

PROPERTY AND ESTATE PLANNING

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INTRODUCTION

Property and estate planning issues may involve the local church board of trustees, district superintendents, annual conference board of trustees, and other individuals and connectional entities in the Church. It is essential that all persons and parts of the Church be aware of the important theological and legal implications of the acquisition, ownership, use, and disposition of property (both real and personal) which is held in trust for the denomination.

This section examines issues relating to: the Trust Clause; local church property, including its purchase, sale, transfer, lease, and mortgage; how property of a closed local church is to be handled; historical landmark designation; property ownership; trusts and estates; church stewardship; contracts; and intellectual property (copyrights, trademarks, etc.).

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THE TRUST CLAUSE

All properties of United Methodist local churches and other United Methodist agencies and institutions are held, *in trust*, for the benefit of the entire denomination, and ownership and usage of church property is subject to the *Discipline*. This trust requirement is an essential element of the historic polity of The United Methodist Church or its predecessor denominations or communions and has been a part of the *Discipline* since 1797. It reflects the connectional structure of the Church by ensuring that the property will be used solely for purposes consonant with the mission of the entire denomination as set forth in the *Discipline*. The trust requirement is thus a fundamental expression of United Methodism whereby local churches and other agencies and institutions within the denomination are both held accountable to and benefit from their connection with the entire worldwide Church.¹

The trust clause is a critical concept to understand, not only because it reflects the connectional nature of the Church, but also because of its practical necessity. “The United Methodist Church” does not, and cannot, hold property in its own name.² Title-holding capacity is thus relegated to the Church’s constituent units.³ All written instruments of conveyance involving property acquired for use as a place of worship or for other church activities must contain the trust clause language found in ¶ 2503.1.⁴ However, it is important to understand that, even if the trust clause is not contained in any written instruments, the property is still being held in trust for the benefit of the Church. The *Discipline* lists the situations where this would be the result:

[If] the intent of the founders and/or a later local church or church agency, or the board of trustees of either, is shown by any or all of the following [then the property is held in trust for the Church]:

a) the conveyance of the property to a local church or church agency (or the board of trustees of either) of The United Methodist Church or any predecessor to The United Methodist Church;

b) the use of the name, customs, and polity of The United Methodist Church or any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; or

¹ ¶ 2501.1.

² ¶ 141.

³ ¶ 2501.1.

⁴ See also ¶¶ 2501.2-.5 for the trust clauses to use in other situations.

c) the acceptance of the pastorate of ordained ministers appointed by a bishop or employed by the superintendent of the district or annual conference of The United Methodist Church or any predecessor to The United Methodist Church.⁵

The principal reason for the trust clause is to ensure that local church property will continue to be used for United Methodist Church purposes. The trust clause requires that the property “be used, kept, and maintained as a place of divine worship of the United Methodist ministry and members of The United Methodist Church.”⁶

1. Types of Property Subject to the Trust Clause.

The trust clause covers not only the local church’s land and building(s), but also all its personal property, whether it be tangible (for example, pews or church vans,) or intangible (such as interests in estates or trusts or bank accounts).⁷

2. Restrictions Imposed by the Trust Clause.

The *Discipline* sets forth detailed procedures a local church must follow prior to taking most major actions that would affect real property subject to the trust clause.⁸ These requirements reflect the denomination’s shared interest in the future of the local church property.

Additionally, when a local church closes or attempts to “break away” from the denomination, the trust clause is the determining factor in what happens to the local church’s property.⁹ In such instances, ownership of the property will transfer to the annual conference, on behalf of the denomination.

3. Validity of the Trust Clause.

The trust clause goes beyond “church law” and imposes the civil law requirement that church property shall only be used for purposes consistent with those of the denomination. Thus, there are instances when civil court systems have been used to either challenge or enforce our trust clause. While there are outlier cases, our trust clause has been consistently upheld by the courts, even in situations where a local church had been closed by the denomination or had decided to separate itself from the denomination.

⁵ ¶ 2503.6.

⁶ ¶ 2503.1.

⁷ ¶ 2501.1.

⁸ ¶¶ 2536-44.

⁹ See ¶ 2549.

CONFERENCE PROPERTY

1. Annual Conference Property.

Paragraphs 2512-16 deal with property held by the annual conference. Each annual conference has a board of trustees, which fulfills important functions in relation to the ownership of conference property.¹⁰ This property includes episcopal residences that are jointly owned by annual conferences.¹¹ Through the closure of a local church, or through operation of the trust clause, the annual conference may also take ownership of local church property.¹² As part of its responsibility to protect annual conference property, the board of trustees may also be responsible for managing relationships with related health and welfare ministries.¹³

See the [Appendix](#) to this section for a summary of the Disciplinary responsibilities of annual conferences trustees regarding conference property.

2. District Conference Property.

The main focus of the *Discipline* regarding property and the district conferences is on district parsonages and the district board of church location and building.

The *Discipline* provides that a district parsonage may be acquired by the district for use by the district superintendent.¹⁴ It also outlines the procedures that are to be followed when a district parsonage is affected by a change in district boundaries.¹⁵

Each district is required to have a district board of church location and building.¹⁶ These boards are heavily involved in the purchase, construction, or major remodeling of a local church,¹⁷ as well as the sale, transfer, lease, or mortgage of pre-existing church property.¹⁸ A local church must receive the board's approval before any such undertaking.

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¹⁰ See ¶ 2512.3.

¹¹ ¶ 2514.

¹² ¶ 2549.

¹³ See ¶ 2517.

¹⁴ ¶ 2518.1.

¹⁵ See ¶ 2518.3.

¹⁶ ¶ 2519.

¹⁷ See ¶¶ 2521, 2544.

¹⁸ See ¶¶ 2540.3, 2541.3.

ACQUISITIONS AND OTHER DISPOSITIONS OF REAL PROPERTY BY LOCAL CHURCHES

The procedures for the acquisition and sale of property by local churches are set forth in §§ 2536-44. These procedures vary depending on whether the local church is incorporated or unincorporated.

1. Conveyance of Real Property – Generally.

In the simplest terms, a “conveyance” is the process by which title or other interest in real property is transferred from one party (grantor) to another party (grantee). While most conveyances are sales, other instruments creating or affecting interest in, or title to, real property, such as deeds, mortgages, or assignments, can function as conveyancing instruments.

Conveyancing is typically 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. Although pre-printed form contracts are often used by purchasers or sellers of real property, the terms in such contracts are still subject to negotiation. A local attorney should be consulted before executing any conveyancing instrument, as it is easier to negotiate for particular terms prior to execution of the contract.

The second step of the conveyancing process is the actual delivery of the conveyancing instrument (usually a deed) by the grantor and delivery of the consideration (payment) stated in the contract by the grantee. The grantee must determine the capability and competence of the grantor to transfer the property prior to paying over the consideration. A complete and thorough examination of the grantor’s title must be made. A title summary (abstract) or title report may be prepared and examined either by the grantee’s legal counsel 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, which protects the purchaser against losses due to defects in the seller’s title, should be acquired, when possible.

2. Purchase of Real Property.

Prior to the purchase of real property by an unincorporated local church, a resolution authorizing the purchase must be passed at a charge conference meeting by a majority of the members.¹⁹ Ten days notice of this meeting must be given.²⁰ Additionally, the local church must obtain the written consent of the pastor, the district superintendent, and the district board of church

¹⁹ § 2537.

²⁰ *Id.*

location and building (the latter only if the purchase includes a church, educational building or parsonage).²¹

Once the unincorporated church has obtained the necessary approvals, the *Discipline* places specific requirements on the document that conveys the title to the property to the church. That document is to convey title to the church's board of trustees, and "their successors and assigns, in trust for the use and benefit of [the] local church and of The United Methodist Church."²² The document must name the board of trustees, as a whole, along with each individual board member.²³

The procedures to be followed when incorporated churches purchase property are essentially the same. The main difference are the names of the decision-making bodies that are involved. An authorizing resolution from the charge conference is still required, with the difference being that members are voting in their capacity as members of the corporate body.²⁴ The same majority vote and notice requirements apply and the church must still obtain the same written consents.²⁵ Instead of conveying title to a board of trustees, the *Discipline* requires that documents involving incorporated churches convey title to the church's corporate body, in its corporate name.²⁶ The requirement that the property be held in trust still applies.²⁷

Regardless of the local church's form, resolutions at the charge conference should specifically recite: the requisite consents of the pastor, district superintendent, and, if needed, the district board of church location and building; the presence of a quorum at the meeting of the charge conference taking the action; the name of the presiding officer of the charge conference; the notice that was given before the meeting; and the authority of the charge conference to authorize the purchase as granted by the appropriate *Discipline* paragraphs. The resolution should direct the local church's board of trustees to purchase the property in conformity with the terms of the resolution and the requirements of the *Discipline* and should authorize officers of the board to sign the relevant documents.

Practical and Legal Concerns.

Beyond the specific requirements of the *Discipline*, there are numerous practical issues a local church must take into account when it seeks to purchase property. Title insurance or a title abstract should be obtained to guarantee good title and ownership of the property, when possible. In the case of buildings, warranties as to the soundness of structure, compliance with local building codes, and pest and termite infestations should be included in the purchase contract, whenever

²¹ ¶¶ 2537, 2544; *see also* ¶ 2520.

²² ¶ 2536.

²³ *Id.*

²⁴ ¶ 2539.

²⁵ *Id.*, ¶ 2544.

²⁶ ¶ 2538.

²⁷ *Id.*

possible and/or required by state law. 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 need to be addressed. An environmental audit of the property should be conducted. 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 insurance may be purchased to insure against the future discovery of any 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. The insurance responsibilities of the seller prior to the closing should be spelled out. The identity of the party who will assume the cost of any required official documentary stamps should be specified. 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 the time needed to obtain zoning approvals should be factored into all documents and plans.

When real property is acquired by a local church, efforts should be made to take the property free of any encumbrances, such as a reverter to the donor's heirs should the property be 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. A reverter, or other restrictive use clause, can lead to the property reverting to the heirs of the donor with no compensation to the local church. The advice of an experienced real estate attorney should be sought if any such clauses are found.

Finally, it is important to understand that local laws can place specific requirements on the purchase of property. This Manual cannot possibly enumerate the peculiarities of the various state, county, and/or city laws to which these transactions are subject. Therefore, it is important that churches retain local counsel to provide guidance in these areas and to ensure that all local legal requirements are met.

Please also see the specific issues relating to contracts for the purchase and sale of real property discussed at length in Subheading 12 below.

3. New Construction – Specific Issues.

In most states, the law gives laborers or subcontractors who provide services and materials connected with the construction, repair, or remodeling of a building a lien on the property, buildings, and improvements in order to secure the payment of the materials and labor provided. Subcontractors who have not been paid by a general contractor may establish a mechanic's lien on the property even though the general contractor has been paid. 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.

The general contractor should supply an affidavit providing the names of all subcontractors and suppliers on the building project. Prior to payout on the church or remodeling project, releases or lien waivers should be obtained from the contractor and all subcontractors. 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 an architect or title company) to ensure that all the necessary waivers and releases have been obtained.

4. Sale, Transfer, Lease, and Mortgage of Real Property – Generally.

As with the purchase of property, the procedures for the sale, transfer, lease, and mortgage of property by incorporated and unincorporated local churches are essentially the same. Both incorporated and unincorporated churches must give ten (10) days notice of the meeting to vote on the proposed action,²⁸ obtain an authorizing resolution from the charge conference,²⁹ and receive written consent from the pastor and the district superintendent.³⁰ The *Discipline* places certain requirements on the pastor, district superintendent, and district board of church location and building that must be met before written consent can be given.³¹ All written consents must be attached to, or included within, the document evidencing sale, conveyance, transfer, lease, or mortgage, if permitted by local law.³²

The authorizing resolution relating to an unincorporated local church may provide for any two officers of the board to execute the necessary documents on behalf of the church,³³ while equivalent resolutions or incorporated local churches must direct the board of directors to take the requisite steps to execute the documents.³⁴ Additionally, the board of an incorporated church must follow all of the local legal requirements applicable to incorporated entities.³⁵ As with resolutions regarding the purchase of property, resolutions pursuant to ¶¶ 2540-41 should evidence that all requirements of the *Discipline* have been followed and should direct the board to execute the necessary documents.

A mortgage is a lien upon real property that secures the payment of money owed. The debtor is called the “mortgagor,” and the creditor is the “mortgagee.” The mortgage provides 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. In the event of the mortgagor’s failure to pay on the note, the mortgagee can recover the loaned funds by foreclosing on the property. A first mortgage

²⁸ ¶¶ 2540.1, 2541.1.

²⁹ ¶¶ 2540.2, 2541.2.

³⁰ ¶¶ 2540.3, 2541.3.

³¹ *Id.* EDITOR’S NOTE: Note that unincorporated local churches that are relocating are now required to first offer the property to another United Methodist entity.

³² *Id.*

³³ ¶ 2540.4. EDITOR’S NOTE: Earlier versions of this paragraph stated that the resolution shall require two officers to execute the documents.

³⁴ ¶ 2541.4. *See also* ¶ 2541.6, which requires the documents to be executed in the name of the corporation, by any two officers.

³⁵ ¶ 2541.5.

gives the mortgagee first priority on the proceeds of a foreclosure. A second mortgagee recovers proceeds only after satisfaction of the first mortgage.

While preparing for closing, title attorneys often question how to deal with the trust clause. They should be informed that compliance with ¶ 2540 or ¶ 2541 releases the trust clause from the property. If necessary, the conference chancellor may be able to advise the closing attorney.

Obsolete names on a deed (such as a pre-1939 deed to Lindsey Street Methodist Protestant Church) can be addressed by an affidavit from the district superintendent or other conference official explaining the evolution of The United Methodist Church as laid out in the “Historical Statement” beginning on page 11 of the *Discipline*. The deed might also need a brief recital of the local church’s history.

Please also see the specific issues relating to contracts for the purchase and sale of real property discussed at length in Subheading 12 below.

5. Limitations on the Use of Sale and Mortgage Proceeds.

Paragraph 2543 places limits on the use of the proceeds from the sale or mortgaging of local church property. The restrictions on the use of mortgage and sale proceeds are based upon the financial principle that one should not “dip into capital” to pay current expenses. Sanctuaries, educational buildings, and parsonages are capital items against which money can be borrowed only to finance capital expenditures (significant remodeling, expansion, major heating or electrical system upgrades, etc.). If one of these properties is sold, the proceeds may be used to replace it or for another capital need, but may not be used to pay current expense items such as routine repairs and maintenance, salaries of church workers, or housing allowances for ministerial staff. These restrictions apply only to the spending of the principal. Interest on the proceeds may be used for other purposes.

Note that ¶ 2543.1, by its terms, does not restrict the use of proceeds from the sale or mortgage of vacant land or land that contains a building that is neither a church building nor a parsonage.

6. Leasing of Church Property – Specific Issues.

From time to time, local churches and other church organizations will have the opportunity to lease church property to another organization. Many legal, tax, zoning, and practical issues should be considered before any leasing decisions are made.

The leasing of a portion of church property ordinarily should not create any problems with the church’s federal income tax exemption under Internal Revenue Code Section 501(c)(3). Unless rental activities not related to the organization’s exempt purpose (religion) become “substantial,” the federal tax exemption is not affected. Although the renting of church property will produce unrelated business income (UBI), I.R.C. § 513 specifically exempts most rental income from being

treated as taxable UBI. Any church that is considering renting its property should first consult with a professional tax advisor, as there are several commonly occurring exceptions to this general rule, including when the property being leased is subject to a mortgage and when parking spaces are being rented.

Another important taxation issue arises at the state and local level – i.e., local real estate property tax exemptions for religious property. Some states, counties, and/or municipalities have laws that require “exclusive religious use” if a property is to be considered tax-exempt. In areas that have such laws, the leasing of church property to outside business concerns could jeopardize the tax exemption, as would leasing the church’s parsonage. Churches are strongly advised to confer with legal counsel familiar with local property tax law.

Zoning restrictions may impact the leasing of church property. For example, a church in a residential area may not be zoned for use as a school or childcare facility. Before entering any significant lease negotiations, the zoning restrictions should be checked and, where desired, variances or zoning modifications may be considered.

The *Discipline* provides little guidance to local churches contemplating the lease of their property. In an effort to fill in this gap, GCFA recommends that local churches consider the following issues when making these decisions:

1. The tenant (lessee) should ideally be a not-for-profit organization whose purpose is consistent with the mission of The United Methodist Church connection.
2. The lessee should further the cultural, civic, spiritual, and/or educational goals of the church and/or community.
3. The lessee’s activities should not supersede or interfere with church programs.
4. The lessee should submit a properly completed rental/lease application that includes, but is not limited to, an explanation of the structure of the lessee’s organization and the general uses which it intends for the rental (hours, access desired, special needs, etc.).
5. The local church and the lessee should execute a lease that spells out the rights and liabilities of the parties. There should be indemnification and hold harmless clauses 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 lessee.
6. Prior to occupancy, and as part of its duties under the lease, the lessee should be required to submit a current certificate of insurance from the lessee’s liability insurer and to name the church as an additional insured under that policy.
7. All legal documents should be reviewed and approved by an attorney.

8. The church should review the state and local laws relating to zoning and property tax exemptions prior to executing a lease. The lease may be written to shift any potential tax liability to the lessee.
9. There should be a written inquiry made to the local church's liability insurer to ensure that the insurance policy 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. If supplemental or specialized coverages are needed, they should be obtained prior to lease execution and property occupancy. Any increased cost may possibly be offset by adjusting the terms of the lease or by requiring the lessee to pay for the increase. If any insurance claim or lawsuit should arise, immediate written notice must be given to the local church's insurance agent and insurance company.
10. If possible, hold harmless, indemnity, and/or fee shifting provisions should be incorporated into the lease agreement to protect the church in the event of any dispute or litigation. Such a provision should also provide that, in the event of a lawsuit, the local church shall be entitled to attorney fees and costs.
11. The lease agreement should obligate the lessee to pay for any damage to the property and/or its contents.
12. The leasing of the property may cause it to fall under the guise of federal or local statutes regarding access for the disabled that otherwise did not apply. Compliance with such requirements should be covered by the lease agreement.³⁶
13. The church should make best efforts to determine the appropriate rent for the uses of the property involved. Any increases in utility bills, maintenance costs, or other expenses should factor into the rent determination. Special zoning, safety, and licensing requirements may also involve additional costs.
14. The lease agreement should clearly delineate the rented space, the permitted uses, and the allowed occupancy times.
15. The lease agreement should prohibit the lessee from making building changes or improvements without the prior written consent of the local church. The lease agreement should specify the party that is required to pay for any necessary changes or improvements. There should be a clear statement that such improvements become property of the church.
16. The lease should cover the duty of the lessee to comply with zoning and code requirements, make safety inspections, and obtain licenses and permits.

³⁶ See Subheading 9 below, and Section III of this Manual, for more discussion of this issue.

17. Special consideration should be given to security if outside individuals are to be given keys and/or access to the building. The responsibility for locking the building should be fully understood. Alternatively, the church may designate board members or other persons to open and close the building.
18. There should be provisions covering the termination, expiration, and renewal of the lease agreement, including appropriate notification deadlines for such actions.
19. Ensure compliance with the church's Safe Sanctuaries policies. For example, the church must consider if/how church members and guests will interact with individuals associated with the lessee – e.g., would adult employees of the lessee have access to the same bathrooms, at the same time, as children who attend the church-operated preschool? – and establish appropriate security/protection measures. Additionally, who will be responsible for ensuring appropriate background checks are acquired, and who will pay for them?

After the lease agreement is executed, it must be monitored and enforced. The local church must be prepared to act appropriately if the lessee violates any provision of the lease. Should problems arise with improper usage, breaches of security or of Safe Sanctuaries policies, non-payment of rent, or other conflicts, it is always best to address them promptly and in writing.

7. Oil, Gas, and Mineral Leases.

Paragraph 2505 allows the governing body of any church unit or agency owning land in trust for The United Methodist Church to lease the land for production of oil, gas, coal, and other minerals, provided that this production will not interfere with the purpose for which the land is held. Monies received from such leases are to be used for the benefit of the church unit and for the promotion of the interests of the entire denomination. Whenever such leases are contemplated, the services of a local attorney experienced in oil, gas, and mineral leasing should be retained.

8. Disposition of Property of a Closed Local Church.

When a local church is closed, it is very important that all of the procedures outlined by the *Discipline* are carefully followed.³⁷

The district superintendent needs to consult local legal counsel. It is possible the closing church received property carrying a stipulation that such property must be used for church-related purposes. In such a situation, ownership of the property may revert to the original donor of the property, or to someone else specified by that owner, if church-related activities cease.

³⁷ Paragraph 2549 discusses the specific procedures to be followed in dealing with property of a closed local church.

When church property is taken over by the annual conference, it should be cared for so that it does not become a legal liability. If possible, the property should be transferred for the use of another church or simply sold to a third party. When property is of minimal value and/or a buyer is difficult to find, it may be better to convey the property for nominal consideration than to take on the responsibility for maintaining and insuring the property. One option to consider in relation to cemetery property is the potential to transfer the property to a local cemetery association composed of individuals with family buried in the cemetery.

Occasionally, persons attempt to take ownership and control of a (former) local church. Such situations squarely implicate the trust clause. It is often appropriate for the annual conference to declare exigent circumstances exist which necessitate the protection of the church property, at which point the annual conference would assume ownership and control.³⁸

9. Accessibility for Disabled Persons.

The *Discipline* requires special attention be given to providing equal access to church properties for persons with disabilities. The local church's board of trustees must conduct an annual accessibility audit of church facilities and then work to remove any barriers to accessibility.³⁹ The audit and the actions taken are to be part of the church's annual reports.⁴⁰ Generally, any new construction or major remodeling projects must comply with all local codes and laws regarding accessibility and should provide features that allow persons with disabilities to adequately use and enjoy the church and its facilities.⁴¹

As for parsonages, ¶ 2544.4d requires newly constructed or purchased parsonages to include a ground-floor level bedroom, bathroom, and laundry facility that are fully accessible to disabled persons. Most annual conferences have additional policies regarding parsonages.

10. Property Taxes.

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 upon properties held by religious organizations. Whereas exemptions from tax on these properties previously were nearly automatic, these exemptions are now coming under close scrutiny by state legislatures, local taxing authorities, and tax assessors.

Federal and state income tax exemptions and local property tax exemptions are matters of governmental grace, and are not guaranteed by the First Amendment to the U.S. Constitution.

³⁸ ¶ 2549.3b.

³⁹ ¶¶ 2533.6, 2550.10.

⁴⁰ *Id.*

⁴¹ *See* ¶ 2544.4c.

Also, a local church's exemption from federal income taxes does not guarantee the church is also exempt from state income tax or local property tax.

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 a state's statutes needs to be carefully reviewed. In the event that 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 could run into problems. Churches should check local laws before entering into such leases.

"Taxes" as Opposed to "Assessments" and "Fees"

It is important to understand the difference between "taxes," "assessments," and "fees." Taxes are imposed upon the inhabitants of the taxing area to finance government purposes without reference to a particular benefit to owners of particular properties. Real estate taxes are levied on the basis of a certain valuation of real property by an assessor or his or her agent. On the other hand, assessments are levied for improvements that are especially beneficial to certain owners of property. For example, assessments may be levied for street lights or sidewalk repairs. Assessment levies are normally assigned to property owners proportionally based upon the benefit accrued by each property. "Fees" may be charged for specific services to a church, such as garbage, fire, or police services. In most jurisdictions, local churches are liable for the payment of special assessments and fees, but not required to pay real estate taxes.

The local taxing authorities may require evidence of exemption from federal income tax. Such evidence can be provided by The United Methodist Church Group Income Tax Exemption Ruling Letter dated October 16, 1974. A certification letter specifically naming a local United Methodist church or organization may be obtained from GCFA by accessing the [Group Ruling Website](#). This letter does not provide exemption per se from local property taxes, but it does serve as evidence of the local church's exempt status.⁴² This evidence is often accepted by local taxing authorities as evidence in favor of granting local real property tax exemptions.

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 typically provides procedures to appeal the tax or assessment amount and/or 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, local

⁴² It is important to understand that a local church need not apply for inclusion in the group exemption in order to be a 501(c)(3) organization (and thus exempt from federal income tax). Internal Revenue Code Section 508(c)(1)(A) specifically exempts churches from having to apply to the Internal Revenue Service to obtain 501(c)(3) status. Said another way, per the Code, churches are automatically exempt from federal income tax. Inclusion in the group exemption is a way for a church to *document* that exempt status.

politics, and the procedures to be followed to appeal local tax assessments. Local counsel should be obtained to render advice and to file the necessary actions regarding local taxes and assessments.

Local churches should be especially diligent about making any periodic filings required by 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 re-establish that status. Churches should avoid the tedious and difficult task of establishing their 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 that there often are short deadlines for such responses.

11. Designation of Church Property as Historic

Church property often is a prime target for local community efforts to “preserve” historic sites. The preservation effort begins with the designation of a piece of property – or of an entire area of a town – as a historic landmark. Landmark “status” often is not as glamorous as it sounds. It can give governmental entities the “right” to impose significant controls and financial burdens on owners of property. If a local church decides to build an addition onto an historic sanctuary, or to remove an old “eyesore” structure, the governmental unit in charge of approving such actions may impose significant financial and other burdens on the church before granting approval, or may simply reject the request outright. Other, seemingly less drastic actions, such as replacing old, expensive stained glass with modern, energy saving glass, upgrading the heating and cooling systems, or bringing the church into compliance with the laws and *Discipline* provisions regarding accessibility for disabled persons, may be more complicated because of restrictions on making changes to the structure.

In exchange for such limitations on the use of property, governmental bodies typically will compensate the property owner for 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 worthless to a church, as a church does not normally pay income taxes.

In summary, local churches should be wary of concluding that its property would be enhanced in any way by landmark status. Landmark status may be desirable in certain limited circumstances. However, landmark status can drastically limit the availability and allocation of resources and severely restrict a church's freedom to make its own decisions about important issues, including how it practices its faith.

Paragraph 2512.7 directs annual conferences to develop a policy for response to actions by governmental bodies seeking to designate church property as historical, cultural, or architectural landmarks. If a church organization decides to oppose landmarking status, it will need to act

quickly and decisively, through the use of experienced legal counsel, in order to ensure that all rights are appropriately preserved and protected.

12. Contracts for the Purchase and Sale of Real Property.

Contracts for the purchase and sale of real property must be in writing. Oral contracts are not valid or enforceable. 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 seller 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 purchaser's interest against seller's defective title, or an attorney's title opinion letter prepared after research into the state of the title.⁴³
4. The time allowed for the buyer to examine the seller's title, the date for the closing, and the date the buyer will take possession.
5. The type of deed to be delivered.
6. Apportionment of charges – specific clauses relating to the respective liabilities of the seller and buyer to pay the costs incurred for such things as title insurance, surveys, deed preparation, taxes, recording and filing of the deed, surtaxes, mortgage costs, and attorney fees. These are often collectively referred to as “closing costs.”

Implicit in all contracts for the sale of property is the seller's obligation to convey a marketable title. A marketable title is typically defined as one which is free of serious and material encumbrances and of defects in the chain of conveyances by which the seller took title (for example, grants of all or part of the property to two different people by a previous owner, creating more than one claim of title).

The seller's obligation to convey a marketable title does not require conveyance of title free from all restrictions. Many properties are subject to lease agreements, mortgages, zoning restrictions, public rights of way, and/or easements. Any exceptions to the seller's duty to convey free of encumbrances must be specifically noted in the contract, even if the encumbrances are customary in nature. When the buyer is a local church, it may be desirable to include a provision stating that the seller represents that there are no restrictions that would prevent the property from being used as a residence, parsonage, or sanctuary for worship.

⁴³ Note that the *Discipline* requires that local churches acquire a fee simple title, if a building will be erected on the property. ¶ 2544.11.

Although many deeds contain covenants of warranty about the title, it is generally of little consolation to a buyer that has a cause of action against the seller for damages arising from defects in the title. The buyer's title will remain clouded until an action to "quiet" title is brought, thereby subjecting the buyer to a period of uncertainty about the nature and marketability of title. There are several methods used to ensure that 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 upon an individual title search. 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 buyer from all defects and encumbrances on the title. The costs of the abstract or title insurance should be specifically assigned in the contract of sale. Typically, the seller is obligated to pay for title insurance to guarantee good title.

Deeds.

Before the real property transaction can be completed, a deed must be delivered from the seller to the buyer. There are three types of deeds, which vary regarding the degree of protection awarded to the buyer by the seller:

1. A general warranty deed contains a covenant of warranty under which the seller is obligated to protect the property interest conveyed against lawful claims of ownership from any person whatsoever. This is the deed most churches must obtain.⁴⁴
2. A special warranty deed is more limited, in that the seller warrants against defects of the title arising after the seller's ownership, but does not warrant the buyer against claims from persons in the chain of title who acquired their title prior to the seller's ownership.
3. A quit claim deed is a deed that passes any title, interest, or claim that the seller may have in the premises, but does not profess that the title is valid and does not protect the seller against the ownership claims of others.

All deeds must conform to the law of the state where the property is located. The following is a list of minimal standards required by most states:⁴⁵

1. Names of Parties: The buyer must be identified with reasonable certainty or the deed is void. Where bona fide purchasers or mortgages are involved, the person to whom the deed is delivered may have express or implied authority

⁴⁴ ¶ 2544.11.

⁴⁵ This list is merely an overview of requirements that are to be found in most jurisdictions. It should not be considered as definitive in relation to any federal, state, or local laws, regulations, or requirements. To ensure that all requirements are met, any church seeking to purchase or sell real property should consult with local counsel prior to entering into any transaction.

to fill in the name of the buyer. Omission of the seller's name will not usually void the deed if the seller has signed and delivered it.

2. Consideration: It is the custom to specify at least nominal consideration (e.g., "ten dollars and other good and valuable considerations") to protect the buyer from claims that he or she is under a trust obligation to the seller and to protect the buyer from adverse actions that allege that the buyer is not a bona fide purchaser for value.
3. Words of Conveyance and Warranty: 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 "quit claims all interest" are normally used in quitclaim deeds. Any words or phrases that substantially indicate the intent of the seller to transfer his or her property to the seller are usually deemed sufficient.
4. Description of Land Conveyed: The primary requirement of such a description is that it be legally sufficient under state law to permit identification of the property to be conveyed. The buyer should require the seller to provide a current survey (no more than six months old).
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 the retention or assignment of rights such as ownership of any minerals that may exist underneath the land.
6. Quantity of Estate Conveyed: This clause defines the nature of the estate conveyed and the extent of the buyer's ownership of the estate (e.g., "To have and to hold the property in fee simple absolute"). By obtaining title in fee simple absolute, a buyer gains total control over the property for an unlimited period, with unconditional power to dispose of the property during the 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 as to the use of the property. Churches should obtain title in fee simple absolute wherever possible.⁴⁶
7. Covenants of Title: These are the promises of the seller about his or her title in the land that guarantee undisturbed possession to the buyer and the subsequent transferability of the property without adverse claims of ownership by third parties.
8. Execution: The signatures of the buyer and witnesses 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

⁴⁶ ¶ 2544.11.

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.

Physical delivery of the deed is the best evidence of the intent of the seller to transfer ownership to the buyer. A presumption that an effective delivery has occurred will arise from the buyer's possession of the deed. Also, if the seller records the deed to the buyer, it is presumed that the seller has made an effective delivery. The seller's words and conduct can be evidence of his or her intent to make a valid delivery. Escrow arrangements are often used, whereby the seller makes delivery to an "escrow grantee," who is then bound to deliver the deed to the buyer upon the happening of a named event or upon the performance of stated conditions within a stated period, such as final payment. If the buyer does not perform or the event does not occur within the time stated, the deed is returned to the seller.

Surveys.

A description of the land conveyed is contained in all deeds. Customary formal descriptions vary from state to state. Descriptions of the property in question also will appear on the mortgage and title policy or abstract. It is critical that these descriptions, including that on the deed, are identical. A new survey should always be compared with any previous surveys on hand in order to detect any discrepancies.

Recording of Deeds and Other Conveyancing Instruments.

All conveyancing instruments should be recorded immediately upon delivery to the buyer. Unrecorded instruments are only valid between the immediate parties. In some states, an unrecorded deed is also valid against one who knows about the transfer. Regardless, failure to record a deed leaves open the possibility of the buyer losing the interest in the real property to a subsequent buyer who purchases the property without actual or constructive notice of previous purchases (called a "bona fide purchaser").

Some state recording statutes favor the bona fide purchaser over a prior buyer that did not record, whether or not the bona fide purchaser recorded first. These are known as "notice" statutes. In other states, the first buyer to record the instrument in the recorder's office is protected, regardless of whether he or she had notice of a previous buyer's existence. These statutes are known as "race" statutes, as the person who wins the race to the courthouse to record his or her deed gets the property. A third type of recording statute is the "race-notice" statute. In this system, a bona fide purchaser is protected if he or she records before a prior buyer. As with the race system, there is a premium on the race to the recorder's office between bona fide purchasers of the property without notice. However, if the first to record in a race-notice state has actual notice of a prior buyer, he or she is not considered a bona fide purchaser and the first buyer will take the property. A fourth type is a "period of grace" statute, which gives the prior buyer a grace period in which he

or she may record and protect his or her interest against subsequent buyers. In these states, the bona fide purchaser is protected if the prior buyer does not record in the time allowed by the statute.

To avoid the consequences that can result from failure to record deeds, mortgages, and other instruments properly, legal counsel should be employed. It is the buyer's responsibility to make sure that the instrument is properly recorded in the local recorder's office. The cost of recording is generally the obligation of the buyer. Recording systems vary from state to state. Recording statutes enable the owner to give constructive notice of ownership to all other potential purchasers.

Adverse Possession

In certain circumstances, title can pass from one party to another without the signing of a contract and the delivery of a deed. Adverse possession is one such circumstance. If a person openly and continuously occupies or exerts dominion over the property of another for a certain period of time, that person may be able to gain title to the property by claiming adverse possession. The required time period can vary from state to state. In some states it may be possible for someone who buys from an adverse possessor (i.e., not the true owner) and who then continues the adverse possession to tack on the seller's adverse possession period to that of the buyer.⁴⁷ Any act of dominion or grant of permission by the true owner destroys the adverse nature of the possession.

While many states do not permit a claim of adverse possession against church property, church entities should still be careful to ensure that any abandoned or little-used church property, or any portion thereof, is not being used by others without the permission of the church entity.

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⁴⁷ Example: A adversely possesses B's property for 5 years, then sells the property to C, who continues the adverse possession of B's property for 10 more years. State law requires 14 years of adverse possession before title can be transferred. C may be able to use A's 5 years of adverse possession and thereby establish the requisite time period.

TRUSTS, ESTATES, AND OTHER GIFTS TO THE CHURCH

Church entities may acquire property by means other than an outright purchase. Local churches, especially, frequently receive property via a gift. Such gifts can take on numerous forms, including a trust, a bequest in a will, or a simple donation. This section discusses the more common ways in which local churches may acquire gifted or donated property. Like many of the matters discussed in this Manual, these issues are mainly the subject of state and local law. This section is simply an overview of the general issues relating to these matters and should not be used as a substitute for local legal advice.

1. Trusts.

It is possible, if not likely, that many local churches will, at some point, be designated as a beneficiary of a trust. In such situations, the local church would have a right to, or interest in, the assets of a trust, or some portion thereof. The rights that come along with being the beneficiary of a trust are examined more closely below. The church may be the sole beneficiary, or it may be one of a number of potential beneficiaries.

Due to the potentially complex nature of trusts, it is possible that a church could be named as a beneficiary to a trust, yet never receive any proceeds from it. One such situation is when a church is a contingent beneficiary. This means that the church's interest in the trust – *i.e.*, its right to receive proceeds from it – is contingent on the occurrence of a specific condition. The following example illustrates such an instance:

A establishes a trust to provide for the financial well-being of B. A further provides that, when B dies, any value remaining in the trust at that time would be given to A's church. Thus, the church is a contingent beneficiary of the trust created by A. The church's interest would be conditioned on there being value remaining in the trust when B dies. If the trust's assets have been used up prior to B's death, the condition would not be met and the church would receive nothing. If, however, the trust still has value at B's death, the church's interest would no longer be subject to a condition and the church would then be a vested beneficiary.

It is important for church entities to understand the nature of their interests in a particular trust. Local counsel should be consulted if there questions arise about the nature of any such interests.

Trusts can come in numerous forms. The structure of a particular trust can be overly simple, or exceedingly complicated. There can be a single beneficiary, with very little restrictions or conditions, or there can be several beneficiaries, with multiple and varying contingencies and

restrictions. The duration of the life of the trust, and how such duration ends, can vary greatly. Trusts can even be created, out of thin air, by operation of law.

It is impractical to examine all the various forms a trust can take. Instead, this section focuses on the general trust form that churches will most likely see: the express trust. An express trust can take a number of different forms, and its creation is typically evidenced by a written document. One such form is an *inter vivos*, or living, trust. Living trusts are established during the grantor's lifetime and take effect prior to the grantor's death. These trusts may be revocable (can be taken back) or irrevocable (cannot be taken back). Generally, the laws of most states provide that a trust is assumed to be irrevocable unless the grantor has specified otherwise. An irrevocable living trust is one that cannot be terminated after it has been created. The creation of a revocable living trust reserves the grantor's right to terminate the trust and to retake the trust property, along with any undistributed income. This is another situation where a church could be named as a trust beneficiary but not receive (or cease to receive) funds from the trust. It is important for the local church to understand whether the trust of which it is a beneficiary is revocable. A local church should not depend on the continued regular income from a revocable trust, as that income stream could cease to exist at any time.

A grantor may also create an express trust in a will. Such trusts are known as "testamentary trusts." As with other express trusts, there are no specific phrases or words that are required. However, because a testamentary trust is part of a will, it will be ineffective if the will was not properly executed by the grantor. Unlike other trusts, testamentary trusts are not automatically considered irrevocable. A grantor has the right to change his or her will, either in whole or in part. Thus, if a grantor executes a second will, which does not include the testamentary trust that the grantor's first will contained, that trust has been revoked. If the grantor dies without changing or revoking a will that contains a testamentary trust, that trust would then be irrevocable. Like revocable living trusts, churches should not rely on receiving funds from a testamentary trust until the grantor has died.

Every trust has a trustee. A trustee is charged with three primary duties:

1. To follow the grantor's directions about the administration of the trust and the distribution of the trust assets to the beneficiaries;
2. To act with prudence and care in administration of the trust assets; and
3. To act with a high degree of loyalty to the interests of any and all beneficiaries.

A church is often designated as a beneficiary of a trust, rather than as the trustee. As a beneficiary, the church is entitled to hold the trustee accountable for his or her actions and may initiate legal action against the trustee if the trustee is not appropriately managing the trust.

Acceptance of trustee responsibilities or receipt of trust assets or income should be undertaken only after the thorough examination by legal counsel of all relevant documents. Each

trust is unique, and trust restrictions and other legal requirements should be examined carefully. Informed decisions regarding the acceptance of trust income or responsibilities require assessment of the benefits of acceptance against the costs of trust administration.

Discipline Requirements.

The *Discipline* requires a district superintendent to maintain in the district office, and to transfer to any successor, a complete set of records on, among other things, “property, endowments, and other tangible assets of The United Methodist Church within the district.”⁴⁸ Additionally, the local church’s board of trustees must include, in its annual report to the charge conference, detailed information regarding all trusts of which the local church is a beneficiary.⁴⁹

2. Wills.

It is also common for church entities to receive assets from an individual’s estate, as directed by that individual’s will. As already mentioned, there is no such thing as an irrevocable will. A will may be modified by a codicil or memorandum that complies with state law or revoked by the creation of a subsequent will. The grantor must exercise great care in the preparation and execution of a will. A grantor whose will is found defective, or who dies without a will, will have their property distributed according to state law (an intestate statute), which may not reflect the grantor’s wishes. Grantors seeking to give property to a church by means of a will should be advised to hire legal counsel to ensure that the will is validly created and executed and clearly states the grantor’s intentions.

Unless the proceeds are part of a testamentary trust, a local church’s receipt of will proceeds is much different than being named as a beneficiary of a trust. Once court approval has been given, any proceeds from a will that are intended for a church are given directly to that church. Despite the direct nature of the transfer, the receipt of the proceeds by the church can still be subject to restrictions. Real property may be given to a church for only a certain period of time, or only after some point or occurrence in the future, such as the death of the grantor’s spouse. Property may also be subject to use restrictions. A church may receive real property only for so long as it is used for church activities. Such a provision may prevent the church from being able to sell the property in the event the church decides to relocate and instead require the property to revert to the grantor’s heirs. Other types of property may also contain use restrictions (e.g., money given for the purchase of a new bus for the church).

Probate.

The procedure of administering and distributing the estates of decedents is referred to as “probate.” The following steps usually comprise the process of probating a will:

⁴⁸ ¶ 419.8.

⁴⁹ ¶ 2550.9.

1. Determination of the existence of a will;
2. Approval or appointment of an executor or administrator by the court;
3. Posting of a bond, if required, by the executor or administrator;
4. Proving of the will in court by witnesses, followed by a decree admitting the will into probate;
5. Issuance of letters of testamentary or of administration;
6. Filing of estate inventory by executor or administrator;
7. Publishing of notices regarding proof of claims, opening of bank accounts for the estate, collection of assets, payment of debts and taxes, and disbursement of the remainder including settlement of the “widow’s share,” spouse’s elective 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), etc.; and
8. Winding up receipts on distribution, distribution of assets, approval and filing of final inventory, and closing of the probate estate by the court.

If a church believes it will receive property from a grantor’s estate, it should monitor the probate process. This is especially true if the validity of the will is being contested in some way, or if there are other disagreements about the control over, or distribution of, the grantor’s estate. In certain situations, it may be necessary to hire legal counsel to ensure the church’s interest in the grantor’s estate is protected.

3. Other Gift Issues.

Charitable Donations and Deductions.

In general, outright gifts of cash or property to the church will generate charitable deductions to the donor in the year when the gift is made. For property other than cash (such as negotiable instruments, vehicles, computer equipment), the amount of the deduction will typically be the fair market of the property. [IRS Publication 526](#) is an excellent resource for both churches and their donors, as it covers numerous topics regarding charitable contributions and their deductibility.

When 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, as the donative intent will not have been sufficiently established. For example, a donor may wish to give the church \$5,000 to be used to send two specific children within the congregation to college. Aside from the initial issue that a church should probably not be involved in administering such a gift, and definitely should not issue any kind of tax receipt for it if it does, in such a case there would be no deduction, as the gift is really to the two students, not to the church. If the gift was given to the church with no conditions set as to whom the church designated as a recipient, then the deduction would be available. If the donor does not relinquish all control, sufficient

donative intent to a charitable recipient will not be established, and any charitable deduction taken by the donor may be disallowed.

Similar concerns exist about “designating” gifts to specific, needy individuals. Churches that want to solicit or receive gifts for third parties should do so only after considerable thought and planning. If there is a need to help a certain individual or family in the community, often a bank will be the best entity to accept and administer such gifts. The church may set up, in writing, a “Good Samaritan Benevolence Fund,” or other similar fund, to administer the gifts, as long as all donors realize the church makes the ultimate decision on who receives payments from the fund. A sample policy for these types of funds can be found on the [Tax Packet](#) area of the GCFA website.

Gift Restrictions and Encumbrances.

It is always prudent for church entities to determine what restrictions, if any, are attached to a gift, prior to accepting that gift. Depending upon the nature of the restrictions, and the cost, difficulty, and desirability of following such restrictions, it may be better for the church to refuse the gift or to request that the restrictions be removed, if that is possible. Boards of trustees are advised to develop a policy, approved by the charge conference, for the 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 selling and/or maintaining the property. Another issue to consider regarding real property is the possible presence of building or housing code violations. A church may wish to reject donated property that is heavily mortgaged or in serious disrepair.

One of the most significant problems involved in the acceptance of real estate is the potential for environmental hazards, and their resulting liabilities. Owners of real property, including a church that acquired it through a gift, could be liable for the costs of cleanup and removal of any hazardous waste. It is important to consider all of these factors when evaluating the acceptance real property. An environmental audit or title insurance rider insuring against liability should be obtained, when possible. Should the audit indicate the possibility of hazardous waste contamination, the best way to prevent potential liability is to exercise the right to disclaim the gift or bequest.

Stewardship and Planned Giving.

Assisting people in giving to United Methodist organizations and causes is an important role to be carried out at all levels of the Church. Gifts to local churches, and to other United Methodist organizations, enable the whole Church to continue to grow.

Planned giving can allow individuals to provide for the needs of both the church and of family members. For example, a charitable remainder trust can provide for a steady stream of

income to a family member during his/her lifetime, with the principal going to the local church at some point in the future. Gift annuities, unitrusts, pooled income funds, and charitable lead trusts are other ways to give to the Church. Legal counsel should be retained to assist with these different types of planned giving.

United Methodist Foundations.

Many annual conferences have United Methodist foundations, as do several general agencies. United Methodist foundations may be able to provide information on estates, trusts, bequests, and various life income gifts. Information can include assistance on promoting, receiving, and administering such gifts. A significant role of a foundation is to assist the local church, agency, or conference in educating persons as to the variety of gift opportunities available beyond simple cash donations.

United Methodist foundations may also be able to work with a prospective donor to maximize a gift through the use of income or estate tax advantages. Many foundations assist individuals by serving as the trustee for a life income gift or a perpetual trust. Through the years, the work of the foundations has generated millions of dollars for United Methodist causes. It is important that the local church see these resources as stewardship partners.

In addition to consultations with donors, foundations also provide consultation on planning for the receipt of planned gifts. Through the *Planned Giving Handbook*⁵⁰ and other resources, the foundations are able to assist in the development of policy statements as to the nature of the gifts that will be accepted, who will manage them, and how they will be used to benefit the ministry of the Church. Resources also can be provided to encourage such gifts and to assist a church in developing an integrated planned giving program into its stewardship program.

Once gifts are received, the management of long-term assets is a service provided by the foundation. Depending upon the size and purpose of the gift, the foundation seeks to provide investments that are in keeping with the United Methodist Social Principles and that provide a competitive rate of return.

In some areas of the country, the foundation administers a church loan program for new construction, renovation, and parsonages. Contact your United Methodist conference foundation to determine the specific services that are available. Also, it is important to consult an attorney for assistance with legal issues and an accountant or tax advisor on tax concerns.

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⁵⁰ See [this example](#).

CONTRACTS

This section provides a cursory overview of issues relating to contracts. As with other legal issues, the information provided here does not cover all of the concerns and issues that go into the creation, execution, and enforcement of contracts. Whenever a church entity is considering entering into a binding contract, legal counsel should be retained to, at the very least, review the provisions of the contract before it is signed.

1. Definition of a Contract.

A contract is a promise, or set of promises, constituting an agreement between two or more parties that gives each a legal duty to the others and the right to seek redress for any breach of those duties. It is the total legal obligation that results from the parties' agreement. In order to be legally binding, a contract must include: competent parties, subject matter, legal consideration (something of value given), mutual assent, and mutual obligation to perform.

2. Types of Contracts.

Generally, a contract does not have to be written in order to be valid. There are, however, a few very important exceptions to this general rule. These exceptions include any contract for the sale or transfer of real property and any contract that cannot be performed within one year from its execution (e.g., a three-year employment contract). If there is any doubt regarding whether a particular contract must be written, it is always best to consult local legal counsel.

A contract can be an expressly stated promise communicated by language (e.g., A promises to paint B's garage in return for B's promise to pay \$250 to A), or implied by the parties' conduct (e.g., A fills his car with gas at B's gas station – there is an implied contract for the purchase and sale of gas).

3. Written vs. Oral Contracts.

Whenever possible, a contract should be put into written form. A clear written agreement between the parties lets each party know what is expected of them and helps avoid or resolve future disputes. Without such a written agreement, excess funds may be expended, conflicts may be difficult to resolve, and future working relationships may be hindered.

4. Terms to Include in Contracts.

Numerous issues should be clearly and concisely set forth in any contract. These issues include, but are not limited to:

1. The legal names of the parties and any relevant titles and addresses;
2. All relevant dates, such as payment deadlines or completion dates for construction projects;

3. How and when the contract can be renewed (if at all) and terminated;
4. A description of the products or services being exchanged;
5. The cost of products or services, including such things as any applicable payment schedules, late penalties, or interest;
6. A statement regarding the ownership of any copyrightable material;
7. Whether any expenses will be reimbursed and, if so, by whom and to what extent;
8. A description of any warranties or guarantees to be provided; and
9. A statement of how disputes will be resolved (for example, whether the parties wish to require arbitration or mediation) and how the parties will be compensated for any resulting legal expenses.

5. Amending an Existing Contract.

If the existing terms of a contract need to be modified in some way, an addendum will be needed. This addendum should clearly identify the contract it is amending, the specific contractual provisions being amended, and the substance of the changes to be made. It should state that all provisions not amended remain in full force and effect and it should be signed and dated by all parties.

6. Disputes.

Contractual disputes can arise in a number of different ways. They can involve the creation, execution, or performance of a particular contract or the interpretation of contractual language. Even the most clear and concise contract can become the subject of a dispute. Some of these disputes can be relatively easily resolved. Others can prove to be much more difficult to remedy. Generally, litigation should be a last resort when trying to resolve a contractual dispute, as the process can quickly become very costly, in terms of both financial and personnel resources. Mediation and arbitration can be helpful, less expensive ways to resolve these conflicts.

7. Contractual Authority and Authorization.

Preceding portions of this Section discuss the authorization requirements of the *Discipline* for contracts regarding the conveyance of real property. When a church wants to purchase a new organ, a new set of pews, a photocopy machine, or even office supplies, it is essential that the proper resolution, authorization, and budgeting steps have been taken.

It is essential that whoever signs a contract understands in what capacity and by what authority he or she is acting. Whenever the pastor, staff, or officer of the church signs a contract, they should first make certain they are authorized to bind the church by the *Discipline*, the church's bylaws, and/or and other governing documents. When signing a contract, the signatory should indicate his or her position and title, thus eliminating any confusion or personal liability regarding the contract. For example, the chair of the board of trustees would have a signature line that looked like this:

St. James United Methodist Church, by:

John A. Doe
Chair, Board of Trustees

8. Important Tax Information Regarding Independent Contractors.

The IRS requires that the payor issue a 1099-MISC to any nonemployee worker paid \$600.00 or more during the year. This would typically arise under an independent contractor agreement or for an honorarium. Note: The 1099-MISC is not used for payments to corporations or to employees.

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COPYRIGHT

1. Copyright - General

A copyright is a property right under federal law protecting original works of authorship fixed in any tangible medium of expression from which they can be perceived, reproduced, or otherwise communicated, directly or with the aid of a machine or device. Examples of 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; architectural works; and computer programs.

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.

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

1. Reproduce the work in copies or recordings;
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 recordings of the work to the public by sale or other transfer of ownership, or by rental lease or lending;
4. Perform the copyrighted work publicly;
5. 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.

The [Copyright Guidelines for Churches](#) on GCFA's website is a more comprehensive resource on this issue.

2. Internet and Web Pages

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.

If a web page owner places copyrighted material on the owner's 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. The Digital Millennium Copyright Act of 1998 provides limited liability for Internet service providers and site operators whose activities fall within the Act's safe harbors.

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.

3. 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 copyrighted 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.

4. Application and Use of "United Methodist" Name

Paragraph 2502 of the *Discipline* states:

The words *United Methodist* are not to 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 corporations or other business units created for the administration of work undertaken directly by The United Methodist Church.

The General Council on Finance and Administration is directed to register as a service mark the name “United Methodist.”⁵¹

The law of unfair competition prohibits the misleading use of a name, even while unintentional, and is based upon the idea that the right to use a name may be 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 as to registration and notice, or by a combination of both.

The use of the name “United Methodist” 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. The complaining party must show that the effect of the offending use is the confusion or deception of third parties.

5. The Cross and Flame Insignia

The Cross and Flame insignia is the official membership mark of The United Methodist Church. It was trademarked in 1971 and registered with the United States Patent and Trademark Office. The United Methodist General Conference has authorized use of the Cross and Flame under the following circumstances:

The insignia may be used by any official United Methodist agency, including local churches, to identify United Methodist work, programs, and materials In order to preserve the integrity of its design, the insignia should not be altered or modified. Users of the insignia must ensure that it stands independent from and is not covered by or layered over other designs or words. Any commercial use of the design requires express prior authorization in writing by an appropriate officer of the General Council on Finance and Administration and shall be used only in accordance with guidelines and fees set forth by the General Council on Finance and Administration.⁵²

Because the Cross and Flame is fully protected as the service mark of The United Methodist Church, it may be used only by official agencies of the Church and others that have been given licenses. If you are aware of unauthorized or possibly improper use of the insignia, please notify the [GCFA Legal Services Department](#).

⁵¹ ¶¶ 807.10-.11, 2502.

⁵² ¶ 807.10.

Need to Maintain Integrity of Trademark

Any reproduction of the Cross and Flame must maintain the integrity of the original design. Three areas in particular are scrutinized by the persons who supervise the insignia's use:

1. The base of the flame should be lower than that of the cross.
2. The tip of the left portion of the flame must align with the arm of the cross.
3. The space between the flame and the upright of the cross is wider at the top of the design than it is at the bottom. The words accompanying the design — The United Methodist Church — both as horizontal and as vertical elements — should not be altered, if used.

Should the Cross and Flame be used as part of a larger design or logo, the cross and flame insignia must stand on its own, separate from other elements in the design. It should not be adapted by changing its design or altering its proportions. It should not be attached to or touch other elements in the larger design. The flame should not be the letter “S” or the cross the letter “T.”

Commercial Use

Any commercial products containing the Cross and Flame marketed in wholesale or retail settings must be specifically licensed by GCFA. Any individual or company wishing to license the Cross and Flame for commercial use should contact GCFA's [Legal Services Department](#).

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APPENDIX

LOCAL CHURCH PROPERTY SALE, TRANSFER, LEASE, AND MORTGAGE CHECKLIST

2016 *Book of Discipline* Requirements

The following checklist has been developed to assist the local church to follow *Discipline* provisions when selling, transferring, leasing, and mortgaging real property. The first section deals with unincorporated churches and the second section deals with incorporated churches. It is essential that you know the “corporate” status of your church so you can follow the proper procedures.

SECTION ONE

Sale, Transfer, Lease and Mortgage of Property by an Unincorporated Church (¶ 2540)

1.____ Notice given, from the pulpit and in the weekly bulletin/newsletter, of the proposed sale, transfer, lease, or mortgage and of the date and time of the charge conference’s meeting, at least ten days prior to the meeting. ¶ 2540.1. The district superintendent, in consultation with the church, schedules the time of the meeting of the charge conference. ¶ 246.4. Local legal counsel should be consulted to see if state laws require more than ten days notice.

2.____ Charge conference approval of the proposed sale, transfer, mortgage, or 30+ day lease. The resolution is presented at the charge conference meeting and requires a majority vote of the members present and voting. ¶ 2540.2. If the charge consists of two or more local churches, the local church conference provisions in ¶ 2527 should be followed. The church must be mindful of the prohibition in ¶ 2543 on the use of proceeds of a sale or mortgage to pay for the current budget or operating expenses of the local church.

3.____ Written consent of the pastor, district superintendent, and district board of church location and building (if ¶ 2544 applies), who must ensure that the following requirements of ¶ 2540.3 are met:

- Full investigation must be made and an appropriate plan of action must be developed for future missional needs of the community.
- All sale documents and transferred paperwork must conform with the *Discipline*.
- Congregations that will no longer continue as a United Methodist church may not sell facilities to another United Methodist church. (They may transfer the facilities.)
- Congregations that are relocating must first offer to sell its property to another United Methodist church or agency.

4.____ Affix written consents to the final deed or other document. ¶ 2540.3. When real property is sold in conformity with provisions of the *Discipline*, such proper actions and conformity are

sufficient to transfer titles and constitute a release and discharge of the real property sold and conveyed from the trust laws or clauses, when applicable. ¶ 2542.

5.____ Signing of documents by authorized representatives. Any contract, deed, bill of sale, mortgage, or other written documents may be executed by and on behalf of the local church by two of the officers of the board of trustees. ¶ 2540.4.

SECTION TWO

Sale, Transfer, Lease and Mortgage of Property by an Incorporated Church (¶ 2541)

1.____ Notice given, from the pulpit and in the weekly bulletin/newsletter, of the proposed sale, transfer, lease, or mortgage and of the date and time of the charge conference's meeting, at least ten days prior to the meeting. ¶ 2541.1. If local law and the church's bylaws require action by the corporate board (typically the board of trustees), notice of their meeting must also be given. The district superintendent, , schedules the time of the meeting of the charge conference., with the church picking the location.,¶ 246.4. Local legal counsel should be consulted to see if state laws require more than ten days notice.

2.____ Charge conference approval, as members of the corporate body, of the proposed sale, transfer, mortgage, or 30+ day lease. The resolution is presented at the charge conference and requires a majority vote of the members present and voting. ¶ 2541.2. If the charge consists of two or more local churches, the local church conference provisions in ¶ 2527 should be followed. The church must be mindful of the prohibition in ¶ 2543 on the use of proceeds of a sale or mortgage to pay for the current budget or operating expenses of the local church.

3.____ Written consent of the pastor, district superintendent, and district board of church location and building (if ¶ 2544 applies), who must ensure that the following requirements of ¶ 2541.3 are met:

- Full investigation must be made and an appropriate plan of action must be developed for future missional needs of the community.
- All sale documents and transferred paperwork must conform with the *Discipline*.
- Congregations that will no longer continue as a United Methodist church may not sell facilities to another United Methodist church. (They may transfer the facilities.)
- Congregations that are relocating must first offer to sell its property to another United Methodist church or agency.

4.____ Affix written consents to the final deed or other document. ¶ 2541.3. When real property is sold in conformity with provisions of the *Discipline*, such proper actions and conformity are sufficient to transfer titles and constitute a release and discharge of the real property sold and conveyed from the trust laws or clauses, when applicable. ¶ 2542

5.____ Signing of documents by authorized representatives. The authorizing resolutions must direct the board of directors to execute the contract, deed, bill of sale, mortgage or other written documents, which must be signed, on behalf of the corporate board of directors, by two of the corporate officers. ¶¶ 2541.4, .6.

6.____ Take any actions necessary to adopt corporate resolutions in compliance with local laws. ¶ 2541.5.

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LOCAL CHURCH PURCHASE OF REAL PROPERTY CHECKLIST

2016 *Book of Discipline* Requirements

The following checklist has been developed to assist the local church to follow *Discipline* provisions when purchasing real property. The first section deals with unincorporated churches and the second section deals with incorporated churches. It is essential that you know the “corporate” status of your church so you can follow the proper procedures.

SECTION ONE

Purchase of Real Property by an Unincorporated Church (¶¶ 2536-37)

1. ____ Notice given, from the pulpit and in the weekly bulletin, newsletter, or electronic notice, of the proposed purchase and of the date and time of the charge conference’s meeting, at least ten days prior to the meeting. ¶ 2537. The district superintendent schedules the time of the meeting of the charge conference, with the church picking the location of the meeting. ¶ 246.4. Local legal counsel should be consulted to see if state laws require more than ten days notice.
2. ____ Charge conference approval of the proposed purchase. The resolution is presented at the charge conference meeting and requires a majority vote of the members present and voting. ¶ 2537.
3. ____ Written consent of both the pastor and district superintendent. ¶ 2537.
4. ____ The deed or conveyance contains the appropriate trust clause language as set forth in ¶ 2503. Title to the property shall be held in the name of the board of trustees, their successors and assigns, in trust for the use and benefit of the local church and of The United Methodist Church. ¶ 2536.
5. ____ Paragraph 2544 has extensive requirements relating to purchase of property that includes a church, educational building, or parsonage. This paragraph should be carefully reviewed in light of the church’s plans. Some highlights include:
 - Approval of the district board of church location and building as provided in ¶¶ 2520-21. ¶ 2544.3.
 - The church building committee and the district board must carefully plan for costs, financing, architectural design, and current and future needs. ¶¶ 2544.4-.8.
 - Buildings must have certain features including accessible facilities. ¶ 2544.4.
 - Title to property on which a building is to be erected must be in fee simple; legal concerns such as guaranteed title and environmental standards should be met. ¶ 2544.11.
 - Contractor bonding, and other forms of security, are recommended. ¶ 2544.15.

SECTION TWO

Purchase of Real Property by an Incorporated Church (¶¶ 2538-39)

1.____ Notice given, from the pulpit and in the weekly bulletin, newsletter, or electronic notice, of the proposed purchase and of the date and time of the charge conference's meeting, at least ten days prior to the meeting. ¶ 2539. The district superintendent, in consultation with the church, schedules the time of the meeting of the charge conference. ¶ 246.4. Local legal counsel should be consulted to see if state laws require more than ten days notice, or if other means of notice are required or permitted.

2.____ Charge conference approval of the proposed purchase. The resolution is presented at the charge conference meeting, sitting in corporate session, and requires a majority vote of the members present and voting. ¶ 2539.

3.____ Written consent of both the pastor and district superintendent. ¶ 2539.

4.____ The deed or conveyance must have the appropriate trust clause language as set forth in ¶ 2503. Title to the property shall be held by the corporate body in its corporate name, in trust for the use and benefit of the local church and The United Methodist Church, unless otherwise required by local law. ¶ 2538.

5.____ Paragraph 2544 has extensive requirements relating to purchase of property that includes a church, educational building, or parsonage. This paragraph should be carefully reviewed in light of the church's plans. Some highlights include:

- Approval of the district board of church location and building as provided in ¶¶ 2520-21. ¶ 2544.3.
- The church building committee and the district board must carefully plan for costs, financing, architectural design, and current and future needs. ¶¶ 2544.4-.8.
- Buildings must have certain features including accessible facilities. ¶ 2544.4.
- Title to property on which a building is to be erected must be in fee simple; legal concerns such as guaranteed title and environmental standards should be met. ¶ 2544.11.
- Contractor bonding is recommended. ¶ 2544.15.

DISPOSITION OF PROPERTY OF A CLOSED LOCAL CHURCH CHECKLIST

2016 *Book of Discipline* ¶ 2549

Closure of a local United Methodist church in many ways is a task-oriented process (with detailed “to dos”), so it lends itself well to a checklist like this. What should not be lost in the tasks are the many spiritual and pastoral aspects of closing a local church: honoring the rich history of the church, attending to the grief and other pastoral needs of persons who still worship there, listening to persons who have thoughts and ideas about what should happen to the property, and the like. These spiritual and pastoral aspects of closing a church cannot be captured in a checklist, because they are uniquely different in every situation.

NAME OF CHURCH: _____
ADDRESS: _____
DISTRICT: _____

LOCAL CHURCH CONTACT PERSON:

NAME: _____
ADDRESS: _____
PHONE/FAX: _____
E-MAIL: _____

I. Discussion and Evaluation of Potential Recommendation of Closure.

___ Cabinet, district superintendent, conference board of trustees, pastor, local church members, or other groups should discuss and evaluate closure issues. A district superintendent may recommend the closure of a local church because either (1) the local church no longer serves the purpose for which it was organized or incorporated (¶¶ 201-204) or (2) the local church property is no longer used, kept, or maintained by its membership as a place of divine worship of The United Methodist Church. ¶ 2549.1.

II. Assessment of Potential. ¶ 2549.a(1).

___ Prior to a recommendation of closure, the district superintendent, in consultation with the appropriate agency assigned the responsibility of the conference parish and community development strategy, shall guide the congregation in assessment of its potential as outlined in ¶ 213. (See Exhibit A, a sample letter to the congregation that discusses issues for a voluntary closure).

III. Obtain Legal Counsel. ¶ 2549.1a(2).

___ The district superintendent must obtain and consider an opinion of legal counsel as to 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.

IV. Content of Recommendation. ¶¶ 2549.2a(3)-(4).

The recommendation of the district superintendent must cover:

- ___ Transfer of membership (¶ 229).
- ___ Future use of all real, personal, tangible, and intangible property.

The district superintendent may consult with the local church in regard to its thoughts on the disposition and transfer of the real and personal property of the church.

V. Consent to Recommendation. ¶ 2549.2b.

The district superintendent's closure recommendation must be approved by:

- ___ The presiding bishop.
- ___ The majority of the district superintendents.
- ___ The district board of church location and building.

VI-A. Action by the Annual Conference. ¶ 2549.2b.

___ Superintendent presents to the annual conference the resolution for the local church to be declared closed. (See Exhibit B.)

___ Annual conference action on the closure

___ Written copies of actions supplied to:

- ___ Conference secretary.
- ___ Conference board of trustees.

___ Appropriate notification to local church.

___ Attention to healing issues.

VI-B. *Ad Interim* Procedures. ¶ 2549.3.

___ Local church voluntarily transfers title to all of its property to the annual conference board of trustees by following the processes in ¶ 2540 ¶ 2541. ¶ 2549.3a.

___ At its next meeting, the annual conference votes on whether to close the local church.

___ Determination by the bishop, a majority of the district superintendents, and the district board of church location and building that exigent circumstances which require the immediate protection of the local church's property.

___ At its next meeting, the annual conference votes on whether to close the local church.

VII. Title to Real Property – Transfer to the Annual Conference or Another United Methodist Organization. ¶ 2549.2c.

___ Obtain a copy of the current deeds and legal descriptions.

___ The title [deed] of the property shall be transferred to: _____

___ Consultation with the conference chancellor and/or other legal counsel in relation to preparation of a deed.

___ Inclusion of the trust clause, if deeded to another United Methodist entity (¶ 2503.5).

___ If the transfer is to another United Methodist entity, a title policy be obtained showing good title in the new entity, when possible.

___ The board of trustees removes United Methodist and Christian symbols and insignia, when possible.

VIII. Maintenance of Property Insurance.

___ Property and liability insurance has been maintained on the property.

___ Assign an individual to regularly check the unoccupied property.

___ Change mailing address or have any mail forwarded.

___ Give neighbors and police a contact person for emergencies.

___ Local church trustees and/or annual conference trustees have provided for ongoing maintenance of property during transition (e.g., utilities, repairs, lawn service, snow removal, etc.).

___ Develop and ensure viable plan for paying bills.

IX. Sale of Property – To Third Party.*

___ If property is sold, an appraisal should be obtained to aid in determining a fair sale price. It may be easiest to have the cooperating local church board of trustees deed the property directly to

* If the conference trustees are taking immediate action on sale, "consideration should be given to selling or leasing the property to one of the other denominations represented in the Commission on Pan-Methodist Cooperation and

the new buyer. The superintendent must agree to any such sale. Section 4 of the [GCFA Legal Manual](#) contains a checklist for sale of property that outlines the necessary *Discipline* steps.

___ Sale price established by conference action or as delegated to the Conference Trustees.

___ Disposition of proceeds determined by annual conference resolution or conference trustees in keeping with annual conference policy.

___ Removal by conference trustees, insofar as reasonably possible, of all Christian and church insignia and symbols from such property. ¶ 2549.2c)

___ Instructions or Restrictions: As determined by the bishop, cabinet, conference trustees.

IX. Transfer of Personal Property.

___ There should be an inventory and a checklist of any and all personal property that is being transferred to another United Methodist organization or donated without any consideration.

X. Instructions Pertaining to:

Commission on Archives and History of the Annual Conference

___ ¶ 2549.4: All deeds, records, and other official and legal papers, including the contents of the cornerstone, of a closed local church shall be collected by the district superintendent and deposited for permanent safekeeping with the conference commission on archives and history.

Gifts, Endowments, and Foundations

___ ¶ 2549.5: All gifts held in trust and assets of any endowment funds or foundation shall be reviewed. The property passes as directed by or the conference trustees (unless the annual conference gives specific instructions), unless otherwise directed by the terms of the gift or operation of law.

___ ¶ 2549.6: Any gift, legacy, devise, annuity, or other benefit to a pastoral charge or local church that accrues or becomes available after the charge or church has been closed shall become the property of the trustees of the annual conference to be disposed of by the trustees unless otherwise directed by the annual conference or required by law.

Sales of Closed Local Church Properties Located in Urban Centers

___ ¶ 2549.7: When properties from the closure of a local church are sold in urban centers with a population of more than 50,000, the proceeds of sale must be used for new and/or existing ministries within urban transitional communities, as described in ¶ 212.

Union.” (African Methodist Episcopal Church, African Methodist Episcopal Church Zion, Christian Methodist Episcopal Church) A letter to the appropriate local representatives would be appropriate. ¶ 2549.2c.

Sales of Closed Local Church Properties Located in Non-Urban Centers

___ ¶ 2549.7: When properties from the closure of a local church in a non-urban center is closed, any proceeds of the sale of its property may be used for new churches, new faith communities, new missional initiatives, relocating churches, churches building multi-campus facilities for the purpose of evangelistic church extension, or an organization that is a nonprofit and has values consistent with The United Methodist Church's values and is consistent with our Wesleyan heritage, theology, and United Methodist polity. In addition, the proceeds may be used to revitalize or enhance church ministry, or be given to an organization that is a vetted nonprofit and has values consistent with The United Methodist Church's values and is consistent with our Wesleyan heritage, theology, and United Methodist polity. In addition, the proceeds may be used to embrace or continue the work and vision of ministry with the poor in the community.

XI. Additional Recommendation and Actions.

___ At the time of closure, the district superintendent provides the pastor with the current year Statistical and Financial Report forms to be completed and sent to the conference treasurer for inclusion in the Conference Journal.

___ TABLE I: Membership Statistics

___ TABLE II: Financial Statistics

___ When possible, it is helpful to leave the local church board of trustees intact for the time period needed to sell and/or dispose of the property as the annual conference directs.

___ The district superintendent has collected all keys, if local church trustees are not kept intact to dispose of property (it may be advisable to change all the locks on the church).

___ Upon closure, make an inventory of all property.

___ Upon closure, take pictures of inside (including furnishings) and outside of church and put in the church file (especially all items of value).

___ Arrangements made to acquire remaining balances of all church bank account and separate funds within bank accounts:

___ General Account

___ Sunday School Account

___ Memorial Funds

___ Other: _____

___ Other: _____

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EXHIBIT A

Sample Letter from a Bishop to a Local Church (For a Voluntary Church Closing)

I am writing in response to Rev. _____'s phone call on _____ informing me that the members of _____ United Methodist Church have decided that it would be in the best interests of all to close the church and transfer their memberships to _____ United Methodist Church.

First, let me say that I know such a decision comes only after much evaluation of the church's current status and future potential and in thanksgiving for all the church has meant to so many disciples of Jesus Christ over the many years of its history. Having worked with the loving and gracious members of _____ United Methodist Church, I know that you are also grieving the loss of something precious to all of you. However, I want to commend you for your decision. It is a decision of good stewardship, genuine knowledge of what a church is to be, and a real concern for vital discipleship. By making this decision you have witnessed to your faith in a God who is not restricted to one building or one community and in a God who reigns through changing times and demographics. Thank you for reminding all of all of us that good stewardship is not clinging to the past but moving into the future with faith and assurance. We are blessed by your strong witness.

The process for the voluntary closing a church is found in the "Church Property" section of *The Book of Discipline*, particularly in ¶ 2549.3a. Based upon this section, here are the steps we need to take together:

1. Please decide the date on which you want to close the church and let me know. The decision will be made by a church conference for _____ United Methodist Church. We will need to be sure to comply with the requirements of [¶ 2540 or ¶ 2541].
2. I will engage a lawyer to research your deed and provide a legal opinion as to any reversion restrictions on your property as required by the *Discipline*. (In your case, we will need to be certain that the deed is complete for all of your property.) Please send to my office the legal description and information (book and page number) where your deeds may be found in the County offices.
3. Plan to have a special worship service as the official closing of the church. This might include a remembering of the major events in the life of the church, a presentation of a history of the church, and thanksgiving for all who have given life to the church. There is an order in *The Book of Worship* for the leave-taking of a church building and the disbanding of a congregation. This could provide a guide for the service and some liturgy and prayers. There are other worship resources that will also be helpful, but the most meaningful service will be the one that the members plan together.

4. Plan with your district superintendent and the conference board of trustees on how best to care for all the symbols of the Christian faith: crosses, communion service, baptismal font, and other symbols.
5. The board of trustees of the annual conference will receive the property and determine what would be the best stewardship of it for the good of the annual conference, subject to any applicable standing rules.
6. The final decision on the closing of the church and disposition of the property will be made by the [year] session of the _____ Annual Conference.

I hope this list is helpful to your process. May God's rich blessings be especially clear to you as you journey through this ending to a new beginning. Please let me know if I can be of any further help.

*Thanks to Rev. Susan Keiran Kester (district superintendent) for sharing a letter which we have used as a basis for this sample. **NOTE:** This is a sample letter. Each situation is unique, and other issues may need to be addressed that are not covered by this letter. GCFA is not engaged in providing legal advice, and the conference chancellor or other legal advisor should be consulted before making decisions or taking action.*

EXHIBIT B

Sample Resolution for Closure of a United Methodist Church

WHEREAS the _____ United Methodist Church located in _____ County was founded in _____ and has had a long and proud history; and

WHEREAS the charge conference of the _____ United Methodist Church voted on _____ to voluntarily transfer its assets to the annual conference; and

WHEREAS the district superintendent has recommended closure of _____ United Methodist Church and transfer of membership to _____ United Methodist Church; and

WHEREAS the superintendent has recommended that the property be [sold or transferred] [and the sale proceeds be paid to _____]; and

WHEREAS the consent to closure has been granted by the presiding bishop, a majority of the district superintendents, and the district board of church location and building and all proper Disciplinary requirements have been complied with;

THEREFORE, BE IT RESOLVED, that the _____ United Methodist Church be closed effective _____ and that the property shall be transferred to _____ (or proceeds paid to _____).

ANNUAL CONFERENCE TRUSTEES AND PROPERTY

The Annual Conference Board of Trustees (the “BOT”) is a vital part of the life of the Annual Conference. A chief responsibility of the BOT is property management. The BOT has a stewardship responsibility for property that has been entrusted to its care.

Many of the BOT’s duties deal with the legal responsibilities for property. These duties are determined by *The Book of Discipline*, state and federal laws, and decisions of state and federal courts. This summary covers the relevant *Discipline* provisions regarding the BOT and its oversight of property. Because the responsibilities imposed by civil law can vary from state to state, the BOT should also endeavor to acquaint itself with all relevant state and federal laws and court decisions applicable to its geographical area.

Authority, Election, Membership, and Term

¶ 2512.1 Legislative Authority: Each annual conference shall have a BOT, which shall be incorporated unless the conference is incorporated in its own name.

Membership: The BOT shall consist of twelve persons, who must be of legal age as determined by law. Diversity of representation is recommended, with clergy, laymen, and laywomen each making up one third of the BOT.⁵³ Lay members must be in good standing.

Election and Term of Office: The BOT shall be elected by the conference for a term of four years, except as to the first board, one-fourth of which shall be elected for a term of one year, one-fourth for a term of two years, one-fourth for a term of three years, and one-fourth for a term of four years and which shall serve until its successors are elected.

¶ 2512.2 Meetings and Officers: The BOT shall meet at least annually and organize by electing a president, vice-president, secretary, and treasurer who are amenable to the annual conference. Vacancies for unexpired terms are filled by the annual conference.

Property Responsibilities

¶ 2512.3a To receive, collect, and hold in trust for the benefit of the annual conference, any and all donations, bequests, and devises of any kind or character, real or personal, and administer the same as directed by the grantor. Where no use has been designated, such donation, bequest, or devise is subject to the direction of the annual conference.

⁵³ See also ¶ 610.5.

- b* To receive and hold in trust for and on behalf of the annual conference, its districts, or agencies, any real or personal property previously acquired by them in fulfillment of their mission, ministry, and program. Educational and health and welfare institutions whose properties are held in their names or those of their duly elected boards of trustees or institutions, together with local church properties (except where closed pursuant to ¶ 2549), are not covered under this provision.
 - c* Subject to ¶ 2512.3*b*, to invest, reinvest, buy sell, transfer, and convey any or all funds and property held in trust, as directed by the controlling instrument.
 - d* Absent a contrary decision by the annual conference, to execute any contract, deed, bill of sale, mortgage, or other written instruments concerning its property, by two officers of the BOT.
 - e* To act as a socially responsible investor, by making investments in furtherance of the goals of the Social Principles of the Church, and to report annually to the annual conference regarding this duty.
 - f* To invest only when there is amply secured collateral, after approval by the BOT or its designated committee, unless otherwise directed by the annual conference.
- ¶ 2512.4 Legal Action to Protect Annual Conference Property: To intervene and take all necessary legal steps to safeguard and protect the interests and rights of the annual conference relating to property and rights to property.
- ¶ 2512.5 Acceptance or Rejection of Gifts: To conserve, protect, and administer any property of which the BOT has been notified unless it declines to receive or administer any such property.
- ¶ 2512.6 Report to Annual Conference: To make to each session of the Annual Conference, a full, true, and faithful report of the BOT's doings, of all funds, moneys, securities, and properties held in trust by it, and of its receipts and disbursements in the conference year. Beneficiaries of these funds are also entitled to an annual report on transactions affecting such funds.
- ¶ 2512.7 Policy on Church-Owned Property: To consult with the conference commission on archives and history in developing an annual conference policy to respond to any effort to designate Church property as a cultural, historical, or architectural landmark.

Relationship with Annual Conference Foundations

- ¶ 2513.1 The BOT may delegate its responsibilities under ¶ 2512.3 to the annual conference's United Methodist Foundation.

Titling, Documenting, and Disposing of Property

- ¶ 2514 Episcopal Residence: The BOT holds, in trust, the title to any episcopal residence authorized by the annual conference.
- ¶ 638 Episcopal Residence Committee: The president, or other designate, of the BOT shall serve on the episcopal residence committee.
- ¶ 2515 Annual Conference Property Sold, Transferred, Leased, Mortgaged, or Purchased: Any written instruments regarding sale, transfer, lease of more than 20 years, mortgage, or purchase of annual conference real property must be executed by two officers of the BOT, *if the annual conference is not incorporated*.
- ¶ 2516 Camps, Conference Grounds, and Retreat Centers: Title to annual conference or district camps, conference grounds, and retreat centers held in trust by the BOT can be mortgaged or sold only after authorization by the annual or district conference.

Health and Welfare Institutions

- ¶ 2517 If the annual conference has not designated another body within the conference to carry out the responsibilities set forth in this paragraph, the responsibilities are to be carried out by the BOT.

Closed Property

- ¶ 2549.2b Vesting of Ownership: Ownership of property of local churches closed by the annual conference shall immediately vest in the BOT.
- Consideration When Selling or Leasing: The BOT should consider the other denominations represented in the commission on Pan-Methodist Corporation and Union when selling or leasing closed local church property.
- Removal of Insignia and Symbols: The BOT must see that all Christian and church insignia and symbols are removed from the property, when possible.
- Insurance Proceeds: The BOT may make a claim for and collect any insurance proceeds from lost, damaged, or destroyed property.
- ¶ 2549.5 Gifts and Assets: All gifts and assets of any endowment funds or foundation of the church shall pass to the BOT unless otherwise directed by the annual conference or by operation of law.
- ¶ 2549.6 Future Gifts, Legacies, Devises, or Annuities: Any gift, legacy, devise, annuity, or other benefit that becomes available after a charge or church has been closed shall become the property of the BOT.

TEN STEPS FOR BEING A SUCCESSFUL CHURCH LANDLORD

From time to time, churches and church organizations lease their property. Here are some simple suggestions to help your church, and its relationship with its tenants, to run smoothly.

1. Check credit history, references, and background information before renting to anyone. Haphazard screening and tenant selection too often result in problems.
2. Make sure the use of the space is in conformity with the Social Principles. The relationship will be more successful if the use is in keeping with the mission and ministry of your church.
3. Get all terms of the tenancy in writing and have an attorney review the documents. Beginning with the rental application and lease or rental agreement, be sure to document important facts of your relationship with your tenants – including rental amounts and due dates, what the property will be used for, when and how you handle tenant complaints and repair problems, disclosures (e.g., lead paint), your right of access, responsibility for damage, and the like.
4. Establish a clear, fair system of setting, collecting, holding, and returning security deposits. Inspect and document the condition of the rental unit jointly with your tenant, before the tenant moves in, to avoid disputes over security deposits when the tenant moves out. Be sure to comply with any state or local requirements regarding the holding and/or refunding of security deposits.
5. Stay on top of repair and maintenance needs and make repairs when requested. If the property is not kept in good repair, not only may you alienate good tenants, they may also have the right to withhold rent, sue for any injuries caused by defective conditions, or move out without notice.
6. Make sure the property is safe. Do not let your tenants (or property) be in danger. You could well be liable for the tenant's losses.
7. Respect your tenants' privacy. If the space is rented exclusively, notify tenants whenever you need to enter the rental space, and provide as much notice as possible. At the very least, comply with the minimum amount of notice required by state law.
8. Disclose environmental hazards such as lead-based paint (federal and/or state law may require disclosure)
9. Purchase adequate liability and other property insurance. A well-designed insurance program can protect your rental property from losses caused by everything from fire and storms to burglary, vandalism, and personal injury lawsuits. When dealing with leases to outside organizations (like a child care center or counseling center), always get a certificate of insurance and indemnity clause in the lease.

10. Choose and supervise staff carefully. If your staff commits a crime or acts negligently, you may be held financially responsible. Do a thorough background check and clearly spell out the staff's duties in writing to help prevent problems down the road.
11. Try to resolve disputes with tenants without resort to litigation.

[END OF DOCUMENT]