

1 **PRESBYTERY OF GENESEE VALLEY**
2 **COMMITTEE ON MINISTRY**

3
4 **Guidelines and Procedures for Reconciliation or Dismissal**
5 **of Its Member Congregations**
6

7 **Introduction**

8 The 218th General Assembly (2008) of the Presbyterian Church (USA) urged that presbyteries and synods
9 develop and make available to lower governing bodies and local congregations a process that exercises
10 the responsibility and power of “dismissing or dissolving” churches in consultation with their members”
11 (*Book of Order, G-3.0301a*) It urges congregations considering whether or not to leave the denomination,
12 presbyteries and synods to implement a process that makes use of the following principles:

13 *Consistency:* The local authority delegated to presbyteries is guided and shaped by our
14 shared faith, service, and witness to Jesus Christ.

15 *Pastoral Responsibility:* The requirement in *G-3.0301a* to consult with the members of
16 a church seeking dismissal highlights the presbytery’s pastoral responsibility, which
17 must not be submerged beneath other responsibilities.

18 *Accountability:* For a governing body, accountability rightly dictates fiduciary and
19 connectional concerns, raising general issues of property (*G-4.02*) and specific
20 issues of schism within a congregation (*G-4.0207*). But, full accountability also
21 requires preeminent concern with “caring for the flock.”

22 *Gracious Witness:* Scripture and the Holy Spirit require a gracious witness from us rather
23 than a harsh legalism.

24 *Openness and Transparency:* Early, open communication and transparency about principles and
25 process of dismissal serve truth, order, and goodness, and work against seeking civil
26 litigation as a solution.

27
28 The Presbytery believes that trying to exercise this responsibility and power through litigation is
29 detrimental to the cause of Christ. It affects the local church, other parts of the Body of Christ, ecumenical
30 relationships, and our witness to Christ in the world around us.

31
32 Therefore, as requested, after study and meeting, we, the appointed Ministry Team of the Presbytery of
33 Genesee Valley, recommend that the following process with its particular guidelines and procedures be
34 followed by the Presbytery of Genesee Valley. This process would apply when any particular member
35 congregation believes it is no longer able to remain faithful to its calling as a Church of Jesus Christ
36 within the PC(USA) denomination and is considering and or is actively seeking dismissal from the
37 PC(USA).

38
39 **Belief and Affirmation**

40 The Presbytery of Genesee Valley desires to be in faithful communion with all the pastors, sessions and
41 congregations committed to its care. We recognize however our unity in Christ is being tested, and our
42 ability to work together in mission is being tried. We covenant that even in times of disagreements and
43 conflict we will seek to uphold one another, build up one another, respect one another and love one
44 another to the end that Christ Jesus is honored and His mission is fulfilled. In all such contexts the
45 Presbytery is committed to seeking reconciliation. We will celebrate and rejoice when such is achieved.
46 If however, such efforts do not succeed and a congregation chooses to seek dismissal from the
47 Presbyterian Church (USA), the Presbytery is committed to providing a faithful and equitable process
48 through which a member congregation with or without its property may be dismissed graciously as a
49 reformed witness in its community.

50

51 Our Book of Order clearly states a principle of our Presbyterian beliefs:

52 “The power that Jesus Christ has vested in his Church...is one for building up the
53 body of Christ, not for destroying it...so that the Great Ends of the Church may
54 be achieved, that all children of God may be presented faultless in the day
55 of Christ.” (*D-1.0102*)

56
57 We believe and we affirm that the Church is characterized by pure preaching of the gospel in accordance
58 with the apostolic witness of Scripture, right administration of the sacraments, and gentle church
59 discipline, bound and loosed. We believe that our unity, purpose, and mission are in Jesus Christ and
60 nowhere else.

61
62 We believe and we affirm that the Great Ends of the Church found in *F-1.0304* of our Book of Order
63 summarize the mission of our presbytery and its member congregations.

64
65 **Profession...** Borrowing (adapting) language from the Book of Order ...

66
67 We profess that the Church is the body of Christ, both in its corporate life and in the lives of its individual
68 members.

69
70 We profess that the Church of Jesus Christ is the provisional demonstration of what God intends for all of
71 humanity.

72
73 We profess that the Church is called to be a witness to the world of the new reality that God has made
74 available to people in Jesus Christ.

75
76 We profess that the new reality revealed in Jesus Christ is the new humanity, a new creation, a new
77 beginning for human life in the world:

78
79 We profess that
80 Sin is forgiven.
81 Reconciliation is accomplished.
82 The dividing walls of hostility are torn down.

83
84 We profess that the Church is called to give shape and substance to this truth.

85
86 We profess that the Church is further called to undertake this mission even at the risk of losing its life,
87 trusting in God alone as the author and giver of life, sharing the gospel, and doing those deeds in the
88 world that point beyond themselves to the new reality in Christ.

89
90 **Lamentation...**

91 From its beginning the Church has experienced controversy and division. Men and women of good will
92 and sincere faith disagreed. Paul and Barnabas had to separate for a season in order to continue their
93 respective ministries (*Acts 15:39*). The church of Jesus Christ divided into three great traditions:
94 Protestant, Catholic and Orthodox. The Protestant tradition again divided into Anglican, Lutheran,
95 Reformed (Presbyterian), Anabaptist communions and certain others.

96
97 We lament that the Church, as we know it, experiences and struggles with divisiveness, animosity and
98 mistrust.

99
100 **In the midst of the despair of division, and with the hope of reconciliation...**

101 We believe and we affirm that the particular churches of our Presbytery have the authority to make their
102 own decisions concerning how they are called to accomplish the Great Ends of the Church. This includes
103 but is not limited to decisions about their programs and ministries, the use of their finances and property,
104 their style of worship and education and their denominational affiliation. Except for the provisions of the
105 Book of Order that commend oversight, we affirm that these guidelines and procedures are not to
106 interfere with such authority and decision-making.

107

108 We acknowledge that the distribution of property or assets is a particular concern when a congregation is
109 considering or is actively seeking dismissal from the PC(USA). We affirm that decisions affecting
110 ownership of property are subordinate to, and should support our spiritual unity in Christ, and that
111 whenever particular churches pursue the Great Ends of the Church they are in fact using their property to
112 the glory of God and for the benefit of this Presbytery, of the PC(USA) and of the Church Universal.

113

114 Mindful of its obligations under Chapter G-4 of the Book of Order, the Presbytery resolves and agrees
115 that, as the party empowered to administer the trust provisions set forth in G-4.0203, we will seek to
116 resolve issues relating to the disposition of property by all means possible before taking any action in civil
117 courts to enforce such trust provisions as to any property, real or personal, held by a particular church. In
118 any discussions or negotiations relating to the disposition of property subject to such trust provisions,
119 consideration shall be given to whether or not there is any outstanding indebtedness by the particular
120 church to the Presbytery; whether the Presbytery is a surety or guarantor with respect to any outstanding
121 loan or obligation incurred by that church; and the history of “investment” by the Presbytery in the
122 development and growth of the church.

123

124 As a Presbytery, we recognize that Chapters 3.0301a, 4.0204 and 4.0205 of the Book of Order provide
125 that congregations may be dismissed from the denomination and that the presbytery may transfer or sell
126 the property to the congregation upon its dismissal. We affirm to each Congregation their right to seek
127 dismissal and we ask all of our congregations to act with love, forbearance, dignity and discretion in
128 pursuing this right. Specifically, in light of the Presbytery’s above mentioned affirmations, we ask our
129 congregations to defer any action in secular courts.

130

131 In the Spirit of the Apostle Paul, we seek first to arbitrate disagreements as brothers and sisters in Christ
132 before seeking civil remedies afforded by law in the State of New York.

133

134 We affirm that it is our policy not to take any action to remove a pastor or session as a result of a decision
135 to withdraw or seek dismissal in order to gain more control of the outcome of the situation. Such action
136 would only be taken if there is clear and unequivocal evidence that the pastor(s) and or session are acting
137 in manners or making decisions that are clearly contrary to the will of the congregation or accepted
138 procedures and protocols of our Book of Order. If any action is found to be contrary to or in violation of
139 our PC(USA) Constitution by any person or committee, we hereby covenant and agree to seek discipline
140 of that person or persons according to the disciplinary rules and process of the PC(USA).

141

142 At all times and in all circumstances it is incumbent upon the Presbytery and its congregations to treat
143 each other respectfully and pastorally and thus represent and give witness to the Love of Christ that we
144 each profess.

145

146 **Procedure**

147 It is the will of this Presbytery to create a gracious context and procedure in which the will of God is
148 sought for the life, ministry, and calling of the particular congregation. The Presbytery commits itself and
149 invites all of its congregations to pursue a broad understanding of God’s mission with graciousness
150 befitting those who claim Jesus as Lord. And acting together we seek to further the peace, unity and
151 purity of the Church, minimizing confrontation while we seek to discern and follow the will of Christ.

152

153 In all matters relating to this subject, the following questions will be deemed paramount:

- 154 ▪ Is God leading this particular congregation toward restoration of fellowship with the
- 155 Presbyterian Church (USA) or to seek dismissal from the denomination? And
- 156 ▪ If God is leading this congregation toward restoration of fellowship with the Presbyterian
- 157 Church (USA), how can that be accomplished in a way that honors Jesus Christ and
- 158 strengthens both the Congregation and the Presbytery?
- 159 ▪ If God is leading this congregation to seek dismissal from the Presbyterian Church (USA),
- 160 how can that be accomplished in a way that honors Jesus Christ and strengthens both the
- 161 Congregation and the Presbytery?

162

163 The Presbytery asks any session seeking or considering dismissal from the denomination to covenant with
164 the Presbytery to enter into a defined process of mutual discernment. To seek such discernment
165 adequately will require significant time and energy. We believe that a matter of this magnitude deserves
166 such attention and prayer. We believe the Presbytery and the Congregation will benefit from this time of
167 discernment regardless of the specific outcome.

168

169 This process is based on the willingness of all parties to join together in discernment of God's will and to
170 work towards a mutually agreeable implementation of what they determine God's will to be. This process
171 will require a high level of trust, communication, openness, and love. It will be this atmosphere of mutual
172 respect, deep conversation and prayer that forms the basis of a two-phase procedure between the
173 Presbytery and the Congregation for their discernment work. The two phases are a time of listening and a
174 time of resolution. The entire process should take no less than four months and no more than one year.
175 This process will begin upon the full formation and training of the Discernment Team. At the conclusion
176 of the process, the Discernment Team will report to the Presbytery and the Congregation on
177 reconciliation, or will make a recommendation to the Presbytery to honor the request for dismissal or
178 dissolution. Such recommendation will need to be ratified by vote of the Congregation and the
179 Presbytery.

180

181 In light of these beliefs and affirmations The Presbytery of Genesee Valley will use the following
182 procedure regarding particular congregations who for reasons of conscience and faith are considering or
183 are actively seeking dismissal from the PC(USA).

184

185 **Initiation of the Procedure**

186 When the leadership of the Presbytery becomes aware (either through contact with the pastor(s), the
187 session, or members of the congregation) that a congregation or its leadership is seriously questioning
188 their continued relationship with the Presbytery or the PC(USA), the Committee on Ministry will initiate
189 the discernment process.

190

191 **Formation of the Discernment Team:**

192 The Committee on Ministry, in consultation with the Presbytery Council and the Moderator of the
193 Presbytery, will appoint a team of 5-7 members to be known as the "Discernment Team". Team size and
194 membership will vary according to the situation and will depend on the number of people or groups with
195 which the Team will be meeting. The Committee on Ministry will supervise the work of the Discernment
196 Team.

197

198 **Functions of the Discernment Team:**

199 The Discernment Team will

- 200 work with all parties in the situation through a two-phase discernment process
- 201 of listening and resolution.
- 202 participate in open discussions on the issues and exploring possible options

203 with the intent of promoting peace and harmony.
204 first meet with the Pastor(s) and the Session, and then with members of the
205 Congregation, as appropriate, offering respect and sensitivity in the
206 discernment process and encouraging openness to the guidance of the
207 Holy Spirit.
208 offer pastoral care, both to those members who believe themselves called to
209 seek dismissal and those who believe themselves called to remain.
210 keep all parties (Pastor(s), Session, and Team members) informed in writing,
211 (i.e., electronic or hard copy) of the issues and concerns raised in the
212 discussions.
213 be present with voice during any interactions of the Congregation (including,
214 but not limited to, congregational meetings, town hall meetings, and
215 gatherings of any nature) when the agenda of such interactions includes
216 topics specifically related to reconciliation or moving toward dismissal
217 from the PC(USA).
218 keep an accurate record of all its proceedings and its progress with the
219 Congregation and report such periodically to the Committee on Ministry,
220 who has oversight of its work on behalf of the Presbytery.

221
222As mentioned, the discernment process will consist of two phases: listening and resolution.
223A brief description of each phase follows.

224 225**Listening Phase:**

226Once the Discernment Team has been formed, it will engage the Pastor(s), Session and Congregation in a
227time of prayer and discernment aimed at listening to the concerns of the leaders and congregation,
228understanding the conflict, expressing the Presbytery's concerns and identifying possible steps toward
229reconciliation. Our desire is to develop a process for mutual discernment of God's leading that involves
230the pastor(s), session, the congregation and the Presbytery in this phase. An important goal of this phase
231is to ensure that all voices are heard, including the smallest of minorities. During this phase the
232Discernment Team will encourage a special congregational meeting be called in order to keep the
233Congregation informed on the issues and to provide open and honest discussion on the issues. While the
234quorum for congregational meetings is set by rule of the congregation (G-1.0501), it is expected that at
235least fifty percent of the active members will participate in any special congregational meeting called for
236the purposes covered by this policy. Further, it is expected that any vote taken be done by secret ballot. A
2372/3 majority vote of the members of the congregation that are present shall be needed for approval of the
238request for dismissal or dissolution and terms thereof. The Discernment Team will ensure a safe forum,
239free from pressure and intimidation, for all to express their thoughts and feelings. It is hoped that during
240this Listening Phase reconciliation and restoration to fellowship will be accomplished. When that is the
241case the following are suggestions for celebrating that reconciliation:

- 242 ▪ Conducting a public service of worship and recommitment to shared fellowship and ministry, with
243 participation from Presbytery and the Congregation.
- 244 ▪ Sharing of story and testimony from members of the Discernment Team and Congregation at the
245 congregational and presbytery level (and beyond, if appropriate).
- 246 ▪ Blessing and commissioning of any minority that leaves the local congregation (to the extent
247 possible), in the hope of maintaining bonds of peace.

248 249**Resolution Phase:**

250Following a time of listening, there may be a situation where a Session and Congregation (or some group
251of members thereof) do accurately understand the policies and stances of the Presbytery and PC(USA)
252and simply disagree with them and decide that they cannot in good conscience remain in the
253denomination. At that time the discussion will move to a Resolution Phase.

254

255 This phase will clarify the needs/choices of the members of the Congregation and the
256 ramifications/consequences of such choices and will help the congregation identify and resolve all issues
257 requiring attention in order to move forward in the chosen direction. The Discernment Team will request
258 that a second congregational meeting be called in order to keep the congregation informed on the progress
259 of the discussions, and provide information to the congregation in order to assist it to make prayerful and
260 informed decisions relative to its future ministry.

261

262 The process of gracious separation will be guided by the additional following principles based upon our
263 Presbyterian polity:

- 264 ▪ The unity we have in Christ and the relational nature of our polity require dialogue between and
265 among governing bodies, congregations, pastors, and members, and the nature of dialogue
266 requires faithful participation by all concerned. This faithful dialogue must be based on trust and
267 love (G-1.0102)
- 268 ▪ The mission of the Kingdom of God and not the maintenance of any particular institution is our
269 highest calling.
- 270 ▪ The particular institution of the PC(USA) embodies important principles and structures which
271 have furthered and continue to further the Kingdom of God and should not be cast aside lightly.
- 272 ▪ The local congregation is the primary mission unit of the Presbytery, and issues of property and
273 assets are always secondary to people and mission.
- 274 ▪ All decisions regarding property and finance will not be abdicated to the local congregation.
- 275 ▪ Property is maintained and administered locally by the congregation on behalf of the
276 denomination.
- 277 ▪ Accountability and connection shall be maintained by shared, representative leadership and
278 oversight.
- 279 ▪ Regarding issues of conscience, all parties must be willing to confront difficult realities, confront
280 perceived breaches of mistrust, and consider the ongoing health and viability of the other.
- 281 ▪ Property and asset issues will be approached in such a way as not to constrain local congregations
282 in their ability to do mission and ministry.
- 283 ▪ Property and asset issues will be approached in such a way as not to constrain the Presbytery's
284 ability to do mission and ministry in any given locality under its jurisdiction.
- 285 ▪ Dismissal is the process to another Reformed body and dissolution is the only process to
286 independence, for example, to be a "community church".

287

288 After such time has been allowed for all of the aforementioned questions and issues are dealt with, a third
289 congregational meeting shall be called in order to officially request the Presbytery to approve all the
290 changes previously proposed. After the congregational meeting, and the congregation's approval of
291 passing the request to Presbytery, the Discernment Team and representatives of the Congregation seeking
292 dismissal shall present to the Presbytery through the Committee on Ministry a formal request for
293 dismissal or dissolution and the motions needed to accomplish a gracious separation.

294

295 The dismissal or dissolution of a congregation will be a significant event. It behooves the parties involved
296 through our mutual calling of respect and compassion for one another in Christ that each party consider
297 the appropriate support and services rendered to each other in previous years of their relationship when
298 making the request.

299

300 This request shall:

- 301 ▪ Specify how the separation will affect all the assets, liabilities, debt liquidations, pension issues,
302 preservation of church records, corporate and other interests of all the parties involved, and the
303 steps taken (or to be taken) to properly handle them, and

- 304 ▪ Specify the pastoral care offered to any pastor(s) and/or any staff who choose not to be dismissed
305 from the Presbytery and the PC(USA), and
- 306 ▪ Specify that financially, to care for any pastor(s) and any staff who choose not to be dismissed
307 from the Presbytery and the PC(USA), the Congregation being dismissed has committed itself to
308 continue the salary, benefits, and allowances of such person(s) for a period of at least six (6)
309 months following the date of dismissal by the Presbytery, unless a given contract would expire
310 under its terms within that six month window of time. and
- 311 ▪ State the civil processes and/or ecclesiastical processes and procedures required for the church to
312 join another Reformed body or to become a non-affiliated Reformed witness in its geographical
313 community.

314
315 Please refer to Appendix A for some legal and civil considerations that will need to be addressed as a
316 result of dismissing or dissolving a congregation. The document has been compiled by the attorney for the
317 Presbytery of Genesee Valley as an aid. The document should not be considered as all inclusive, but
318 should be the starting point for necessary legal steps to be taken by those involved in such actions.
319 Specific situations may involve unique requirements for legal actions.

320
321 In the event that any congregation is approved for dismissal or dissolved under the terms of this policy,
322 the Presbytery and the Congregation shall take all steps possible in order to provide for the pastoral care
323 and congregational life of those members who do not wish to depart the Presbyterian Church (USA).
324 Their protection and nurture shall be a matter of paramount concern to both the departing congregation
325 and the Presbytery.

326
327 In the event that any congregation's request for dismissal or dissolution is approved under the terms of
328 this policy, the Presbytery shall, in conjunction with the Congregation, hold a final worship service to
329 celebrate our common life in Jesus Christ and to pray for the effectiveness and well-being of both the
330 Congregation and the Presbytery.

331

332 APPENDIX A

333
334 LEGAL AND CIVIL CONSIDERATIONS IN
335 SEPARATION OF CHURCHES FROM
336 PRESBYTERY OF GENESEE VALLEY AND PC(USA)
337

338
339 The process of discernment and resolution, and the action by the Presbytery approving the separation of a
340 particular Church or Congregation from the Presbytery and the PC(USA), necessarily should consider
341 applicable corporate and property issues under New York State Law. The action of Presbytery, in voting
342 to dissolve or dismiss a particular church does not effect any change in the corporate documents, in
343 applicable statutory provisions, or in title (as reflected in recorded Deeds). It is important that these issues
344 be addressed, as failure to do so would adversely affect a church's ability to sell, mortgage or otherwise
345 deal with its property.

346
347 Corporate Organization Issues

348
349 Statutory Background.

350
351 In New York State, Presbyterian Churches associated with the PC(USA) are incorporated under
352 Article 4 (§§ 60 – 70) of the Religious Corporations Law (abbreviated as “RCL”). Section 60 of that law
353 provides that the Article applies “only to a Presbyterian church in connection with the General Assembly
354 of the Presbyterian Church (U.S.A.).” The initial incorporation process requires the filing of a certificate
355 of incorporation in the Office of the Clerk for the County in which the church is located, and that
356 certificate recites, for a Presbyterian church, that the church is being incorporated under Article 4 of the
357 Religious Corporations Law.

358
359 The provisions of Article 4 and other “General Provisions” of the RCL “mirror” the trust clause
360 and other property provisions of Chapter G-4 of the Book of Order, including:

361
362 ○ Section 69, paragraph 3, provides that the Trustees of an incorporated Presbyterian Church
363 “...shall have the custody and control of all the temporalities and property belonging to the
364 corporation and of the revenues from such property and shall administer the same in accordance
365 with the constitution of the Presbyterian Church (U.S.A.), and with the provisions of law relating
366 thereto.” (Emphasis supplied.)

367
368 ○ Section 12 of the RCL (in Article 2, General Provisions) relates to the sale, mortgage or lease of the
369 real property of a church. Paragraph 1 of that section provides that:
370 “A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of
371 its real property without applying for and obtaining leave of the court therefor ...

372
373 And Paragraph 5-a of that section then states:
374 “The trustees of an incorporated Presbyterian church in connection with the General Assembly of
375 the Presbyterian Church (U.S.A.) shall not make application to the court for leave to mortgage,
376 lease or sell any of its real property without the consent in writing of the particular Presbytery
377 with which said church is connected.” (Emphasis supplied)

378
379 ○ Section 17-b of the RCL relates to the disposition of property of an “extinct” or dissolved
380 Presbyterian church and states in relevant part:
381 “Whenever the presbytery having jurisdiction over a particular church in connection with the
382 General Assembly of the Presbyterian Church (U.S.A.) dissolves or declares extinct the particular

church, upon petition by the presbytery to the supreme or county court and upon satisfactory proof of the facts leading to said dissolution, the court shall have jurisdiction to grant an order to the effect that all property of whatever kind which may have belonged to, or have been held by, said church shall vest in the presbytery of jurisdiction in as full and ample a manner as the same shall theretofore have been vested in the church so declared to be dissolved and extinct.”

There are numerous other Articles of the RCL which specifically relate to incorporation of churches of other denominations – for example, Protestant Episcopal (Article 3); Roman Catholic (Article 3915); Reformed Dutch, Reformed Presbyterian and Lutheran Churches (Article 6); Baptist (Article 7); and Churches of the Holy Ukrainian Autocephalic Orthodox Church in Exile (Article 8-B). And there are two Article which apply to “other” churches – “Independent” churches (Article 8 - Churches of the United Church of Christ, Congregational Christian and Independent Churches) and Other Denominations (Article 39510).¹

Interestingly, there are no provisions in the RCL which refer to or which would in any way provide for “dismissal” of a church by the Presbytery to another denomination, nor are there any provisions relating to the “amendment” of a certificate of incorporation so as to change the Article of the RCL under which a church operates as a corporate entity. It thus would appear that a Presbyterian church could not unilaterally simply amend its Certificate of Incorporation, and thereby become an “independent” or “community” church, or even, by such an amendment, “connect” themselves with another denomination. A few years ago, the Oakfield Church attempted to amend its Certificate of Incorporation, and thus claim that the Presbytery no longer had any jurisdiction over it, and the Court found that such an amendment was not proper and declared the amendment to be null and void.

Suggested Process

There would appear to be two different approaches which could be taken in order to accomplish a “re-incorporation” of the church, depending upon the nature of the agreed separation:

A. Incorporation of new religious corporation. The heart of this process would be the incorporation of a new religious corporation under the applicable Article of the Religious Corporations Law and, contemporaneously, dissolution of the old “Presbyterian” corporation.² Typically, this would be the relevant process when a Church is not being “dismissed” to another denomination but is either becoming an independent or “community” church, or is proposing to associate with a denomination to which “dismissal” is not authorized under the Book of Order.

1. The incorporation process itself is fairly simple and does not require any Court approval or other judicial action. The specific process and requirements, contents of certificate of incorporation, etc., are spelled out in either Article 8 (“Independent” churches) or Article 10 (“Other Denominations”) of the RCL, or in the specific Article applicable to the denomination with which the church proposes to associate. The certificate of incorporation is filed with the Clerk of the County in which the Church is located. Costs are minimal.

⁹¹ Section 172 in Article 8 states that: “This article applies only to churches of the United Church of Christ, Congregational Christian churches, whether or not part of the United Church of Christ, and Independent churches.” Article 10 of the RCL specifically provides that it “is not applicable to ... a Presbyterian church in connection with the General Assembly of the Presbyterian Church in the United States of America.”

13

¹⁴² It is possible, however, that there could be a circumstance in which the existing Presbyterian church could continue as a corporate entity if, for example, there was a group of members who wished to continue as Presbyterian.

2. The old “Presbyterian” Church is then dissolved pursuant to Section 17-b of the RCL (see above). This does require a Petition to Supreme Court, and the costs are more significant – attorney time for preparation of Petition and Order, filing fees, etc.

Note that incorporation of the new Church and dissolution of the old one does not effect any transfer of title to real property. See the next section for a description of that process.³

- B. Court Approval of Change to Certificate of Incorporation (Dismissal). Where the agreed separation involves the “dismissal” of a church to another denomination, as authorized by the Book of Order, Court approval of the change is recommended. This would probably involve a “joint” Petition by both the Presbytery and the Church, and the resulting Order could specifically authorize the filing of an amended or restated Certificate of Incorporation, under the applicable Article of the RCL. (For example, Article 6 of the RCL, if dismissal is to the Reformed Presbyterian Church.) Because the system of government for each denomination can vary considerably – particularly with regard to the title of the governing body (the Session, in PCUSA churches, but the “deacons” in other denominations) and trustees (which may or not be a separately elected body) – it is recommended that an attorney be consulted to ensure that all necessary changes are identified and then addressed in the Court Order and proposed amended or re-stated Certificate, and that any “transition” issues are addressed.⁴

Real Property Transfer Issues

Statutory Background.

As discussed above, Section 12 of the RCL, and specifically Paragraph 5-a, provides that any mortgage, lease (for more than 5 years) or sale of real property by a Presbyterian church requires Presbytery consent, as a pre-condition to Court approval. This requirement has been interpreted broadly to include any transfer or conveyance of an interest in real property, including such things as easements. Section 17-b of the RCL, also discussed above, provides that any real property of an “extinct” or dissolved Presbyterian church “vests” in the Presbytery, upon “satisfactory proof” of the facts leading to dissolution, and a Court order.

A change in the “corporate structure” of a church which is separating, as outlined above, does not effect a change in property title. Given the statutory provisions set out above, Court approval is required in order for such any change in title to take place. However, in the case of a separation in which there is a “dismissal” and court approval of the corporate change, it should be possible to consolidate, in one

¹⁷³ This process – the incorporation of a new religious corporation and dissolution of the old one – is essentially what occurred with the Canaseraga Church. Although that was a “federated church” - a “troika” comprised of a Presbyterian church, a Methodist church and a Baptist church - the real property was still titled in the name of the First Presbyterian Church of Canaseraga. The congregation determined that it wanted to be a true “community” church, not associated with any of the three denominations. A new religious corporation was then formed and the Presbyterian church was dissolved. The ultimate outcome to the Oakfield situation also involved the incorporation of a new church and dissolution of the old one.

24

²⁵⁴ This process – joint Petition by the Presbytery and the Church, and a resulting Order providing for the corporate change – is essentially what occurred with the Parsells Avenue Church. That was also a “federated” church (Baptist and Presbyterian), but there the congregation wished to remain in connection only with the Baptist denomination. The joint Petition, reciting the agreement of separation between the parties, resulted in a Court Order terminating the “Covenant of Union” and dissolving the affiliation with the Presbytery and the Presbyterian Church (USA).

Petition, the request for the corporate change and any request for approval of the transfer of real property. Likewise, in the same Petition the Presbytery could request that the Court approve the dissolution and vesting of property title in Presbytery, and the conveyance of the property to the new church corporation.

Suggested Process

The following is the suggested process for accomplishing a change in title of real property in accordance with an agreed separation:

A. Where Incorporation of new religious corporation. In the case of the incorporation of a new religious corporation, and an agreed plan of separation that provides for retention by the church of real property, the following are the necessary steps:

1. The Presbytery will need to apply to the Court for (i) dissolution of the old Presbyterian church (which vests the property in Presbytery); and then (ii) conveyance of the real property to the new church corporation for the agreed consideration (if any). This can be accomplished in one Petition and Order.
2. The Order is recorded in the County Clerk's Office, in the Book of Deeds, so that there is a permanent record as to the Court approval.
3. A Deed conveying the real property will be executed by the Presbytery (typically by the Chair of Trustees) and delivered to the new church, and recorded in the County Clerk's Office.

B. Where Court Approval of Change to Certificate of Incorporation (Dismissal). In the case of "dismissal" of a church, in accordance with an agreed plan of separation, and change to the certificate of incorporation by Court Order, the request for approval of the transfer of title of real property to the dismissed church can be included in the joint Petition requesting approval of the change in corporate structure. As in "A" above, the Court Order would be recorded in the Book of Deeds, and a Quit Claim Deed from the Presbytery to the Church would also be recorded, making a permanent record of the fact that the Presbytery no longer had any interest of any kind in the property.

Other Related Issues.

As part of this transfer process, consideration must be given to any other issues which could affect the real property of the church or the Presbytery's interest in such property, including such things as:

- A. Outstanding obligations of the church to the Presbytery (such as loans from the Revolving Loan Fund). Given the trust clause in the Book of Order, and the New York State statutory provisions discussed above, loans have generally been made from the Revolving Loan Fund without any requirement for a mortgage. If the Presbytery no longer has any interest of any kind in the property, consideration will need to be given either to payoff of the outstanding loan, or the execution and recording of a mortgage to the Presbytery as security for the loan.

- 513 B. Guarantees by Presbytery of loans to the church. Loans from the General Assembly loan
514 program (PILP) or the Synod loan program, generally require a Presbytery guarantee, and
515 occasionally commercial loans may involve such a guarantee. The terms of the GA and
516 Synod loan programs may require that any outstanding balance be paid off, if the church is no
517 longer connected to the PC(USA), but if not, a release of the Presbytery guarantee should be
518 obtained.
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- 520 C. Commercial mortgages. If a new religious corporation is formed, transfer of the property
521 to the new church corporation may trigger a “due on sale” clause in the mortgage document,
522 requiring that the outstanding balance be paid off immediately. Discussion with the lender,
523 prior to any action, would be highly recommended. Although a change in the corporate
524 structure per Court order may not have the same effect, consultation with the lender would be
525 recommended, to avoid unnecessary problems.
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- 527 D. Insurance. Most churches in this Presbytery are covered by a Master Policy issued in the
528 name of the Presbytery, which is predicated on all of the covered churches being part of
529 Presbytery and subject to the statutory provisions discussed above. Separation from
530 Presbytery will terminate eligibility for coverage, and new coverage should be arranged as
531 early as possible.
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- 533 E. Restrictive covenants or conditions. Gifts to the church – including bequests of money or
534 stock, or conveyances of real property – may include conditions or requirements that restrict
535 the use of such gifts to a particular purpose that is specific to the “_____ Presbyterian
536 Church.” Any documents relating to such gifts – Wills, Trust Agreements, Deeds, letters of
537 instruction or intent – should be reviewed, as continued use of such gifts by the church may
538 require, or make it advisable, that a “release” of such conditions, and approval of the “new”
539 use, be obtained, either from the donor or even by Court Order, which may also require notice
540 to and approval by the Office of the Attorney General.
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