party. A reversionary interest may defeat the right to sell the church property after dissolution. A title report may also be obtained to determine reversionary interests.

II. Title of the Real Property

Who (what body) holds title (ownership) of the property according to the deed?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

To whom will the title (ownership) of the property be transferred?

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Note: If the property is to be sold, an appraisal or other reliable data should be obtained to aid in determining a fair sale price.

III. Disposition of Real Property

\_\_\_ [1] Sale price(s) established by

\_\_\_ a. Contents \$ \_\_\_\_\_

\_\_\_ b. Building \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

\_\_\_ [2] Disposition of proceeds determined by presbytery trustees in keeping with presbytery policy.

\_\_\_ [3] Removal, insofar as reasonably possible, all Christian and church insignia and symbols from such property.

\_\_\_ [4] Instructions or Restrictions:

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IV. Instructions Pertaining To

Department of History — All the deeds, records, and other official and legal papers, including the contents of the cornerstone, of a church that is dissolved may be collected and deposited for permanent safekeeping with the Department of History.

V. Additional Instructions

Any gift, legacy, devise, annuity, or other benefit to a local church that accrues or becomes available after said church has been dissolved should become the property of the trustees of the presbytery within whose jurisdiction the church was located. List the known beneficial interests:

\_\_\_ [1] \_\_\_\_\_

\_\_\_ [2] \_\_\_\_\_

\_\_\_ [3] \_\_\_\_\_

\_\_\_ [4] \_\_\_\_\_

\_\_\_ [5] \_\_\_\_\_

VI. Recommendations

It is advised, where possible, that the church board of trustees be left intact at the time of dissolution to sell and/or dispose of the property as the presbytery shall direct.

Notify as soon as dissolution is apparent.

Make sure insurance is maintained on the property. Have someone checking on the property regularly if not occupied.

The Executive Presbyter should collect all keys, if church trustees are not kept intact to dispose of property. May want to change the locks on the church.

Make inventory of all property at closing.

Take pictures of inside (include furnishings), outside of church, and put in church file.

Make arrangements to receive balance in all accounts:

\_\_\_ [1] General account

\_\_\_ [2] Sunday school account

\_\_\_ [3] Memorial funds

\_\_\_ [4] Other: \_\_\_\_\_

\_\_\_ [5] Other: \_\_\_\_\_

Sometimes the church and presbytery may endeavor to return items to families who have donated them to the church.



## APPENDIX C

### Articles of Incorporation of

\_\_\_\_\_, Inc.  
(name of particular church)

[**Note:** The Secretary of State's Office generally has a list of names that have already been used or reserved. Check that list. It may be necessary and advisable to include the city's name in the name of the church corporation.]

#### Article I *Name*

The name of the corporation is \_\_\_\_\_, Inc.  
(name of particular church)

#### Article II *Type*

The Corporation is a nonprofit religious corporation.

#### Article III *Duration*

The period of duration of the Corporation is perpetual.

#### Article IV *Purposes*

The purposes for which the Corporation is formed are more fully set forth in the Constitution of the Presbyterian Church (U.S.A.) (citations to the *Book of Order*), including:

The Great Ends of the church (*Book of Order* G-1.0200):

- the proclamation of the gospel for the salvation of humankind;
- the shelter, nurture, and spiritual fellowship of the children of God;
- the maintenance of divine worship;
- the preservation of the truth;
- the promotion of social righteousness; and
- the exhibition of the kingdom of heaven to the world.

In furtherance of the Constitution of the Presbyterian Church (U.S.A.) and the purposes stated above, the Corporation shall exercise powers as set out herein.

#### Article V *Support and Conform to the Constitution of the Presbyterian Church (U.S.A.)*

The Corporation shall support, at all times and in all respects, the Constitution of the

Presbyterian Church (U.S.A.). The Corporation and all of its property, both real and personal, shall be subject to the Constitution of the Presbyterian Church (U.S.A.), as it is now or shall be, from time to time, amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.). The business of the Corporation shall be conducted in conformity with the Constitution of the Presbyterian Church (U.S.A.), as it is now or shall be, from time to time, amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.).

## Article VI

### *All Property Held in Trust for the Presbyterian Church (U.S.A.)*

All property, both real or personal, held by or for the particular church, whether title is lodged in the Corporation, the board of trustees or a trustee, or an unincorporated association, and whether the property is used in programs of the particular church or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.). (*Book of Order* G-8.0201).

## Article VII

### *Powers and Duties*

The Corporation shall have the powers and duties granted by the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-7.0402):

To receive, hold, encumber, manage, and transfer property, real or personal, for the church;

To accept and execute deeds of title to such property;

To hold and defend title to such property;

To manage any permanent special funds for the furtherance of the purposes of the church.

In addition, to the extent not included in the above and not inconsistent with the Constitution of the Presbyterian Church (U.S.A.), the Corporation shall have all of the general powers of a nonprofit religious corporation organized under

---

(state religious nonprofit incorporation statute)

The powers and duties of the trustees shall not infringe upon the powers and duties of the session and the board of deacons of the church and such powers and duties shall be exercised in conformity with the Constitution of the Presbyterian Church (U.S.A.) (*Book of Order* G-7.0401, G-7.0402, G-10.0102). In addition, the Corporation shall not engage in ultra vires acts.

## Article VIII

### *Members*

Only members on the active role of the \_\_\_\_\_ (name of particular church) shall be members of the Corporation and eligible for election as trustees. (*Book of Order* G-7.0401).

## Article IX

### *Trustees*

The directors of the Corporation are designated trustees. The trustees shall be those persons who

are elected, installed, and serving as active elders of the session of \_\_\_\_\_ (name of particular church). They must also be eligible under civil law. (*Book of Order* G-7.0401).

[Note: The preferred and most efficient model is this one: The session and the board of trustees is identical. Some states may prohibit this dual capacity; your local attorney should check state law in this regard. Also, some churches may simply choose to have a separate board of trustees. If the church designates a trustee board other than the elders of session, then different language should be used for this article. See G-7.0401 for particular requirements when another board is designated.]

## Article X *Officers*

The bylaws identify and provide for the method of election or appointment of the officers of the Corporation.

## Article XI *Bylaws*

The bylaws of the Corporation shall be in conformity with the Constitution of the Presbyterian Church (U.S.A.), as it is now or shall be, from time to time, amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.). The bylaws will be adopted by the members of the Corporation and may be amended or repealed by the members of the Corporation but must at all times and in all respects remain in conformity with the Constitution of the Presbyterian Church (U.S.A.).

## Article XII *Initial Board of Trustees*

The number of trustees constituting the initial board of trustees shall be \_\_\_\_\_ [not less than three] and the names and addresses of the persons who are to serve as the initial trustees and until their successors are elected and installed are:

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(address)  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(address)  
\_\_\_\_\_

**Article XIII**  
***Incorporators***

The names and addresses of the incorporators are:

\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(address)  
\_\_\_\_\_  
\_\_\_\_\_  
(name)  
\_\_\_\_\_  
(address)  
\_\_\_\_\_

**Article XIV**  
***Initial Registered Office and Agent***

The address of the Corporation's initial Registered Office and the name of its initial Registered Agent at this address is:

\_\_\_\_\_  
(Clerk of Session)  
\_\_\_\_\_  
(Street Address of Particular Church)  
\_\_\_\_\_

(City, State, Zip Code)

## Article XV *Amendments*

The articles of incorporation of the Corporation may be amended or added to, or new articles of incorporation may be adopted, by the affirmative vote of two-thirds of the members of the Corporation; provided that the articles of incorporation must at all times and in all respects remain in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-7.0401, G-7.0402, G-8.0201)

[**Note:** Your attorney should determine if state law requires a different articles of incorporation amendment process but the required conformity with the Constitution of the Presbyterian Church (U.S.A.) must always be present.]

## Article XVI *Restrictions on Corporations Exempt from Federal Taxation*

No part of the assets of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501 (c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

## Article XVII *Dissolution*

If the church is formally dissolved by the Presbytery of which it is a member, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or any other cause, all such property, both real and personal, present and future, as the Corporation may have shall be vested in and be the property of the Presbytery of

\_\_\_\_\_ (name of Presbytery of membership) of the Presbyterian Church (U.S.A.), pursuant to the Constitution of the Presbyterian Church (U.S.A.), said Presbytery being an organization qualified under section 501(c)(3) of the Internal Revenue Code of the United States. In the alternative, said property of the Corporation shall be held, used and applied for such uses, purposes and trust as the Presbytery may direct, limit and appoint, or such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-8.0300, G-8-0400, G-11.0103).

## APPENDIX D

### Corporate Bylaws of

\_\_\_\_\_, Inc.  
(name of particular church)

#### Article I

#### Objectives, Purposes, Formation, Limitations, Powers and Duties, Property

Section 1. **Purpose.** The purposes for which the Corporation is formed are as more fully set forth in the Constitution of the Presbyterian Church (U.S.A.) (citations to the *Book of Order*), including the Great Ends of the Church (*Book of Order* G-1.0200), and in the Articles of Incorporation (Article IV).

Section 2. **Formation.** The Corporation is formed by \_\_\_\_\_ (name of particular church) pursuant to the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-7.0401). The \_\_\_\_\_ (name of particular church) is a member church of the Presbytery of \_\_\_\_\_ (name of presbytery) in the Synod of \_\_\_\_\_ (name of synod).

Section 3. **Authority.** In carrying out such purposes, the trustees and the Corporation shall be under the authority of the session and the congregation and shall, at all times and in all respects, conform to and support the Constitution of the Presbyterian Church (U.S.A.) as it is now or shall be, from time to time amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.). (*Book of Order* G-7.0402; Articles of Incorporation V, VI, VII).

Section 4. **Limitation of Powers and Duties.** The powers and duties of the Corporation and its trustees shall not infringe upon the powers and duties of the session or of the board of deacons of the church. (*Book of Order* G-7.0401, G-7.0402, G-10.0102; Article of Incorporation VII).

Section 5. **Powers and Duties.** The Corporation shall have the powers and duties granted by the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-7.0402; Article of Incorporation VII):

- To receive, hold, encumber, manage, and transfer property, real or personal, for the church;
- To accept and execute deeds of title to such property;
- To hold and defend title to such property;
- To manage any permanent special funds for the furtherance of the purposes of the church.

In addition, to the extent not included in the above and not inconsistent with the Constitution of the Presbyterian Church (U.S.A.), the Corporation shall have all of the general powers of a nonprofit religious corporation organized under

\_\_\_\_\_  
(state religious nonprofit incorporation statute)

Section 6. **All Property Held in Trust.** All property, both real and personal, is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). (*Book of Order* G-8.0201; Article of Incorporation VI).

Section 7. **Particular Property Requirements.** When buying, selling, and mortgaging real

property, the board of trustees shall act only after the approval of the congregation granted in a duly constituted meeting. (*Book of Order* G-7.0402). The board of trustees shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session. (*Book of Order* G-8.0501). The Corporation shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session. (*Book of Order* G-8.0502).

Section 8. ***Property Conveyances***. Pursuant to the Constitution of the Presbyterian Church (U.S.A.) (*Book of Order* G-8.0201), real property held or acquired by the Corporation, the church, the board of trustees, a trustee, or an unincorporated association will include the following language in the deed:

The premises herein conveyed shall be used, kept, and maintained by the grantee for Divine Worship and other purposes of its ministry as a particular church belonging to the Presbytery of \_\_\_\_\_, subject to the provisions of the Constitution of the Presbyterian Church (U.S.A.). The grantee holds the property in trust pursuant to the provisions of the Constitution of the Presbyterian Church (U.S.A.).

## Article II Members

Section 1. ***Eligibility for Membership***. Only members on the active roll of the church shall be members of the Corporation and eligible for election as trustees. (*Book of Order* G-7.0401; Article of Incorporation VIII). Ministers are not members of the congregation and, so, are not members of the Corporation. (*Book of Order* G-7.0308).

Section 2. ***Active Members***. The roll of active members established and maintained by the session as prescribed by the *Book of Order* (G-10.0302) shall determine those individuals who are active members from time to time.

## Article III Trustees

***Qualification; Election; Removal***. The directors of the Corporation are designated Trustees. The initial board of trustees shall be those persons named in the Articles of Incorporation. Thereafter, the membership of the board of trustees shall be identical to the membership of the session in active service. Election by the congregation and installation as elder of the church shall constitute a person a trustee of the Corporation. They must also be eligible under civil law. [Note: Have your local attorney determine the minimum age under state law; insert that requirement, if any, here.] Termination for any cause of the active service of a person on session shall automatically terminate such person as a trustee of the Corporation. (*Book of Order* G-7.0401; Article of Incorporation IX).

[Note: The preferred and most efficient model is this one: The session and board of trustees is identical. Some states may prohibit this dual capacity; your local attorney should check state law in this regard. Also, some churches may simply choose to have a separate board of trustees. If the church designates a trustee board other than the elders of session, then different language should be used for this article. See G-7.0401 for particular requirements when another board is designated.]

## Article IV Meetings of the Board of Trustees

Section 1. **Annual Meeting.** The annual meeting of the board of trustees shall be held in conjunction with or immediately following the first meeting of the session of the church held after the annual meeting of the congregation of the church.

Section 2. **Procedures.** The meeting requirements and provisions of the Constitution of the Presbyterian Church (U.S.A.) shall govern. In addition to those requirements and provisions, these bylaws provide specific guidance for the Corporation. Robert's Rules of Order (Newly Revised) shall be used for parliamentary guidance.

Section 3. **Notices.** Notice of the time and place and in case of special meeting the purpose of every meeting of the board of trustees shall be in writing and shall be duly sent, mailed or otherwise delivered to each trustee not less than ten (10) days before the meeting; provided, that no notice of any regularly scheduled or adjourned meeting need be given.

Meetings may be held at any time without notice if all of the trustees are present or if those not present waive notice of the time, place, and purpose of the meeting, either before or after the holding thereof.

Section 4. **Quorum.** A majority of the trustees shall constitute a quorum for the transaction of business, and the action of the board of trustees present at any meeting at which a quorum is present shall be the action of the board of trustees; provided, that if the trustees shall unanimously consent in writing to any action to be taken by the Corporation, such action shall be valid as corporate action as though it had been authorized at a meeting of the trustees. If at any meeting of the board of trustees there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum shall have been obtained.

Section 5. **Special Meetings.** Special meetings of the board of trustees may be held simultaneously with meetings of the congregation or immediately thereafter. Special meetings may be held at any time upon the call of session, the president or vice-president, or of not less than one-third of the trustees then in office.

Section 6. **Power and Authority.** The board of trustees shall have power and authority to carry out the affairs of the Corporation and in so doing may elect or appoint all necessary officers or committees; may employ all such employees as shall be requisite for the conduct of the affairs of the Corporation; may fix the compensation of such persons; may prescribe the duties of such persons; may dismiss any appointive officer or agent of the Corporation without previous notice. The board of trustees may, in the absence of an officer, delegate that officer's powers and duties to any other officer or a trustee for the time being.

Section 7. **Executive Committee.** The officers of the board of trustees shall constitute the executive committee. The executive committee shall have and exercise the authority of the board of trustees in the management of the business of the Corporation between the meetings of the board. The board of trustees may appoint such other committees, including therein persons who are not members of the board of trustees, as in the judgment of the trustees will be helpful in carrying on the work of the Corporation.

## Article V Meeting of Members



Section 1. **Annual Meeting.** There shall be an annual meeting of the members of the Corporation.

Section 2. **Place and Time.** Such meeting shall be held at the same place and time as the annual meeting of the congregation or immediately thereafter. Whenever permitted by civil law, both ecclesiastical and corporate business may be conducted at the same meeting. (*Book of Order* G-7.0304). Any stated or called meeting of the congregation shall be a meeting of the Corporation, and any business may be conducted that is appropriate to the Corporation.

[**Note:** This section sets out the preferred form: The corporate meeting is contemporaneous with the congregational meeting. Some states may prohibit this dual capacity. Your local attorney should check state law. If your state prohibits this dual capacity, different language should be used in this section. See G-7.0403 for particular requirements when this alternative form is used.]

Section 3. **Notices.** Notice of all meetings of members of the Corporation shall conform in all respects to the notice requirement of meetings of the congregation. (See *Book of Order* G-7.0300).

Section 4. **Procedural Requirements.** The meetings of the members shall be conducted to conform to the procedural requirements of meetings of the congregation and the provisions of the Constitution of the Presbyterian Church (U.S.A.). (See *Book of Order* G-7.0300). In addition to those requirements and provisions, these bylaws provide specific guidance for the Corporation. *Robert's Rules of Order (Newly Revised)* shall be used for parliamentary guidance.

Section 5. **Proxy Voting.** Voting by proxy is prohibited unless civil law specifically requires that voting by proxy shall be permitted as to that particular corporate matter. (*Book of Order* G-7.0404).

[**Note:** Your attorney should check state law regarding whether proxy voting is specifically required, and, if so, when. If there are specific instances in which proxy voting is required, those should be set out here.]

## Article VI Officers

Section 1. **Officers.** The board of trustees, as soon as may be after the election of trustees in each year, shall elect from their number a president of the Corporation, and may from time to time select one or more vice-presidents, assistant secretaries, and assistant treasurers. The clerk of session shall serve as Secretary of the Corporation. The treasurer elected by the session shall serve as treasurer of the Corporation (See *Book of Order* G-10.0400). The same person may hold any two offices except those of president and secretary. The board may also appoint such other officers and agents as may be deemed necessary for the transaction of the affairs of the Corporation. (Article of Incorporation X).

[**Note:** This is a recommended configuration and process to elect the corporate officers. Your church may choose a different configuration of corporate officers and different process. See G-10.0400 regarding the requirements for the church treasurer and G-9.0203 regarding the duties of the clerk of session.]

Section 2. **Term.** The term of office for all officers shall be one (1) year or until their respective

successors are chosen. Any officer elected by the board of trustees may be removed from the office at any meeting of the board of trustees by the affirmative vote of a majority of the trustees then in office, whenever in their judgment the interest of the Corporation will be served thereby. The board of trustees shall have full power to fill any vacancies in any offices it is authorized to elect occurring for any reason whatsoever.

Section 3. ***Powers and Duties.*** The officers of the Corporation shall respectively have such powers and perform such duties in the management of property and affairs of the Corporation, subject to the control of the Trustees, as generally pertain to their respective offices, as well as such additional powers and duties as may from time to time be conferred by the board of trustees. No action taken by the officers shall infringe upon the authority of the session of the church or of the board of deacons and all actions shall be in conformity with the Constitution of the Presbyterian Church (U.S.A.). Subject to this Section, these bylaws and the articles of incorporation of the Corporation, the officers shall have the following powers and duties in regards to the Corporation:

A. The president shall: (1) preside at meetings of the Corporation and the board of trustees; (2) make such appointments as directed, authorized, or required, including appointing trustees to serve on committees who shall be responsible for reporting to the board of trustees of the activities of their respective committees; (3) execute any and all documents of whatsoever kind and nature necessary to carry out the purpose and functions of the Corporation; (4) be responsible for carrying out the directives and requirements of applicable law, these bylaws, and the articles of incorporation; (5) in general, perform all duties incident to the office of president; and (6) perform such other duties as may from time to time be assigned by the board of trustees.

B. The vice president(s) shall: (1) assist the president in the exercise of his or her duties; (2) in the absence or inability of the president, execute the duties of the president; (3) in general, perform all duties incident to the office of vice president; and (4) perform such other duties as may from time to time be assigned by the board of trustees.

C. The secretary (clerk of session) shall: (1) perform for the Corporation those duties set out in the Constitution of the Presbyterian Church (U.S.A.) (see *Book of Order* G-9.0203); (2) record all votes by the board of trustees; (3) be the custodian of the corporate seal, if any, and affix it to all documents to be executed on behalf of the Corporation under its seal; (4) in general, perform all duties incident to the office of secretary; and (5) perform such other duties as may from time to time be assigned by the board of trustees.

D. The treasurer (elected by the session) shall: (1) perform for the Corporation those duties set out in the Constitution of the Presbyterian Church (U.S.A.) (see *Book of Order* G- 10.04000); (2) be responsible for the safekeeping of all funds and assets, except for those funds expressly assigned to the trusteeship of another; (3) be responsible for the filing of any and all tax and other financial reports as required by applicable law; (4) deposit all monies, drafts, and checks in the name of or to the credit of the church or Corporation at such banks or depositories as the board of trustees shall designate; (5) in general, perform all duties incident to the office of treasurer; and (6) perform such other duties as may from time to time be assigned by the board of trustees.

E. Assistant secretaries shall perform those duties of the secretary as directed by the board of trustees.

F. Assistant treasurers shall perform those duties of the treasurer as directed by the board of trustees.

[**Note:** This is a recommended configuration and listing of corporate officers' powers and duties. Your church may choose a different configuration (fewer officers, for example) and different powers and duties. Or, you may choose to list none of these powers and duties and accomplish them by corporate resolution. Always keep in mind the requirements for the church treasurer (*Book of Order* G-10.0400) and the clerk of session (*Book of Order* G-9.0203).]

Section 4. ***Checks, Notes, Drafts, and So On.*** The board of trustees may, from time to time, prescribe the manner of making signature or endorsement of bills of exchange, notes, drafts, checks, acceptances, obligations, and other negotiable paper or other instruments for the payment of money and designate the officer or officers, agent or agents, who shall from time to time be authorized to make, sign, or endorse the same on behalf of the Corporation.

## Article VII Fiscal Year; Seal; Office

Section 1. ***Fiscal Year.*** The fiscal year of the Corporation shall be \_\_\_\_\_ [Choose a twelve-month period. Many church corporations choose the calendar year: January 1–December 31. Some choose July 1–June 30. You should choose the twelve-month period that best serves your accounting needs.]

Section 2. ***Seal.*** The board of trustees shall provide a suitable corporate seal for use by the Corporation if deemed appropriate.

Section 3. ***Office.*** The principal office and mailing address of the Corporation is \_\_\_\_\_ (address of church).

## Article VIII Amendments

The bylaws of the Corporation may be amended or added to, or new bylaws may be adopted, by the affirmative vote of two-thirds of the members of the Corporation; provided, that the bylaws must at all times and in all respects remain in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-7.0401, G-7.0402, G-8.0201; Articles of Incorporation IV, V, VI, XI).

[**Note:** Your attorney should determine if state law requires a different bylaws amendment process but the required conformity with the Constitution of the Presbyterian Church (U.S.A.) must always be present.]

## Article IX Indemnification of Trustees and Officers

Each trustee and officer of the Corporation shall be indemnified by the Corporation against expenses reasonably incurred in connection with any action, suit, or proceeding to which the trustee or officer may be made a party by reason of being or having been a trustee or officer of the Corporation (whether or not he or she continues to be a trustee or officer at the time of incurring such expenses), except in relation to matters as to which he or she shall finally be adjudged in such action, suit, or proceeding to be personally liable. The foregoing right of indemnification shall not be exclusive of other rights to which any trustee or officer may be

entitled as a matter of law.

[**Note:** Many states have particular indemnification requirements. Your attorney should determine and use the particular state requirements, if any.]

## Article X **Dissolution**

If the church is formally dissolved by the presbytery of which it is a member, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or any other cause, all such property, both real and personal, present and future, as the Corporation may have shall be vested in and be the property of the Presbytery of

\_\_\_\_\_ (name of presbytery of membership) of the Presbyterian Church (U.S.A.), pursuant to the Constitution of the Presbyterian Church (U.S.A.), said Presbytery being an organization qualified under section 501(c)(3) of the Internal Revenue Code of the United States. In the alternative, said property of the Corporation shall be held, used, and applied for such uses, purposes, and trust as the Presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-8.0300, G-8.0400, G-11.0103; Article of Incorporation XVII).

**APPENDIX E**

**Request for License to Use the Seal of the Presbyterian Church  
(U.S.A.)**

**Commercial Use**

1. Name of Applicant and Company/Organization

---

Address: \_\_\_\_\_

---

2. How will the seal be used and to whom will the product or service be marketed? (Please describe in detail):

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3. Description of product to be manufactured or developed

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4. How many will be manufactured?

---

5. What is the anticipated selling price?

---

6. Will the seal be used under the authorization and direction of some governing body or related entity of the Presbyterian Church (U.S.A.)?

---

If so, name of the governing body or related entity and the chief executive

---

7. If this is a renewal request, give the date that permission was first given

---

Signed \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

APPENDIX F

**Sample Form of Honorarium Letter**  
*{On Letterhead of Church or Middle Governing Body}*

(Current Date)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (Address of Recipient)

**RE: Honorarium**

Dear \_\_\_\_\_:

In order that we may provide you with an honorarium in the amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), **(total amount to be paid for services rendered by Recipient)** for your participation as \_\_\_\_\_ **(description of services provided, i.e., speaker, teacher)** in the \_\_\_\_\_ Presbyterian Church **(name of church)** (hereinafter "Church Corporation") "**\_\_\_\_\_**" **(name of event Recipient will participate in)** on \_\_\_\_\_, 20\_\_\_\_, **(dates Recipient will perform the services)** please complete the certification appearing below. For your convenience attached is a pre-paid envelope for your handling **(optional)**.

**(If applicable)** Also as agreed, the Church Corporation will reimburse your expenses related to this event up to \_\_\_\_\_ Dollars (\$\_\_\_\_\_) **(total amount to be paid for expenses related to the services being performed)**. All reimbursable expenses must be documented with receipts for amounts in excess of Ten Dollars (\$10).

I thank you in advance for your attention to this matter. Should you have any questions please call \_\_\_\_\_ at \_\_\_\_\_ **(name and telephone number of person in Office that can assist Recipient)**.

Sincerely,

\_\_\_\_\_  
Signature and Title of Church Corporation Officer

Attachment

By my signature I, \_\_\_\_\_ **(name of Recipient)**, hereby certify that this Honorarium is fully understood by me and is entirely satisfactory and that I am not on the payroll of the Church Corporation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

APPENDIX G

Sample Independent Contractor Contract — Page 1 of 4

\_\_\_\_\_  
(Name of Church Corporation)

\_\_\_\_\_  
(Address)

**This form is to be used for services to be performed by an *individual*. It is not to be used to contract services by a *corporation or other business association*. No work shall be performed until this contract is fully *completed* and approved by all parties. Any work performed prior to such date is at contractor's sole risk that payment will not be approved.**

Name and Social Security # of Contractor:  
\_\_\_\_\_

Address & Phone No:  
\_\_\_\_\_

Trade, Business or Profession:  
\_\_\_\_\_

Other major clients (Do not include service as an employee):  
\_\_\_\_\_

Is the Contractor *in any way related* to any employee of Church Corporation (i.e., related by blood or marriage, business associate, partner, or employment relationship)? \_\_\_\_\_ If so, to whom and what relationship? \_\_\_\_\_

Church Corporation hereby contracts with Contractor, and Contractor agrees to perform the following services in accordance with the terms and conditions outlined in this Contract. If appropriate, attach a copy of any additional terms. This copy must be dated and initialed by both parties hereto and shall be incorporated herein by reference: \_\_\_\_\_

Will Church Corporation set Contractor's working hours; determine work site; or control the day-to-day details of the services? \_\_\_\_\_

Contractor shall begin work on \_\_\_\_\_, 20\_\_\_\_ and complete work by \_\_\_\_\_, 20\_\_\_\_\_.

Contractor will perform services in accordance with this contract at \_\_\_\_\_.

Will Church Corporation provide Contractor's working space, materials, or equipment?  
\_\_\_\_\_ If yes, specify which: \_\_\_\_\_

Are expenses to be reimbursed by Church Corporation? \_\_\_\_\_ If yes, list type and maximum dollar amount for each expense: \_\_\_\_\_

Church Corporation shall pay Contractor a firm and fixed fee of \$ \_\_\_\_\_



for the satisfactory completion of all work. The total fee paid shall not exceed this amount and excludes any expenses. The fee shall be paid (check one only):

\_\_\_\_\_ (A) In a lump-sum payment on \_\_\_\_\_ or

\_\_\_\_\_ (B) In installment payments on the following schedule: \_\_\_\_\_

Signatures:

\_\_\_\_\_

Contractor (Also Sign Page 2) Date

\_\_\_\_\_

Church Corporate Officer Date

\_\_\_\_\_

Title

## Terms and Conditions — Page 3 of 4

Contractor and Church Corporation agree that Contractor shall perform the services described on PAGE 1 according to the following terms and conditions:

A. **Termination.** This Contract may be terminated by either party upon ten (10) days' written notice. Upon termination, a written report of work completed and the status of the project, including all materials completed or in progress, research findings or other products previously produced by the Contractor, shall become the property of Church Corporation and shall immediately be delivered by Contractor to Church Corporation. In the event of cancellation of this Contract, any amounts previously advanced to Contractor for which satisfactory work has not been completed shall be refunded to Church Corporation, and Contractor shall release to Church Corporation all copies and all rights to all of the written materials produced under this Contract. Immediately upon any cancellation notice, Contractor shall not perform any further work, and Church Corporation shall not make any further payment.

B. **Time Devoted by Contractor.** It is understood and agreed that Contractor will spend a sufficient number of hours in fulfilling the duties and obligations under this Contract. The particular amount of time may vary from day-to-day and week-to-week.

C. **Payment.** The fee for the work is stipulated on PAGE 1 and is payable according to the terms specified therein.

D. **Independent Contractor.** Both Church Corporation and Contractor understand and agree that Contractor is at all times and shall remain an independent contractor in the performance of the duties under this Contract and shall not be considered an agent, employee, partner of, or joint venturer or joint employer with Church Corporation. Contractor hereby acknowledges that she/he is an independent contractor and has no authority to represent, obligate, or bind Church Corporation in any manner or to any extent. Contractor is to do work according to Contractor's best judgment and methods, without being subject to the control of Church Corporation except as to the quality of the final product. Because Church Corporation will not control the manner of performing services, it will not be liable for the negligence of Contractor or Contractor's employees or agents, and Contractor will indemnify Church Corporation for any claims resulting therefrom, including attorney's fees. Contractor will determine the time and place for doing the work consistent with the responsibilities described. Except as otherwise provided on PAGE 1, Contractor will provide the required working space, equipment, materials, and assistance at Contractor's own expense. Under this Contract, there will be no deductions for withholding income or Social Security taxes, and Contractor shall file all applicable tax returns and pay all taxes due thereon. Church Corporation will not obtain Worker's Compensation Insurance or State Unemployment Insurance for Contractor or Contractor's employees. Contractor will not be eligible for, or entitled to, any benefits normally provided for employees of Church Corporation.

E. **Confidential Information.** Contractor agrees that any information received by Contractor during any activities under this Contract, which concerns the personal, financial, or other affairs of Church Corporation, will be treated by Contractor in full confidence and will not be revealed to any other persons, firms, or organizations.

F. **Indemnity.** Contractor hereby agrees that all work and services performed and all personnel provided and/or hired under this Contract (with exception of employees of Church Corporation) shall be covered by Contractor's worker's compensation insurance and general liability

insurance, and that Contractor shall be solely responsible for and shall indemnify, hold harmless, and defend Church Corporation with respect to any and all actions, suits, causes of action, or damages based upon or arising out of any work performed hereunder by Contractor or any person hired by Contractor.

G. **Approvals and Changes.** Church Corporation shall have the right of review, and approval, or disapproval at all stages of the services to be delivered under this Contract.

H. **Title/Ownership.** Contractor understands and agrees that title to all items prepared and produced by Contractor for Church Corporation under this Contract shall be solely the property of Church Corporation, and Contractor shall have no right or interest therein. Further, all materials of whatever kind are works made for hire under federal law; all rights for publication will be held by Church Corporation; and the copyright will be owned by Church Corporation. Without limiting the generality of the foregoing, Church Corporation shall own all rights in and to all items prepared and any programs, products, and files that result or are derived therefrom. As applicable, Contractor understands and authorizes his or her voice and/or image to be projected on the audio/video recordings produced for Church Corporation under this Contract.

I. **Entire Agreement.** This Contract represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, representations, and writings between the parties relating hereto. No modification, alteration, waiver, or change in any of the terms of this Contract shall be valid or binding upon the parties hereto unless expressed in writing signed by both parties. This Contract shall be deemed to be fully understood, satisfactory, and in effect when signed by all parties indicated below but shall not be binding on Church Corporation until approved by its appropriate officials.

J. **Governing Law and Venue.** It is understood and agreed by the parties that this Contract shall be construed in accordance with the laws of \_\_\_\_\_ (state where Church Corporation is located) and that any litigation in connection with this Agreement shall be determined by a court proceeding in \_\_\_\_\_ (city and state where Church Corporation is located).

**These Terms Have Been Read and Agreed to By:**

---

Contractor Date

---

Church Corporate Officer Date

---

Title

APPENDIX H

REQUEST FOR SERVICES OF A COMPANY - PART 1 OF 2
PRESBYTERIAN CHURCH (U.S.A.), A CORPORATION ("PCUSA")
100 Witherspoon Street, Louisville, Kentucky 40202-1396

THIS FORM IS TO BE USED FOR SERVICES TO BE PERFORMED BY A COMPANY. IT IS NOT TO BE USED TO CONTRACT SERVICES BY AN INDIVIDUAL. NO WORK SHALL BE PERFORMED UNTIL THIS CONTRACT IS FULLY COMPLETED AND SIGNED BY ALL PARTIES. ANY WORK PERFORMED PRIOR TO SUCH DATE IS AT COMPANY'S SOLE RISK THAT PAYMENT WILL NOT BE APPROVED.

- 1. Company Name
2. EIN #
3. Full Address & Phone No:
4. Trade, Business or Profession:
5. Other major clients:
6. PCUSA hereby contracts with Company, and Company agrees to perform the following services...
7. Company shall begin work on...
8. Company will perform services in accordance with this Agreement at...
9. Will PCUSA provide Company's working space, materials or equipment?
10. Are expenses to be reimbursed by PCUSA?
11. PCUSA shall pay Company a firm and fixed fee of \$...
(A) In a lump-sum payment on...
(B) In installment payments on the following schedule:

SIGNATURES (also print name):

Requestor Date Company (Also Sign Part 2) Date
Ministry or Program Director or Designee Date Office of Legal Services Date
(Required only if amount expended exceeds \$25,000)

**Corporate Officer (over \$10,000)**

**Date**

## TERMS AND CONDITIONS - PART 2 OF 2

Company and PCUSA agree that Company shall perform the services described in PART 1 according to the following terms and conditions:

A. **Termination.** This Contract may be terminated by either party upon ten (10) days' written notice. Upon termination, a written report of work completed and the current status of the project, including all materials completed or in progress, research findings or other products previously produced by the Company, shall become the property of PCUSA and shall immediately be delivered by Company. In the event of termination of this Contract, any amounts previously advanced to Company for which satisfactory work has not been completed shall be refunded to PCUSA, and Company in turn shall release to PCUSA all copies and all rights to all of the written materials produced under this Contract. Immediately upon any termination, Company shall not perform any further work, and PCUSA shall not make any further payment.

B. **Time Devoted by Company.** It is understood and agreed that Company will spend a sufficient number of hours in fulfilling the duties and obligations under this Contract. The particular amount of time may vary from day-to-day and week-to-week.

C. **Payment.** The fee for the work is stipulated in PART 1 and is payable according to the terms specified therein. The fee is fixed and firm.

D. **Independent Contractor.** Both PCUSA and Company understand and agree that Company is, at all times and shall remain, an independent contractor in the performance of the duties under this Contract and shall not be considered an agent, employee, partner of, or joint venturer or joint employer with PCUSA. Company hereby acknowledges that it is an independent contractor and has no authority to represent, obligate, or bind PCUSA in any manner or to any extent. Company is to do work according to Company's best judgment and methods without being subject to the control of PCUSA, except as to the quality of the final product. Because PCUSA will not control the manner of performing services, it will not be liable for the negligence of Company or Company's employees or agents, and Company will indemnify PCUSA for any claims resulting therefrom, including attorneys' fees. Company will determine the time and place for doing the work consistent with the responsibilities described. Except as otherwise provided in PART 1, Company will provide the required working space, equipment, materials, and assistance at Company's own expense. Under this Contract, there will be no deductions or withholding of income or Social Security taxes, and Company shall file all applicable tax returns and pay all taxes due thereon. PCUSA will not obtain Worker's Compensation Insurance or State Unemployment Insurance for Company or Company's employees. Company will not be eligible for, or entitled to, any benefits normally provided for employees of PCUSA.

E. **Confidential Information.** Company agrees that any information received by Company during any activities under this Contract, which concerns the personal, financial, or other affairs of PCUSA, will be treated by Company in full confidence and will not be revealed to any other persons, firms, or organizations.

F. **Indemnity.** Company hereby agrees that all work and services performed and all personnel provided and/or hired under this Contract (with exception of employees of PCUSA) shall be covered by Company's worker's compensation insurance and general liability insurance and that Company shall be solely responsible for and shall indemnify, hold harmless, and defend PCUSA with respect to any and all actions, suits, causes of action, or damages based upon or arising out of any work performed hereunder by Company or any person hired by Company.

G. **Approvals and Changes.** PCUSA shall have the right of review and approval or disapproval at all stages of the services to be delivered under this Contract.

H. **Title/Ownership.** Company understands and agrees that title to all items prepared and produced by Company for PCUSA under this Contract shall be solely the property of PCUSA, and Company shall have no right or interest

therein. Further, all materials of whatever kind are works made for hire under federal law; all rights for publication will be held by PCUSA; and the copyright will be owned by PCUSA. Without limiting the generality of the foregoing, PCUSA shall own all rights in and to all items prepared and any programs, products, and files that result or are derived therefrom.

I. **Entire Agreement.** This Contract represents the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all previous negotiations, representations, and writings between the parties relating hereto. No modification, alteration, waiver, or change in any of the terms of this Contract shall be valid or binding upon the parties hereto unless expressed in writing signed by both parties. This Contract shall be deemed to be fully understood, satisfactory, and in effect when signed by all parties indicated below but shall not be binding on PCUSA until approved by its appropriate officials.

J. **Governing Law and Venue.** It is understood and agreed by the parties that this Contract shall be construed in accordance with the laws of Kentucky and that any litigation in connection with this Agreement shall be determined by a court proceeding in Louisville, Kentucky.

K. **Expenses.** If applicable, a copy of PCUSA's travel and reimbursement policies and guidelines shall be provided upon request and such policies and guidelines are hereby fully incorporated. PCUSA shall not reimburse Company for charges for movie rentals or alcoholic beverages.

**THESE TERMS HAVE BEEN READ AND ARE AGREED TO BY:**

---

Company Date

## APPENDIX I

### Advisory Opinions: Note 05

## Chaplains Recalled to Active Duty

As there continues to be a U.S. military presence in Iraq, questions regarding chaplains being mobilized for active duty have again been coming into our office. The *Book of Order* is quite clear, but sometimes the practice is a bit more confusing.

Section G-14.0534 deals with the task of the congregation, the minister and the presbytery putting together the pastoral call. "If the minister is obligated to fulfill military commitments during a period of pastoral service, an agreement should be added to the terms of call for that obligation and potential mobilization."

Similar language was first added in 1986 and was designed to result in full disclosure of a minister's military commitments at the time of the call. Since the terms of call cannot be changed without the consent of the presbytery, the congregation and the ministers can then be assured of the presbytery's help in working out a reasonable solution to the problems created by the minister being called to active duty.

Any such agreement should provide some process for notification to the calling agency (such as a congregation) that the minister may shortly be called into active service. There needs to be some mutual understanding of how and when and to whom such a "heads up" will be given.

The agreement also needs to make provision as to when the salary from the calling agency might cease. It may well need to deal with issues regarding housing and maybe even the payment of rent for family use of a manse during the mobilization period. There should also be some procedure laid out regarding what would happen if there were death or disability of the minister.

In 1994 Congress adopted legislation called the Uniformed Services Employment and Reemployment ACT (USERRA), which deals with many of these issues. It is a law of general application and does not appear to exempt Church employers. It covers such topics as pension continuation and reinstatement upon return from active duty. It is unclear what impact USERRA might have on a Presbytery's authority under G-11.0103o. Clearly an extended absence could have much impact on the relationship between a pastor and her/his congregation.\*

When a minister is called to active service, the Committee on Ministry should be ready to step in and help the session locate pastoral services for the congregation during the period of its pastor's absence. This is a time when a Committee on Ministry might well call upon its specialized and retired pastors to provide such services. Such persons can often ease the burden upon the congregation.

This is a circumstance where the Committee on Ministry's responsibility to a minister's



family takes on some very practical attributes. The emotional strain upon the family is readily predictable, but there may be other stresses (financial, child care, etc.) with which the minister's family needs assistance.

If your presbytery does not have a record of all its members who are in the reserves of one of the branches of the armed services, this might be a very appropriate time to compile such a list. A little careful planning can go a long way in minimizing the disruption such calls to service might bring about.

\* The Board of Pensions (in cooperation with Legal Services, the Office of Vocation, and Constitutional Services) has published a very helpful document (available at the Board of Pensions Web site, or call 1 (800) 773-7752 and ask for the USERRA Questions and Answers document), which should be consulted for more specific information.

Issued December 2002  
Last updated March 2008

## APPENDIX J

### Private Letter Ruling Regarding Methodist Deacons

Internal Revenue Service  
Department of the Treasury  
Washington, DC 20224  
Refer Reply to:  
CC:EBEO:2 PLR 115424-97  
Index No: 0107.00-00  
Date: Dec. 10, 1998

This is in response to your August 13, 1997, request for a private letter ruling submitted on behalf of X. Additional information was submitted on November 6, 1997, March 31, 1998, and August 3, 1998. A conference was held on February 24, 1998.

#### Facts

The Church is a well-established worldwide Christian denomination that is organized pursuant to the tenets, social principles, constitutional provisions, and legislative enactments contained in its Governing Document. The Governing Document is the fundamental book outlining the law, doctrine, administration and organization, work and procedures of the Church. The Church operates via a connectional structure maintained through a chain of conferences. The highest level of authority is the National Conference, which meets quadrennially to discuss issues of concern to the Church. The National Conference is comprised of one-half laypersons and one-half members of the clergy. Generally, each National Conference amends the Governing Document, and those amendments are reflected in the quadrennial revision of the Governing Document. Although subject to certain restrictions, the National Conference has the full authority, among other things, to define and fix the powers and duties of the members of the ordained clergy of the Church, and the Governing Document includes the rules applicable to ordained members of the clergy.

The basic organizational bodies of the Church are the Regional Conferences. Each Regional Conference within the United States includes the local churches of the Church within specific geographic boundaries. The membership in each Regional Conference includes clergy, laypersons, and diaconal ministers. Clergy members in the Regional Conferences include ordained deacons and ordained elders. Only clergy members in full connection are allowed to vote on matters relating to the ordination, character and conference relations of the members of the clergy.

At its Date G gathering, the National Conference voted to establish the order of ordained deacons and the Governing Document was amended accordingly. Proposals to establish an order of ordained deacons had been made to the National Conference at the three preceding quadrennial

gatherings. Thus, the decision to establish an order of deacons was made after the Church spent more than twenty years studying its ministry. Hence, after Date G and individual may be ordained as either a deacon or an elder. As permitted by the Governing Document, both elders and deacons are ordained as clergy members in full connection. Prior to establishment of the order of ordained deacon, elders were the only ordained members of the clergy.

The Church defines ordination as the act of conferring ministerial orders. In accordance with Church traditions, an ordained minister is a baptized person who is called by God, authorized by the Church, and ordained by a bishop to a lifetime ministry. To qualify for ordination as either a deacon or an elder, an individual must meet the requirements set by the Church that are specified in the Governing Document. In addition, to be ordained, the individual must be recommended by the Regional Conference and receive the affirmative vote of the ministerial members of the Regional Conference. Through ordination the ordained individual is given the approval of the denomination to serve as an ordained minister and the authority to carry out those acts reserved to members of the clergy. Thus, following ordination, the ordained elder or deacon has the authority to exercise the responsibilities and duties of an ordained minister.

According to the Governing Document, an ordained deacon is permitted to give leadership in teaching and proclaiming the gospel, forming and nurturing disciples, performing marriages and funerals, and assisting the elder in administering the sacraments. An ordained deacon has full right of voice and vote in the Regional Conference where membership is held, may serve or hold office as a member of the clergy on the boards, commissions, or committees of the Regional Conference, may be elected as a clergy delegate to the National Conference, must attend all sessions of the Regional Conference, and with the elder is responsible for all matters of ordination, character, and conference relations with members of the clergy. An ordained deacon is accountable to his or her Regional Conference and the bishop for the fulfillment of his or her call. An ordained elder is appointed to a position by a bishop. However, unlike an elder, an ordained deacon does not itinerate, nor does the Church guarantee an ordained deacon a position, salary, or place of employment. Ordained deacons are permitted to participate in the Church retirement plan for members of the clergy.

When it established the order of ordained deacons, the National Conference amended the Governing Document to include transitional rules that would allow certain "diaconal ministers" to become ordained deacons. A diaconal minister is a layperson who was consecrated by a bishop, but who the Church does not treat or consider as a member of the clergy. The Church expects that some, but not all of its diaconal ministers will become ordained deacons. The transitional rules are available for a limited period and provide that a diaconal minister in good standing with his or her Regional Conference who has completed a minimum of three years in an approved service appointment may be ordained as a deacon provided he or she meets the following requirements:

Apply in writing to the Regional Conference for transfer of credentials to ordained deacon in full connection;

Complete the formation and education program sponsored by the Board;

Demonstrate an understanding of the call to the order of deacon and a ministry that fulfills and exemplifies the definition and description of deacon found in the Governing Document;

Satisfy specific educational requirements; and

Receive a two-thirds positive vote of the clergy session of the Regional Conference.

X, a local Church, founded in 1840, is located in City and is in the State Conference. X has more than 1,000 members and employs more than fifty employees; including three ordained deacons, C, D, and E. C, D, and E were ordained pursuant to the transitional rules. X requested rulings that C, D, and E are ministers of the gospel and that the duties they perform are ordinarily the duties of a minister of the gospel under section 107 of the Internal Revenue Code (the Code). X also requested rulings that C, D, and E are ministers performing services in the exercise of their ministry for purposes of sections 1402(c)(4) and 3121(b)(8)(A).<sup>1</sup>

X has represented the following facts concerning C, D, and E and the duties they perform for X:

As ordained deacons, C, D, and E are expected to comply with the applicable provisions of the Governing Document. C is the Minister of Education; D is the Minister of Music; and E is the Minister of Stewardship. As integral members of X's pastoral team, C, D, and E meet with the elder to plan the worship services, assist with the sacraments, and officiate at weddings and funerals. Each is required to preach at Sunday worship service.

C's primary duties relate to the Christian education program. C plans and supervises youth, adult, and family activities, including Sunday education classes, Bible study, and various educational programs sponsored by X. C selects the curriculum, schedules activities, and when needed, coordinates lay volunteers. C also assists the X school to develop appropriate educational opportunities. D, the Minister of Music, coordinates all choir and music activities. E performs financial and managerial functions. His primary function is to encourage members of the congregation to give their time, talent, and money to X and the community. When not leading worship services, C, D, and E participate with the pastor in the weekly worship service. They also perform various other duties at X, including confirmation preparation and membership reception.

X's August 3, 1998, submission specifies how each met the transitional requirements needed to be ordained as a deacon. Each timely applied to the State Conference Board to transfer his or her credentials to ordained deacon. Each was in good standing as a diaconal minister and had completed at least three years in a service appointment approved by the bishop since consecration as a diaconal minister. Each completed the continuing formation and education program sponsored by the Board and satisfied the applicable educational requirements. C and D have bachelor's degrees and have completed graduate theological courses as required by the State Conference. E has a master's degree in theology studies. Each demonstrated an understanding of the call to the order of deacon and received the full support of the State Conference Board of Ordained Clergy and was passed on to the State Conference for final vote of confirmation. Each received the required two-thirds or greater positive vote of the clergy session of State Conference. C, D, and E were ordained as deacons on Date H.

## Applicable Law

Section 61(a) of the Code provides that, except as otherwise provided, gross income means all income from whatever source derived; including compensation for services including fees, commissions, fringe benefits, and similar items.

Section 107 of the Code provides that in the case of a minister of the gospel, gross income does not include the rental value of a home furnished to the minister as a part of the minister's compensation or the rental allowance paid to the minister as part of the minister's compensation, to the extent used by the minister to rent or provide a home.

Sections 1402(c)(4) and 3121(b)(8)(A) of the Code, which provide definitions for purposes of the Self-Employment Contributions Act taxes and the Federal Insurance Contributions Act (FICA) tax respectively, refer to services performed by a "duly ordained, commissioned, or licensed minister" of a church in the exercise of his ministry.

Section 1.107-1(a) of the Income Tax Regulations provides that in order to qualify for the exclusion provided by section 107, the home or rental allowance must be provided as remuneration for services that are ordinarily the duties of a minister of the gospel. In general, the rules provided in regulation section 1.1402(c)-5 apply to that determination. Regulation section 1.107-1(a) also provides that the performance of sacerdotal functions, the conduct of religious worship, the administration and maintenance of religious organizations and their integral agencies, and the performance of teaching and administrative functions at theological seminaries will be considered the duties of a minister for purposes of section 107.

Section 1.1402(c)-5(a)(2) of the regulations provides that a "duly ordained, commissioned, or licensed minister" of a church is engaged in carrying on a trade or business with respect to service performed by him in the exercise of his ministry or in the exercise of duties required by a religious order unless an exemption under section 1402(e) of the Code is effective. Section 1.1402(c)-5(b)(2) provides that service performed by a minister in the exercise of his ministry includes the ministration of sacerdotal functions and the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including the religious boards, societies, and other integral agencies of such organizations) under the authority of a religious body constituting a church or church denomination. Section 1.1402(c)-5(b)(2)(i) provides that whether service performed by a minister constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting the minister's church or church denomination. Section 31.3121(b)(8)-1 has a similar provision.

If a church or church denomination ordains some ministers of the gospel and licenses or commissions others, the licensed or commissioned minister must perform substantially all the religious functions within the scope of the tenets and practices of his religious denomination to be treated as a "minister of the gospel" under section 107 of the Code. Rev. Rul. 78-301, 1978-2 C.B. 103. The Service ruled in Rev. Rul. 59-270, 1959-2 C.B. 44, that neither a minister of music

nor a minister of education was entitled to an exclusion under section 107 when neither one was an ordained minister of the gospel, although both were performing services relating to the office and functions of a minister of the gospel. The facts of the ruling specify that neither minister was licensed, ordained, or commissioned.

In *Wingo v. Commissioner*, 89 T.C. 922 (1989), the Tax Court considered whether the taxpayer, a probationary member of the North Arkansas Annual Conference of The United Methodist Church (the Conference), who was both an ordained deacon and a licensed local pastor, was performing services as a duly ordained, commissioned or licensed minister for purposes of the self-employment tax exemption available under section 1402(e) of the Code. Taxpayer administered the Sacraments, conducted worship and performed services in the control, conduct, and maintenance of his local church and Conference. The court held that the taxpayer was a duly ordained, commissioned, or licensed minister within the meaning of section 1402 when he assumed the duties and functions of a minister in 1980. In analyzing whether the taxpayer was a duly ordained, commissioned, or licensed minister, the court examined whether taxpayer performed the duties and functions of a minister within the three types of ministerial services specified in section 1.1402(c)-5(b)(2) of the regulations, whether the taxpayer was ordained, commissioned, or licensed, and whether his church considered him to be a religious leader.

The court held that the taxpayer was a minister because he satisfied all the elements of section 1.1402(c)-5(b)(2) of the regulations. As a local pastor and an ordained deacon, he administered the sacraments and conducted religious worship. The court also found that he satisfied the third prong (control, conduct, and maintenance of the church or religious organizations within the church) because he was in charge of all the organizational concerns of his own congregation, including administering the provision of the church discipline, supervising the working program of the local church, maintaining church records and meeting local financial obligations. The court noted that a church's designation of an individual as a minister standing alone, is insufficient to determine whether the individual is a minister for self-employment tax purposes; however, it is an additional factor to consider. The court concluded that when a person performs all the three types of services set forth in the regulations and is recognized as a minister or religious leader by his denomination that person is a minister for purposes of section 1402(c) of the Code. Thus, taxpayer's status as a probationary member of the Conference did not prevent him from being a minister for purposes of section 1402(c).

In *Haimowitz v. Commissioner*, T.C.M. 1997-40, the Tax Court concluded that the taxpayer, a synagogue administrator, was not a minister of the gospel for purposes of section 107 of the Code. He had been employed by a temple for 30 years and was recognized as a Fellow in Synagogue Administration. He performed various services for the temple, including assisting students with Bar and Bat Mitzvah preparation, serving as marriage ceremony director, and conducting services for mourners. On his income tax return he specified that he was a religious functionary and asserted that as a religious functionary he was a minister of the gospel within the meaning of section 107. Here the Tax Court concluded that taxpayer did not meet the requirements of regulation section 1.1402(c)-5(b)(2). Specifically, the court found that the duties

he performed, although related to the Jewish religion, were organizational in nature and did not require performance from one with ministerial credentials. The court then noted the religious rites and ceremonies he did not perform. He never fulfilled the role of rabbi or cantor, and the services he did perform were secular in nature. For example, he never officiated at a wedding or a funeral, and he merely assisted the rabbi at religious services. Thus, the court concluded he did not perform regularly those duties that the minister of the Jewish faith customarily performs. In addition, the court found taxpayer's recognition as a Fellow in Synagogue Administration was irrelevant, as that designation is not a recognized religious official of the Jewish religion. The court also noted that taxpayer did not present any evidence that the temple considered him to be a religious leader. Accordingly, the court concluded that taxpayer failed to demonstrate that he was a minister of the gospel.

#### Discussion

Applying the test established in *Wingo*, we conclude that C, D, and E are ministers of the gospel performing services in the exercise of their ministries within the meaning of section 1.1402(c)-5(b)(2) of the regulations. As ordained members of the clergy in the Church, C, D, and E conduct worship and assist with the sacraments. In addition, as ordained members of the clergy in full connection they perform services in the control, conduct, and maintenance of the Church. Further, X and the Church consider C, D, and E to be religious leaders who can perform substantially all of the religious functions within the scope of the Church's tenets and practices. We find that E is distinguishable for the synagogue administrator in *Haimowitz*, as E is an ordained member of the Clergy in full connection. E officiates at weddings and funerals and will regularly perform the duties that members of the clergy of the Church customarily perform. Accordingly, C, D, and E are performing services as "ministers of the gospel" within the meaning of section 107 of the Code. Thus, C, D, and E are eligible to have a portion of their salary designated as a parsonage allowance. Any parsonage allowance will be excluded from gross income, provided the allowance is designated and paid in accordance with section 107. We further conclude that the services C, D, and E perform are in the exercise of their ministry within the meaning of section 3121(b)(8) of the Code.

This ruling is not intended to imply or suggest that the mere designation of an individual as a minister is sufficient to conclude that the individual is a minister of the gospel for purposes of sections 107, 1402, 3121, or 3401 of the Code. Nor does this ruling suggest that the Service has departed from its position in Rev. Rul. 59-270. This ruling applies only to C, D, and E with respect to the services they perform for X. No opinion is expressed as to the federal tax consequences of the transaction described above under any other provision of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

JERRY E. HOLMES  
Chief, Branch 2

Office of Associate Chief Counsel  
(Employee Benefits and Exempt Organizations)



APPENDIX K

Sample Manse Allowance Forms

*Housing Allowance  
Notification by Church to Minister*

Date \_\_\_\_\_

Dear \_\_\_\_\_:

This is to advise you that at a meeting held on \_\_\_\_\_, your **housing** allowance for the year 20\_\_ was officially designated and fixed in the amount of \$\_\_\_\_\_. Accordingly, \$\_\_\_\_\_ of the total payments to you during the year 20\_\_ will constitute **housing** allowance and the balance will constitute compensation. (You will also have rent-free use of the home located at \_\_\_\_\_ for the year 20\_\_). This designation shall apply to calendar year 20\_\_ and all future years unless otherwise provided. Under § 107 of the Internal Revenue Code, an ordained minister of the gospel is allowed to exclude from gross income the housing allowance paid to him or her as part of his or her compensation to the extent used to rent or provide a home so long as such designation does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities. (The minister may also exclude the rent-free use of a home for income tax purposes). Additional information may be obtained by reviewing IRS publication 517, Social Security and other Information for Members of the Clergy and Religious Workers. It is available at <http://www.irs.ustreas.gov/pub/irs-pdf/p517.pdf>.

You should keep an accurate record of your expenditures to rent or provide a home in order to be able to substantiate any amounts excluded from gross income in filing your Federal Income Tax return. Remember that the housing allowance (including the fair rental value of a provided manse) *must be included as part of your income for the self-employment tax*. In the event of an audit, it is the responsibility of the minister receiving a § 107 exclusion to substantiate the use of such funds.

Sincerely yours,

\_\_\_\_\_  
\_\_\_\_\_

Title

## *Housing Allowance*

### *Insert for Minutes of Meeting*

The Clerk of Session informed the meeting that under the tax law an ordained minister of the gospel is (1) not subject to Federal Income Tax with respect to the housing allowance paid to him or her “as part of his or her compensation to the extent used by him or her to rent or provide a home” so long as the designated amount and the amount spent do not exceed the fair rental value of the home, including furnishings and appurtenances, plus the cost of utilities and (2) not subject to Federal Income Tax on the rental value of a home supplied to him or her rent-free.

The (Name of Church or other governing body) \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after considering the statement of Rev. \_\_\_\_\_ setting forth the amount Rev. \_\_\_\_\_ estimates he or she will be required to spend to rent or provide a home for himself or herself and his or her family during the year 20\_\_\_\_, on motion duly made and seconded, adopted the following resolution: (or — The Church or other governing body on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, after discussing the amount to be paid to Rev. \_\_\_\_\_ as a manse allowance, on motion duly made and seconded, adopted the following resolution:) “Resolved that Rev. \_\_\_\_\_ receive compensation of \$\_\_\_\_\_ for the year 20\_\_\_\_. Rev. \_\_\_\_\_ receive a housing allowance of \$\_\_\_\_\_ for the year 20\_\_\_\_ and all future years unless otherwise provided.” (If the minister is to have rent-free use of the home, also state: “Rev. \_\_\_\_\_ shall also have the rent-free use of the home located at \_\_\_\_\_ for the year 20\_\_\_\_ and for every year thereafter so long as he/she is minister of the \_\_\_\_\_ church unless otherwise provided.) The housing allowance (and rent-free use of a home) shall be so designated in the official church records.

## APPENDIX L

### Arson Prevention Checklist

- | OK                       | Needs Work               |   |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Install night lighting.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Secure buildings with strong locks on windows and doors.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Eliminate woodpiles, paper, and leaves that are around the church that could fuel a fire.       |
| <input type="checkbox"/> | <input type="checkbox"/> | Secure flammable liquids and other materials inside the church that could fuel a fire.          |
| <input type="checkbox"/> | <input type="checkbox"/> | Limit the number of entrances into the building while still providing adequate emergency exits. |
| <input type="checkbox"/> | <input type="checkbox"/> | Be alert to unusual activities in the neighborhood.   |
| <input type="checkbox"/> | <input type="checkbox"/> | Install a central station security and fire detection system.                                   |
| <input type="checkbox"/> | <input type="checkbox"/> | Keep valuables locked up and out of sight.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Prevent unauthorized access to the roof, fire escapes, and stairwells.                          |
| <input type="checkbox"/> | <input type="checkbox"/> | Assign personnel to secure the building.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Limit keys to management only.  |
| <input type="checkbox"/> | <input type="checkbox"/> | Leave some interior lights on at night.   |

## APPENDIX M

**Form provided by:  
National Church Insurance Program  
American Coverage Administrators**

### Church Contents Inventory

Date of Inventory:

\_\_\_\_\_  
Name of Church: \_\_\_\_\_  
Address: \_\_\_\_\_

In putting a value on building or contents items use the current cost to replace new, as near as you can estimate it. Most policies provide replacement cost coverage on both buildings and contents and adequate values are very important. Values for the contents of the parsonage should be limited to church-owned contents.

Contents	Church	School	Other Building	Other Building
Communion Service	\$	\$	\$	\$
Altar Furnishings	\$	\$	\$	\$
Draperies	\$	\$	\$	\$
Bibles	\$	\$	\$	\$
Hymnals	\$	\$	\$	\$
Choir Robes & Vestments	\$	\$	\$	\$
Choir Music	\$	\$	\$	\$
Musical Instruments (incl. Pianos)	\$	\$	\$	\$
Unattached Seats & Pews	\$	\$	\$	\$
Tables & Chairs	\$	\$	\$	\$
Pictures & Paintings	\$	\$	\$	\$
Statuary	\$	\$	\$	\$
Christmas Decorations	\$	\$	\$	\$
TV Sets	\$	\$	\$	\$

TV Security System	\$	\$	\$	\$
Sound System	\$	\$	\$	\$
Microphone Stands	\$	\$	\$	\$
Radios	\$	\$	\$	\$
Recorders	\$	\$	\$	\$
Record Players & Records	\$	\$	\$	\$
Video Recorders & Tapes	\$	\$	\$	\$
Slide Projectors & Equipment	\$	\$	\$	\$
Compact Disk Players & Disks	\$	\$	\$	\$
Cameras	\$	\$	\$	\$
Office Desks & Chairs	\$	\$	\$	\$
Files	\$	\$	\$	\$
Computers & Printers	\$	\$	\$	\$
Typewriters	\$	\$	\$	\$
Adding Machines	\$	\$	\$	\$
Duplication Machines	\$	\$	\$	\$
Answering Machines	\$	\$	\$	\$
Fax Machines	\$	\$	\$	\$
Other Equipment	\$	\$	\$	\$
Other Supplies	\$	\$	\$	\$
Books	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Unattached School Desks & Chairs	\$	\$	\$	\$
Unattached Cupboards	\$	\$	\$	\$
Unattached	\$	\$	\$	\$

Blackboards				
Book Cases	\$	\$	\$	\$
Maps & Globes	\$	\$	\$	\$
Science Equipment	\$	\$	\$	\$
Sporting Equipment	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Domestic Appliances, such as Stoves, Refrigerators, Dishwashers, Washers, and Dryers	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Pots & Pans	\$	\$	\$	\$
Dishes	\$	\$	\$	\$
Silverware	\$	\$	\$	\$
Coffee Makers	\$	\$	\$	\$
Pressure Cookers	\$	\$	\$	\$
Warming Ovens	\$	\$	\$	\$
Microwave Ovens	\$	\$	\$	\$
Mixers	\$	\$	\$	\$
Toasters	\$	\$	\$	\$
Carts & Trays	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
	\$	\$	\$	\$
Tools	\$	\$	\$	\$
Lawn & Snow Equipment	\$	\$	\$	\$
Pastors' Business Personal Property	\$	\$	\$	\$

(not otherwise insured)				
Personal Property of Others while in care and custody of church for business purposes	\$	\$	\$	\$
	\$	\$	\$	\$
<b>TOTAL (Contents Only):</b>	\$	\$	\$	\$

Certain building items are high in value and need constant check of current replacement costs to keep your protection adequate. It is recommended that you consult a qualified expert about the cost to replace these items. The person or organization that installed or services these items could be contacted for assistance.

Pipe Organ, including console, pipes, and blowers: \$

---

If value not known:

Number of stops: \_\_\_\_\_

Number of ranks: \_\_\_\_\_

Chimes: \$

---

Carillon: \$

---

Stained glass windows: \$

---





## APPENDIX O

**Form provided by:  
National Church Insurance Program  
American Coverage Administrators**

### **Safe Conditions and Practice Survey: A Self-Inspection Guide**

<i>Fire</i>	<i>Yes</i>	<i>No</i>
Have extinguishers been inspected and recharged within one year?	<input type="checkbox"/>	<input type="checkbox"/>
Are the number of extinguishers adequate and appropriately located? (Check local fire department.)	<input type="checkbox"/>	<input type="checkbox"/>
Are steeples or spires properly equipped with lightning rod protection?	<input type="checkbox"/>	<input type="checkbox"/>
Is an automatic fire detection system, if one has not been installed, a practical consideration for your church?	<input type="checkbox"/>	<input type="checkbox"/>
Are premises, inside and out, free of accumulations of refuse, paint cans, and rags not regularly used, unnecessary collection of cardboard and paper materials? (Check attics, spaces under stairs, and furnaces/boiler rooms, especially.)	<input type="checkbox"/>	<input type="checkbox"/>
If the kitchen range is equipped with hood and exhaust system, are the filter and duct now free of grease? Is there a cleaning schedule?	<input type="checkbox"/>	<input type="checkbox"/>
Are refrigeration motors and cooling coils clean?	<input type="checkbox"/>	<input type="checkbox"/>
Has the electrical system been inspected by a qualified person within the last year?	<input type="checkbox"/>	<input type="checkbox"/>
Are electrical panel boards and switch boxes free of lint and dirt? Are they enclosed in metal cabinets? Please notice if cabinet surface is free of heat?	<input type="checkbox"/>	<input type="checkbox"/>
Check electrical receptacles. Are coverings free of heat? Question any permanent usage of extension cords.	<input type="checkbox"/>	<input type="checkbox"/>
Have heating and air-conditioning systems been inspected by qualified persons within the last year? Have all corrective suggestions been complied with?	<input type="checkbox"/>	<input type="checkbox"/>
If the furnace/boiler room is not a separate fire resistive enclosure, would it be practical to alter some structural parts in a manner that would make it safer?	<input type="checkbox"/>	<input type="checkbox"/>

(Self-closing fire door, etc.)		
Have chimneys been inspected or cleaned within the last year?	<input type="checkbox"/>	<input type="checkbox"/>
Are you closing doors to all rooms when not in use or when leaving at night? (Valuable aid to containment should a fire start.)	<input type="checkbox"/>	<input type="checkbox"/>
If your heating system is a "forced air" type, have the filters been changed recently? Is the area of the blower fan and motor free of lint and dust?	<input type="checkbox"/>	<input type="checkbox"/>
Have all draperies and other burnable decorations been flame proofed?	<input type="checkbox"/>	<input type="checkbox"/>
Are heating system vents and flues properly connected and insulated where required?	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>Crime</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>
If vandals have broken window glass frequently enough to be a problem, have you considered the installation of plastic coverings for protection?	<input type="checkbox"/>	<input type="checkbox"/>
For greater protection of office equipment from burglary, is it practical to install double cylinder deadbolt locks on interior office doors?	<input type="checkbox"/>	<input type="checkbox"/>
Is it practical to bolt down typewriters?	<input type="checkbox"/>	<input type="checkbox"/>
Are checks stamped "for deposit only" the day they are received?	<input type="checkbox"/>	<input type="checkbox"/>
If burglary attempts have been frequent, are you considering the installation of an alarm system? If not for all portions of the premises, for those with the greatest exposure to loss?	<input type="checkbox"/>	<input type="checkbox"/>
If burglary/vandalism losses have been occurring, have you considered the installation of additional exterior lighting and/or the operation of lighting beyond regular hours of occupancy? (Consult with police department on this.)	<input type="checkbox"/>	<input type="checkbox"/>
<b><i>People Safety</i></b>	<b><i>Yes</i></b>	<b><i>No</i></b>
Are floor and stairway surface coverings in such condition that no trip hazards are presented?	<input type="checkbox"/>	<input type="checkbox"/>
Are handrails secure and installed where required or useful?	<input type="checkbox"/>	<input type="checkbox"/>
Are stairways, building exits (inside and outside), and parking lot areas safely lit when available for use?	<input type="checkbox"/>	<input type="checkbox"/>
Are exit doors equipped with panic bars? (Check fire department for requirement or advice.)	<input type="checkbox"/>	<input type="checkbox"/>

Does any refuse, furniture, or equipment block or hinder egress through hallways to exit doors?	<input type="checkbox"/>	<input type="checkbox"/>
Are fire escapes in safe and operable condition?	<input type="checkbox"/>	<input type="checkbox"/>
Are parking area surfaces and walkways free of cracks and holes?	<input type="checkbox"/>	<input type="checkbox"/>
Is playground equipment safely installed and in good condition?	<input type="checkbox"/>	<input type="checkbox"/>
Is the bell tower secured from unauthorized access?	<input type="checkbox"/>	<input type="checkbox"/>