

Trustees Handbook/The Manual

This PDF includes

- the text of the *Congregational Board of Trustees Handbook 2004*
- a concordance (next two pages) to bridge the *Trustees Handbook* to the current edition of *The Manual*; *The Manual* was rewritten, with new section numbers and language, for the 2013 and subsequent editions
- a five-page sample amalgamation checklist



Concordance

Purpose of This Concordance

The Manual was completely rewritten for the 2013 and subsequent editions. The policies are generally the same, but the language has been updated to a more contemporary style and the section numbers are all new.

You may still use the *Congregational Board of Trustees Handbook 2004*. The purpose of this concordance is to bridge the *Trustees Handbook* to the current edition of *The Manual* by providing

- new section numbers for the corresponding section numbers in the *Trustees Handbook*
- new terms for the corresponding old terms contained in the *Trustees Handbook*
- other updates for those using the *Trustees Handbook*

Section Numbers

Section reference in <i>Trustees Handbook</i>	Corresponding section(s) in the current edition of <i>The Manual</i>
001	See list of definitions at end of <i>The Manual</i>
003	J. Oversight, Conflict Resolution and Discipline 14.4 and 14.5
003(c)	J. Oversight, Conflict Resolution and Discipline 14.4
003.1	A. Introduction to Governance 4
113	B. Local Ministry Unit 3.7.2; 3.7.3
114	B. Local Ministry Unit 5.2
123	B. Local Ministry Unit 7.7.4.b.
166	G. Congregational Life 4.4.2 and 4.4.4
166(a)	G. Congregational Life 4.4.2 and 4.4.4
167	G. Congregational Life 4.4.2(c)
170	G. Congregational Life 4.3.1
180–190	B. Local Ministry Unit 7.2 and 7.3.1
200–213	B. Local Ministry Unit 7.2 and 7.3.1
206	G. Congregational Life 3.1
215–223	B. Local Ministry Unit 7.2 and 7.3.1
222	G. Congregational Life 3.1
243(a)	B. Local Ministry Unit 7.8.2 and 7.8.6.b.
250	G. Congregational Life 3.1 and 3.2
251	G. Congregational Life 3.6.1
252(a)	G. Congregational Life 3.6.2
252(b)	G. Congregational Life 3.6.2 and 3.6.3
252(c)	G. Congregational Life 2.3.2.d. and 3.6.3
252(d)	G. Congregational Life 3.6.2(c)
252(e)	B. Local Ministry Unit 5.4.2.c.
253	G. Congregational Life 3.6.4
254	G. Congregational Life 3.6.5
255	G. Congregational Life 3.3.2



256	G. Congregational Life 3.3.4
257	B. Local Ministry Unit 5.4.2.c.; G. Congregational Life 3.3.6.a
258(a)	G. Congregational Life 3.3.4.c.
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271	G. Congregational Life 2.3.2
271(f)	Consult a local lawyer for current advice on property title registration matters.
272	Consult a local lawyer for current advice on property title registration matters.
279	G. Congregational Life 3.1; B. Local Ministry Unit 7.1 and 7.2
334(c)	G. Congregational Life 1.4.3
335(a)	G. Congregational Life 2.1.2

Terms

Term used in <i>Handbook</i>	Corresponding term from the current edition of <i>The Manual</i>
“Church Board”	“governing body [of the congregation]”
“Church Council”	“governing body [of the congregation]”
“Official Board”	“governing body [of the congregation]”
“Personal Property”	“other major assets”
“Real Property”	“congregational property”
“review engagement”	“independent review”

Other Updates

Model Trust Deed: The Model Trust Deed has not been included as an appendix in *The Manual* since the 2013 edition; it is now available online at www.united-church.ca/handbooks. *The Manual* contains a plain language version of the Model Trust Deed; see Section G. Congregational Life 3.

Notices: For notices to trustees, the *Trustees Handbook* indicates the best practice is to avoid sending notices by fax and, instead, to give notice by mail or personally. *The Manual* allows notices to be sent by e-mail or courier (not specifically for trustees). The best practice is still to give notices to trustees by mail or personally. See *The Manual*, Congregational Life 3.6.2 for more information on the correct way to give notice of a trustees’ meeting.



Sample Amalgamation Checklist

Activity	Assigned Person	Timing
1. Review Manual, Trustees Handbook, and any Presbytery Property Guidelines and Procedures, and add to the items set out below. This is a summary, and reference should be made to the original documents.		
Structure and Governance of New Trustee Board		
<i>The Manual</i> indicates that all the real property and personal property of the former congregations become property of the new congregation, so one board is required post-amalgamation.		
2. Determine nature of trustee board required in the new structure.		
3. Conform the responsibilities and mandate of the Board of Trustees, Finance, Stewardship, Property, and Administration committees and what responsibilities are allocated to each committee and reserved by the Implementation Committee. (Some of the items identified within should shift to other committees depending on their mandate.)		Implementation Committee
4. Ascertain the present trustees who are willing to continue to stand for nomination to the new board)—may need to adjust numbers of existing trustees of both congregations, which can be done at the annual meeting preceding the amalgamation.		
5. Through a nomination process, recruit additional trustees based on vacancies with reference to skill set and succession.		
6. Determine who from the ministry personnel wishes to be a member of the board (can be both/all ministers).		
7. Identify a chairperson for the Board of Trustees. Ministry personnel has right to chair if they choose.		
8. Motion to elect new Board of Trustees passed by new congregation.		
9. Update new signing officers at financial institutions for trustee accounts.		
Policies		
10. Review and conform investment policy for new congregation. Present for approval at congregational meeting of new congregation.		

Activity	Assigned Person	Timing
11. Review and conform policy concerning the nature of a gift that will and will not be accepted by the trustees of the new congregation (gifts that have too many conditions attached or do not fit within our Vision/Mission/Values may be rejected).		
12. Develop policy on term of office for trustees.		
Investments		
13. Review investments of each congregation together to manage credit and interest rate risk and to manage cash flow requirements of new congregation.		
14. Review nature of Funds with restrictions (e.g., Housing Allowance Fund).		
15. Review nature of trust agreements and other directions received by donors with respect to the restricted funds.		
16. For Special Funds, determine whether it is an "In Trust" fund or a fund that is part of the operating account.		
17. Obtain letters of good standing from Erik Mathiesen of United Church General Council Office to provide to the financial institutions allowing the new congregation to assume ownership of the investments, etc.		
18. Work with Finance Committee to ensure the funds are accounted for in accordance with the accounting policies adopted by the new congregation.		
19. Decide whether there is a reason to keep two investment advisers—we currently have RBC and CIBC as our advisers.		
Insurance Policies		
20. Review building and contents insurance to account for personal property being relocated.		
21. Liability insurance policy to be reviewed and refreshed.		
22. D&O insurance to be reviewed taking into account United Church D&O policy.		
PROPERTY MATTERS		
Rental Agreements		
23. Review rental agreements to ensure a clause		

Activity	Assigned Person	Timing
exists allowing for the transfer of the benefits to the new congregation.		
24. Ensure compliance with Income Tax Act re: rental income.		
25. Determine whether approval of the presbytery is necessary for the rental agreements, and obtain approval if required.		
26. Determine resources that are available from the presbytery to assist with these items.		
Property		
We need to manage the relationship with our tenants very carefully. We do not want to find that tenants move elsewhere at the end of their lease based on rumours, etc. This applies to both locations.		
27. Develop a communications strategy with respect to the tenants.		
28. Execute communications strategy.		
Need to understand how the XYZ Avenue property may fit into the overall ministry of the amalgamated congregation—do we keep/dispose of property and timing? Need to understand what can and cannot be done. Also, this evaluation needs to be done as part of the strategic review of the OTHER property. An evaluation needs to be done as to whether it makes sense to relocate to XYZ when the OTHER property is being refurbished.		
29. Develop a long-range strategy on the use and possible disposition of the one property and the refurbishing of the other.		
Background: There are two groups of property. “Real property” includes the land, building, and anything attached to the land or building. “Personal property” includes any object not attached (pews, chairs, tables, computers, etc.). The presbytery needs to approve the disposition of both types of property based on a plan for disposition tabled by the trustees acting at the direction of the congregation.		
30. Review Manual and other documents to ensure we understand the limitations on the use and disposition of real and personal property.		
Personal Property (applicable to both locations)		
31. Develop a long-range strategy on the use and possible disposition of the personal property.		
32. Inventory all personal property.		

Activity	Assigned Person	Timing
33. Identify any special conditions attached to the personal property to determine whether it must be returned to the donor if the intention is to dispose of it, etc.		
34. Propose a list of property to be transferred to the ongoing site, and obtain approval.		
35. Develop a plan of disposition for the excess personal property, including surplus personal property located at either site.		
36. Seek congregational and Property and Environment Commission approval to proceed with plan for personal property.		
Real Property		
If a decision is made to dispose of one property, the following are required. Refer to <i>The Manual, Trustees Handbook</i> , and any Presbytery Property Guidelines and Procedures, as many procedures are required.		
37. Locate surveys.		
38. Search title for the property to ensure there are no liens or other encumbrances.		
39. Determine whether a Level 1 Environmental Assessment is required along with a Letter of Reliance.		
40. Review insurance to ensure there are no notifications, riders required if we are not worshipping at either location.		
41. Draft a strategy to approach presbytery with a view to obtaining an agreement on the "surplus property."		
42. Meet with presbytery to negotiate "surplus property" and related matters, subject to final decision by presbytery.		
43. Determine the motions and congregational meetings that will be required to be submitted and held with respect to property matters.		
44. Identify meetings that will be required with presbytery.		
45. Manage communications with tenants.		
46. Identify a lawyer to act on our behalf that is not related to the congregation(s).		
47. Identify commercial real estate agent who is independent of the congregations.		
48. Obtain copy of presbytery motion approving the disposition of the property.		

Activity	Assigned Person	Timing
XYZ Avenue Property		
49. Monitor developments on the planning application, transportation plans, and development.		
50. Develop draft time line for refurbishing the remaining property with information from <ul style="list-style-type: none"> • members • presbytery • professional advisers 		
51. Develop a position paper on the use of each property.		
52. Monitor Mission/Value statement with a view to reactivating and adding membership from other groups to the Community Space Task Force.		
53. Entertain proposals for choosing architect/project manager to provide initial ideas on the refurbishing (presbytery approval is needed to issue an RFP).		
54. Create communications medium to inventory ideas and needs in the newly refurbished space.		
55. Manage communications with tenants.		
56. Manage communications with presbytery.		
Retention of Records/Archives		
57. Review material and policies of the United Church and the local congregations.		
58. Draft policy for new congregation, have it approved, and communicate it to new leadership team.		
59. Review location identified for the maintenance of records and ensure people are identified to maintain the archives.		
60. Advise presbytery and Conference Archives of the movement of records to a new location.		

CONGREGATIONAL
Board of Trustees
HANDBOOK
2004



THE UNITED CHURCH OF CANADA

Congregational Board of Trustees Handbook, 2004



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Preface

This handbook constitutes in large measure a revision of a previous version of a handbook for the congregational Board of Trustees issued in 1986. The revision was prompted by a recognition that the circumstances both within and beyond the United Church that now face many Trustees are today vastly different from what they were in 1986.

Copies of this handbook are available on the United Church website, www.united-church.ca, and through United Church Resource Distribution and presbytery resource centres.

Trustees may also wish to obtain and read a copy of a companion volume, *Mission and Investing* (2000), which advises Trustees about ethical investments, as well as *2004 Financial Handbook for Congregations* (2004), both of which are available from the same sources.

July 2004

Introduction

The legislation of the General Council of The United Church of Canada with respect to the organization of pastoral charges and congregations and the management of their affairs—a part of what is called the “polity” of the United Church—is found in *The Manual* of The United Church of Canada. *The Manual* contains both the Basis of Union and the By-Laws. The basic law of the United Church is contained in the Basis of Union, which came into force by virtue of *The United Church of Canada Act*. The Basis of Union can be changed by the General Council only with the consent of the presbyteries. The By-Laws can be changed without notice by any General Council or by the General Council Executive pursuant to a change of policy made by the General Council.

Almost all source references in this handbook are to a three-digit section number in the By-Laws or to a paragraph in Appendix II, which contains the United Church’s Trusts of Model Deed. Both the By-Laws and the Appendix are found in *The Manual*.

This handbook attempts to set out in a helpful way, and to explain, the provisions in the By-Laws. It is a resource to be consulted in answering those questions that frequently arise for congregational Trustees. But these contents do not have the same force of law as do the By-Laws. Therefore, it is the By-Laws that are to be used in interpreting the contents of this handbook, and not the other way around.

The Manual is revised and reissued after each General Council. All references in this handbook are to the 2004 edition of *The Manual*. It is important that each Board of Trustees has access to the most recent edition of *The Manual*.

Questions regarding the interpretation of *The Manual* should be addressed to the General Secretary of the General Council, The United Church of Canada, General Council Office, 3250 Bloor St. West, Suite 300, Toronto, Ontario, M8X 2Y4.

Structure of The United Church of Canada, 2004

CONGREGATIONS AND PREACHING PLACES

Almost 3 million members and adherents worship in 3,640 congregations or preaching places across the country.

Pastoral care is provided to some 507,000 known households.

Each congregation has its own Board of Trustees.

PASTORAL CHARGE

Pastoral charges may include one or more congregations under the spiritual leadership of a minister.

There are approximately 2,333 pastoral charges, governed by an Official Board or Church Board or Church Council.

PRESBYTERY

An administrative grouping of pastoral charges in a local area.

Lay and ministerial delegates from the pastoral charges meet regularly to oversee the local work of the church.

There are 91 presbyteries within the United Church.

CONFERENCE

An administrative grouping of presbyteries in a regional area.

Lay and ministerial delegates from the presbyteries meet annually.

Full-time staff in Conference offices work with presbyteries and local pastoral charges. There are 13 Conferences within the United Church.

GENERAL COUNCIL

The United Church's highest administrative Court.

Lay and ministerial commissioners are elected by the Conferences and meet triennially to set United Church policy.

An Executive and Sub-Executive govern between meetings of the Council.

Policy is implemented through full-time staff organized into program and administrative units.

So You're Going to Serve as a Trustee

If you are in the position of having been invited to consider serving as a member of the Board of Trustees of your congregation, or have been newly appointed, and you are wondering whether you are a “good fit” for the task, you might usefully skip to the following questions before reading this handbook through. Skip to questions 1 and 2 regarding the concept of trusteeship in the context of the United Church, question 9 regarding meetings, question 25 regarding term of office, questions 32 to 59 regarding duties and powers, question 60 regarding liability, and question 97 regarding conflict of interest.

You will discover that, while Trustee service is important to sustaining the mission of the congregation, this service, like many services to the church and its people, is relatively low in profile and often unrecognized.

General

1. What is a Trustee?

A Trustee is an individual who, having legal title to property, holds that property in trust for the use and benefit of another individual and owes a fiduciary duty to that other individual. The Trustee holds the property subject to certain restrictions, some of which are general, imposed by legislation or by the common law, and some of which are specific, created when the trust relationship is established.

In the context of the United Church, a Trustee is an individual who, along with the other members of the Board of Trustees for a congregation, holds all of the property of that congregation for the use and benefit of the congregation as part of the United Church. The activities of the Trustees are restricted and governed variously by public statute, the United Church's Trusts of Model Deed, and the lawful directions of the Official Board or Church Board or Church Council and of the other Courts of the United Church having jurisdiction. (See Structure of The United Church of Canada, page 9.)

2. Who owns church property?

This is a simple question to which there is no simple answer. It is often said that church property is owned by the congregation, or that church property is owned by the United Church. Neither claim is correct. The complication arises from a mistaken understanding of ownership as a unitary concept.

We typically understand ownership of a thing to embrace the right to do what we want with that

thing, including selling it when we want and, if we do sell it, the right to do what we want with the proceeds. But ownership is more helpfully understood as a bundle of rights, some of the component "sticks" of which may be held by different parties.

Congregational property is held by Trustees; they have the title. The Trustees hold the property for the use and benefit of the congregation as part of the United Church. The Trustees must follow the lawful directions of the Official Board or Church Board or Church Council. The Trustees cannot deal with certain property without first obtaining the consent of the presbytery. Where an organized congregation ceases to exist, the Conference determines how the property is to be used. There is a right of appeal from a Decision, to the next Court of the United Church. So it quickly becomes evident that a number of different parties have an actual or potential interest in congregational property. (See Structure of The United Church of Canada, page 9.)

Since congregational property is held by Trustees, they have the foremost responsibility for respecting this understanding of ownership and acting in accordance with its ramifications. It is therefore important that the role and responsibility of the Board of Trustees be clearly understood.

3. What is the Trusts of Model Deed?

The Trusts of Model Deed, or Model Trusts Deed, is a document of general applicability that sets forth the trusts upon which property is held

by Trustees for the use and benefit of a congregation. The Trusts of Model Deed is a schedule to the Dominion (federal) and provincial legislation that created The United Church of Canada, and appears as Appendix II in *The Manual*. It is there presented in two columns, column one being the short form of the trusts, and column two being the full text of the trusts. Column one is not a reliable summary of what is in column two!

4. Doesn't the Trusts of Model Deed refer exclusively to land and buildings?

No. All lands, premises, and Real Property and Personal Property held or acquired in trust for or for the use of a congregation are to be held, used, and administered under the Trusts of Model Deed. (Basis of Union, sections 5.3 and 5.13; By-Laws, section 265)

The definitions section of the By-Laws contains the following definitions of Real Property and Personal Property:

“Real Property” means land, buildings, and anything else affixed to or growing on land or buildings, and rights relating to these.

“Personal Property” means all property other than Real Property. Personal Property includes, without limitation, money, investments, furniture, and equipment.

(By-Laws, section 001)

It is evident from these definitions that there is nothing that is not included in either Real Property or Personal Property.

5. Are there any exceptions?

The only exceptions are for property of former Congregational congregations and Real Property

of some former Presbyterian congregations, held prior to Church Union on June 10, 1925.

Our polity provides that any property or funds owned by a congregation at the time of Church Union solely for its own benefit and not for the benefit of the denomination of which it formed a part shall not be held under the Trusts of Model Deed unless the congregation decides that it is so to be held. (Basis of Union, section 5.4; By-Laws, subsection 266(a))

This exception applies to property of a congregation of the former Congregational Churches. The exception does not apply to Real Property of a former Methodist congregation, as under legislation affecting the Methodist Church the denomination had an interest in the Real Property of all Methodist congregations. The exception does not apply to the Real Property of a former Presbyterian congregation, except in Alberta and Saskatchewan, as elsewhere the provincial statutes incorporating the Board of Trustees of the Presbyterian Church in Canada vested a reversionary interest in such property in the denomination should the congregation cease to exist. (By-Laws, subsection 266(a))

6. Who has to have a Board of Trustees?

There must be one Board of Trustees for each congregation. (By-Laws, section 250)

7. We have a different form of organization in our congregation— Church Board, Church Council, or another form of organization that was approved by the presbytery. Do we still have to have a Board of Trustees?

Yes. Regardless of the form of organization established for a pastoral charge or congregation, there must be a Board of Trustees named as such within each congregation. (By-Laws, sections 250

and 279) The responsibilities of the Board of Trustees may not be assigned or delegated. (By-Laws, sections 206 and 222)

8. We have a multiple-point pastoral charge. Do we have to have a Board of Trustees for the whole charge, as well as one for each congregation?

No, but you may choose to do this. Where congregations in a multiple-point pastoral charge agree at individual congregational

meetings, there may be an additional Board of Trustees for the pastoral charge, with representation from each congregation. (By-Laws, section 250) This makes sense if there is now, or is likely to be, property to the benefit of which the whole charge is entitled. An example might be a manse.

Meetings

9. How often must the Board of Trustees meet?

No guidance is offered in our polity on the frequency of meetings of the Board of Trustees. This would depend on the quantity and variety of property held by the Board of Trustees and the frequency with which that property is dealt with. The Board of Trustees should meet at least annually to prepare a report to the annual meeting of the congregation on the carrying out of its trust responsibilities. Beyond that, the Board of Trustees may itself decide how often it should meet to discharge its responsibilities.

10. Who can call meetings of the Board of Trustees?

Meetings may be at regular times (for example, the second Tuesday of the month) or scheduled by the Board of Trustees at a previous meeting. In addition, meetings may be called by a member of the Order of Ministry settled in or appointed to the pastoral charge, by a Lay Pastoral Minister appointed to the pastoral charge, by the Pastoral Charge Supervisor, or by at least two of the Trustees. (By-Laws, section 251; Appendix II, Trusts of Model Deed, paragraph 8)

11. What is the difference between a special meeting and an ordinary meeting?

A meeting of the Board of Trustees may be one of three kinds: (1) a special meeting, (2) a meeting to remove a Trustee who retains personal liability, or (3) an ordinary meeting. The kind of meeting determines how the notice

of the meeting is to be given and how much notice is to be given.

1. A special meeting of the Board of Trustees is any meeting that will consider as part of its agenda any purchase of, sale of, or other dealing with land (except the sale of burial plots) or buildings, or any legal proceedings in connection with the trust assets. (By-Laws, subsection 252(c); Appendix II, Trusts of Model Deed, paragraph 8) (It would be advisable also to treat as a special meeting any meeting that will consider as part of its agenda any dealing with major Personal Property as determined by the presbytery. Although major Personal Property is not specifically mentioned in subsection 252(c) of the By-Laws or paragraph 8 of Appendix II, the Trusts of Model Deed, inasmuch as dealings with it do require the consent of the presbytery, as do dealings with land, such dealings should probably be given the same consideration.)
2. Another type of meeting is one at which it is intended to remove from office a Trustee who retains some personal liability for payment of any indebtedness with respect to the property of the congregation—for example, if he or she has given a personal guarantee as security for a purchase money loan.
3. All other meetings of the Board of Trustees would be ordinary meetings.

12. How should notice of a meeting be given?

If the meeting is to be an ordinary meeting—that is, it is certain that there will be nothing on the agenda dealing with land or buildings or any legal proceedings in connection with the trust assets, nor is it intended to remove from office a Trustee who retains personal liability—then notice may be given by public announcement at a service for public worship. (By-Laws, subsection 252(b); Appendix II, Trusts of Model Deed, paragraph 8) Insertion in the printed order of worship is insufficient; the notice must also be read aloud. It is probably wise to do both so that those in attendance will have some written reminder.

Otherwise, notice must be either personally delivered to each Trustee, or mailed to or delivered to each Trustee at his or her usual place of abode or business. Notice of an ordinary meeting may be given in this manner but does not have to be given in this manner. (By-Laws, subsection 252(a); Appendix II, Trusts of Model Deed, paragraph 8)

13. Can notice be sent by fax?

Although subsection 003(c) of the By-Laws contemplates notice by facsimile transmission, those sections of the By-Laws dealing with meetings of the Board of Trustees nowhere specify that notice may be given by facsimile transmission. So it is best not to assume that the requirement of notice is satisfied by facsimile transmission.

14. How much notice of a meeting has to be given?

It depends on what is to happen at the meeting. If the meeting is one at which it is intended to remove from office a Trustee who retains

personal liability, then there must be at least eight days' notice. (By-Laws, subsection 252(e)) If the meeting is a special meeting, then there must be at least seven days' notice. (By-Laws, subsection 252(c); Appendix II, Trusts of Model Deed, paragraph 8) But if the meeting is an ordinary one, then there need be only at least one day's notice. (By-Laws, subsection 252(b); Appendix II, Trusts of Model Deed, paragraph 8)

Since the scope of the agenda cannot always be determined in advance of the meeting, where feasible, it would be wise always to give at least seven days' notice of a meeting, and to give notice either by delivery to each Trustee personally or by delivery to each Trustee at her or his usual place of abode or business.

Furthermore, the By-Laws provide that, when the time period for giving or receiving notice is seven days or less, then in calculating such time period, a day shall not include Saturdays, Sundays, statutory holidays, and the period between December 25th and January 1st. (By-Laws, section 003)

15. What must be in the notice?

Notice of a meeting is to specify whether the meeting is an ordinary meeting or a special meeting at which it is intended to remove from office a Trustee who retains personal liability, the time, the place, and the purpose of the meeting. (By-Laws, subsection 252(a))

16. What happens if the required notice is not given?

If the notice is defective in terms of how it is given or how much notice is given, or if the notice is defective in its contents, any decisions taken by the Board of Trustees at the meeting may be challenged and in that event could well be overturned. The only saving provision in the

By-Laws provides that no decision taken by the Board of Trustees shall be invalid by reason of any defect of notice arising from inability to ascertain the usual place of abode or business of any Trustee for purposes of mailing or delivery. (By-Laws, subsection 252(d); Appendix II, Trusts of Model Deed, paragraph 8)

17. What is the quorum for a meeting?

If the number of Trustees is nine or fewer, then a majority of that number constitutes a quorum. If there are more than nine Trustees, then five constitute a quorum. (By-Laws, section 253; Appendix II, Trusts of Model Deed, paragraph 9)

18. Does the minister have to be present for there to be a quorum?

Since the Board of Trustees is not a Court of the pastoral charge, there is no requirement, under section 123 of the By-Laws or elsewhere, that the minister be present for there to be a quorum.

19. Can the Board of Trustees meet by telephone conference call?

Yes. This is permitted by section 003.1 of the By-Laws. It may, however, be wise to have a face-to-face meeting for agenda items that are complex or contentious.

Membership

20. Who may serve as a Trustee?

A majority of the members of the Board of Trustees must be members of the United Church; that is, they must be members—by adult baptism or by confirmation or otherwise by profession of faith, or by certificate of transfer—of a congregation of the United Church, not necessarily the one served by the Board of Trustees. (By-Laws, section 255; Appendix II, Trusts of Model Deed, paragraph 9) Ideally, however, members of the Board of Trustees should be members of the congregation served by the Board, as membership indicates both their commitment to the congregation and the seriousness with which they assume their duties as Trustees. Care must be taken to see that the majority of the members of the Board of Trustees continue at all times to be members of a congregation of the United Church. Where this requirement is not satisfied, the situation may be remedied either by removing one or more Trustees and replacing them with new Trustees who are members of a congregation of the United Church, or by electing additional Trustees who are members of a congregation of the United Church.

Otherwise there are no stated restrictions or guidelines on which groups should be represented. Obviously any person under consideration must be trustworthy, able to work effectively as part of a group, and willing to be accountable regularly to the congregation either directly or through the Official Board or Church Board or Church Council. Also, one may wish to have among the members of the Board of Trustees expertise in such areas as insurance and investment. Appointment as a Trustee is often

regarded as an honour extended to senior and long-serving members of the congregation, but it is more than an honour as the associated duties may prove onerous. The thoughtful appointment of Trustees affords the congregation another opportunity to acknowledge, reflect on, and celebrate the diversity of its membership (in terms of such dimensions as age, sex, and race), and to affirm the value it places on inclusivity.

21. How many Trustees must there be?

The number of members of the Board of Trustees is to be determined from time to time by the congregation. That number cannot be less than 3 or more than 15. (By-Laws, section 256; Appendix II, Trusts of Model Deed, paragraph 9)

22. Must the minister serve as a Trustee?

Of the 3 to 15 Trustees, one of the settled or appointed members of the Order of Ministry is to be included by virtue of office. (By-Laws, Section 256; Appendix II, Trusts of Model Deed, paragraph 9) Although only one is required to be included, where there is more than one on staff it is certainly acceptable to include all settled or appointed members of the Order of Ministry. (Settled or appointed members of the Order of Ministry are not members of a congregation but rather members of a presbytery; they would thus be considered members of the United Church for the purposes of satisfying the membership requirement of section 255 of the By-Laws and paragraph 9 of Appendix II, the Trusts of Model Deed.)

23. We have fewer than three Trustees (or we don't have any (living) Trustees). What should we do?

In such a case, the Chairperson or the Secretary of the Presbytery, by virtue of office, along with the remaining Trustee or Trustees constitute the Board of Trustees until successor Trustees are elected at a duly called congregational meeting. (By-Laws, subsection 258(d))

24. We have more than 15 Trustees. What should we do?

Nothing. Where there are more than 15 Trustees—as, for example, after an amalgamation of two congregations, where the Board of Trustees is agreed by the amalgamating congregations to comprise all those Trustees on the two prior Boards—all those Trustees remain in office, but no vacancy in the office of Trustee is to be filled until the number of Trustees is reduced below 15, in which case the number shall not again exceed 15. (By-Laws, section 256; Appendix II, Trusts of Model Deed, paragraph 9)

25. How long is the term of office for a Trustee?

There are no stated guidelines. The term of office for members of the Board of Trustees is determined from time to time by the congregation. A rotation of terms is sensible, to ensure some continuity of membership and avoid a wholesale turnover of members. Although a number of congregations make appointments of Trustees for life, this practice is not recommended, since Trustees do not exercise much discretionary power by virtue of their office and experience in exercising their duties is thus not as important as it might otherwise be.

26. We've lost track of who our Trustees are (or we're pretty sure we have no living Trustees). What should we do?

It often happens that there is nothing to prompt Trustees to take an active role in managing the affairs of congregations for decades at a stretch. Therefore, it is important for a congregation to name the members of its Board of Trustees at regular intervals, such as at the annual meeting of the congregation, so everyone knows who the Trustees are, the Trustees themselves are reminded of their role and responsibilities, and there is an opportunity to determine whether any vacancies need to be filled.

If the congregation is unable to ascertain from old minutes who their serving Trustees are, then new Trustees may be elected at a duly called congregational meeting. To take care of any loose ends, at that meeting it would be in order to carry a motion to remove from office such unknown Trustees as may be in office, indemnifying those Trustees who may retain any personal liability.

27. How does a Trustee go about resigning?

The resignation needs to be in writing, addressed to the Secretary of the congregation, as the body that made the appointment, and copied to the Chair of Trustees. The resignation still needs to be accepted by the congregation. That acceptance must be at a congregational meeting called by notice read during public worship on each of the two preceding Sundays on which public worship is held. (So the earliest the congregational meeting may take place is on the day immediately following the second Sunday at which the notice of meeting was read during public worship.) Notice of the congregational meeting may also be inserted in the printed order of worship of the congregation on each of the two preceding Sundays on which public

worship is held. Insertion in the printed order of worship is insufficient; the notice must also be read aloud. It is probably wise to do both, so that those in attendance will have some written reminder. (By-Laws, section 257, also section 112; Appendix II, Trusts of Model Deed, paragraph 9) The notice should state that the object of the meeting is to deal with the resignation of the particular Trustee. The resignation must be accepted by two-thirds of the members of the congregation present at that meeting. (By-Laws, section 257; Appendix II, Trusts of Model Deed, paragraph 9)

28. How is a Trustee removed from office?

Removal of a Trustee from office must happen at a congregational meeting called by notice read during public worship on each of the two preceding Sundays on which public worship is held. (So the earliest the congregational meeting may take place is on the day immediately following the second Sunday at which the notice of meeting was read during public worship.) Notice of the congregational meeting may also be inserted in the printed order of worship of the congregation on each of the two preceding Sundays on which public worship is held. Insertion in the printed order of worship is insufficient; the notice must also be read aloud. It is probably wise to do both, so that those in attendance will have some written reminder. (By-Laws, section 257, also section 112; Appendix II, Trusts of Model Deed, paragraph 9) The notice should state that the object of the meeting is to deal with the removal of the particular Trustee. The removal must be accepted by two-thirds of the members of the congregation present at that meeting. (By-Laws, section 257; Appendix II, Trusts of Model Deed, paragraph 9)

Such an item of business may come before the congregational meeting in one of several ways:

1. When a Trustee dies.
2. When a Trustee submits her or his resignation.
3. As a recommendation from the Board of Trustees, when, prior to completing her or his term of office, a Trustee who was a member of a congregation of the United Church ceases to be a member of some congregation of the United Church so as to render it inexpedient for the individual to remain a Trustee, in the opinion of the other Trustees, expressed by a two-thirds vote of those other Trustees. This may be either because the requirement that a majority of the members of the Board of Trustees must be members of some congregation of the United Church is no longer satisfied, or because the Trustee's ceasing to be a member of some congregation of the United Church makes her or him continuing to serve as a Trustee inadvisable in the opinion of the other Trustees.
4. As a recommendation from the Board of Trustees, when, prior to completing her or his term of office, a Trustee removes to such a distance as to render it inexpedient for the individual to remain a Trustee, in the opinion of the other Trustees, expressed by a two-thirds vote of those other Trustees.
5. As a recommendation from the Board of Trustees, when, prior to completing her or his term of office, a Trustee has failed to attend meetings for a period of not less than a year, so as to render it inexpedient for that individual to remain a Trustee, in the opinion of the other Trustees, expressed by a two-thirds vote of those other Trustees.
6. When the congregation decides, for whatever reason, that it is proper to remove the

Trustee from her or his office of Trustee, and the Trustee has received notice of the meeting specifying that particular object.

(By-Laws, section 257; Appendix II, Trusts of Model Deed, paragraph 9)

No Trustee who is personally liable for payment of any indebtedness with respect to the property of a congregation shall be removed without her or his consent unless indemnified to the individual's satisfaction with respect to any such liability. (By-Laws, section 257; Appendix II, Trusts of Model Deed, paragraph 9) The Trustee alone, acting reasonably, must be satisfied with the arrangement for indemnity.

29. Must vacancies be filled right away?

No. During any vacancy in the office of Trustee, the remaining Trustees have all the powers of the full Board, provided there are at least three remaining Trustees. (By-Laws, section 256; Appendix II, Trusts of Model Deed, paragraph 9)

30. What is the procedure for filling a vacancy?

A vacancy may be filled at the same congregational meeting that accepts the resignation of a Trustee or acts to remove a Trustee. (By-Laws, section 257; Appendix II, Trusts of Model Deed, paragraph 9) So, in the notice of such a meeting, it is wise to specify as the object of the meeting not only the resignation or removal of the particular Trustee but also the election of a successor. The election of a new Trustee as successor must be by two-thirds of the members of the congregation present at that meeting. (By-Laws, section 257; Appendix II, Trusts of Model Deed, paragraph 9)

Only members of the congregation—by adult baptism or by confirmation or otherwise by

profession of faith, or by certificate of transfer—may vote at the election of a new Trustee. Adherents may not vote because the election of a Trustee is specifically excluded from those temporal matters on which adherents may vote with the consent of members. (Basis of Union, subsection 5.8.2; By-Laws, sections 001 and 113)

If no successor is elected at that meeting, another meeting may be called for the object of filling the vacancy. (By-Laws, subsection 258(a)) Notice of that meeting must be issued when requested by any single member of the Board of Trustees, or by seven members of the congregation, or, where there are fewer than three Trustees, by the presbytery. (By-Laws, subsections 258(b) and (d); Appendix II, Trusts of Model Deed, paragraph 9)

The notice calling a congregational meeting for the object of declaring or filling a vacancy or vacancies in the office of Trustee is to be read during public worship on each of the two preceding Sundays on which public worship is held. (So the earliest the congregational meeting may take place is on the day immediately following the second Sunday at which the notice of meeting was read during public worship.) Notice of the congregational meeting may also be inserted in the printed order of worship of the congregation on each of the two preceding Sundays on which public worship is held. Insertion in the printed order of worship is insufficient; the notice must also be read aloud. It is probably wise to do both, so that those in attendance will have some written reminder. (By-Laws, subsection 258(b), also section 112; Appendix II, Trusts of Model Deed, paragraph 9)

The election of a new Trustee as successor at the same meeting at which a resignation or removal of a Trustee is effected requires a vote of two-thirds of the members of the congregation then present. The election of a new Trustee as

successor at a subsequent meeting needs only the votes of the majority of the members of the congregation then present. (By-Laws, subsection 258(a))

31. When can the presbytery appoint Trustees?

The presbytery can appoint Trustees when there are fewer than three Trustees, not including the Chairperson or the Secretary of the Presbytery. Further, the presbytery must first have caused to be held a congregational meeting for the object of electing additional Trustees. If the desired

result is not achieved, at any time after four weeks from the last giving of notice of the congregational meeting, the presbytery may appoint new Trustees. Such appointments shall be communicated to the congregation by notice from the pulpit as soon as is convenient. The appointments are effective from the time of such communication. (By-Laws, section 258(d); Appendix II, Trusts of Model Deed, paragraph 9)

Duties and Powers

GENERAL

32. How much discretion does the Board of Trustees have?

Not as much as one might think. The activities of the Board of Trustees are restricted and governed variously by public statute, the Trusts of Model Deed, and the lawful directions of the Official Board or Church Board or Church Council and of the other Courts of the United Church having jurisdiction.

33. What is required by the Trusts of Model Deed?

To begin with, the Board of Trustees is to discharge the duties and exercise the powers set out in the Trusts of Model Deed. (By-Laws, section 259) Specifically, the Board of Trustees holds property for the use and benefit of the congregation as a part of The United Church of Canada for such religious, charitable, educational, congregational, or social purposes, glebe or burial ground, as the congregation may direct, as for the support and maintenance of public worship and the propagation of Christian knowledge, according to the polity of the United Church. (Appendix II, Trusts of Model Deed, paragraph 1)

34. What happens if a use of the property inconsistent with the uses contemplated by the Trusts of Model Deed is proposed?

The Board of Trustees is obligated not to allow the property to be used for a purpose inconsistent with the uses contemplated by the

Trusts of Model Deed. If such is about to happen, the recourse of the Board of Trustees is not to cooperate in any such dealing, and further, to notify the Official Board or Church Board or Church Council; if that proves ineffectual, then to notify the presbytery to request an investigation and decision, and if that proves ineffectual, then to resign.

35. Who at the local level may give directions to the Board of Trustees?

The Board of Trustees must obey all lawful orders and directions of the Official Board or Church Board or Church Council. (By-Laws, section 259; Appendix II, Trusts of Model Deed, paragraph 3) Whether the Board of Trustees agrees with those directions is irrelevant. The approval of the Board of Trustees is not required. Often, out of courtesy, the Official Board or Church Board or Church Council will couch its instructions to the Board of Trustees in the form of a request rather than a direction. The wording of the instructions does not make them any less a direction to the Board of Trustees. If the Board of Trustees considers those directions to be unwise, and time is not critical, the Board of Trustees could ask the Official Board or Church Board or Church Council to reconsider its directions, but if the Official Board or Church Board or Church Council reissues the same instructions, then the Board of Trustees is obligated to follow them. Those who cannot in good conscience acquiesce to this course of action may wish to submit their resignation, but they cannot block the action that the Board of Trustees is required to take. Individual Trustees are legally obligated to act in good faith.

36. Can anyone at the local level other than the Official Board or Church Board or Church Council give directions to the Board of Trustees?

In certain circumstances the use of property may be approved by the Session or Church Board or Church Council of the congregation. Those circumstances must relate to

1. the use of the church building for benevolent or congregational purposes (Appendix II, Trusts of Model Deed, paragraph 4(a))
2. the use of other buildings for unnamed purposes (Appendix II, Trusts of Model Deed, paragraph 4(e))

37. Can the congregation give directions to the Board of Trustees?

Although it is the congregation that the Board of Trustees serves in the first instance, generally in the law of trusts this does not imply that there is any obligation on the part of the Board of Trustees to follow the directions of the congregation. The Trusts of Model Deed, however, does create such an obligation. Recall that the Board of Trustees holds property for the use and benefit of the congregation as a part of The United Church of Canada, for such religious, charitable, educational, congregational, or social purposes, glebe or burial ground, as the congregation may direct. (Appendix II, Trusts of Model Deed, paragraph 1)

Paragraphs 1 and 3 of the Trusts of Model Deed thus create the possibility of the Board of Trustees receiving conflicting instructions. Both the congregation and the Official Board or Church Board or Church Council have the right to give directions. This may create problems, particularly in the case of a multiple-point pastoral charge, where the Official Board or

Church Board or Church Council gives directions to the Trustees that are different from the expressed wishes of the congregation. It is up to the Official Board or Church Board or Church Council, in such cases, to determine how much deference to accord the expressed wishes of the congregation. The Board of Trustees is obligated to follow the directions of the Official Board or Church Board or Church Council, whatever it decides.

38. Is the Board of Trustees obligated to follow the directions of anyone beyond the local level?

Yes. The Board of Trustees must obey all lawful orders and directions of the presbytery or the Conference. (By-Laws, section 259; Appendix II, Trusts of Model Deed, paragraph 3)

39. How does the responsibility of the Board of Trustees dovetail with that of other individuals and bodies within the congregation that receive, hold, and disburse monies?

Recall that all lands, premises, and Real Property and Personal Property held or acquired in trust for or for the use of a congregation are to be held, used, and administered by the Board of Trustees in accordance with the Trusts of Model Deed. (Basis of Union, sections 5.3 and 5.13; By-Laws, section 265) Further, Personal Property is defined to include money and investments. (By-Laws, section 001)

At the same time, the Committee of Stewards or equivalent body with those responsibilities, such as a finance committee, is charged with receiving and disbursing monies for the current expenses of the pastoral charge or congregation. (By-Laws, section 166) The Committee of Stewards or equivalent body does not have responsibility for any other monies. The Treasurer for the

congregation, being an officer of the Committee of Stewards, cannot have any greater responsibility (although section 170 of the By-Laws is not as specific as section 166 in this regard).

To carry out its responsibilities, the Committee of Stewards may need to maintain an operating account for the congregation. The monies on deposit in this account would be an amount needed to meet the current expenses of the pastoral charge or congregation as outlined in subsection 166(a) of the By-Laws. The determination of that amount would be based on the approved budget of the pastoral charge or congregation, the day-to-day operating needs of the pastoral charge or congregation, and sound accounting practices. Anything above that amount should be held and invested by the Board of Trustees.

40. Are all gifts, legacies, and such made to congregations to be paid to the Board of Trustees?

The donor may have covered this point in the will or other instrument by which the gift was made. In default of direction, the Official Board or Church Board or Church Council should decide whether the gift is to be invested or used immediately. If the gift is to be invested, the investment must be held by Trustees and the revenue used as the Official Board or Church Board or Church Council may direct. If the gift is to be used immediately, it must be turned over to the treasurer for the congregation, with instructions from the Official Board or Church Board or Church Council as to its use.

41. What happens when the Board of Trustees is offered or given property under terms inconsistent with the Trusts of Model Deed?

Any such terms or conditions must be consistent with the provisions of the Trusts of Model Deed and subordinate to them. Neither the donor nor the Board of Trustees can override those provisions. So the Trustees may find themselves obliged to decline or return a gift that is offered on terms inconsistent with the provisions of the Trusts of Model Deed.

INVESTMENTS

42. What is the responsibility of the Board of Trustees with respect to investments?

For those congregations fortunate enough to have accumulated assets available for investment, the task of investment is assigned to the Board of Trustees. In exercising that responsibility, the Board of Trustees is subject to provincial or territorial legislation governing Trustees.

In governing how Trustees are to manage investments, the Trustee legislation of the provinces and territories takes one of two approaches. Some jurisdictions follow the “legal list” approach, listing the kinds of eligible securities in which Trustees may invest. Others use the “prudent investor” rule, which places a general duty on Trustees to make reasonable investment decisions without undue risk.

43. What is the “legal list” approach to investments, and where does it apply?

Formerly, Trustees were restricted by statute to investing only in securities of the types listed in the statute. Because of the traditional focus on the responsibility of Trustees to preserve the

value of the trust, the list comprised low-risk, government-guaranteed bonds and equities such as “blue chip” common stocks. Mutual funds were not among the permitted investments.

Since 2000, Alberta, British Columbia, Newfoundland, and Nova Scotia have changed their provincial statute governing Trustees to move from the “legal list” approach to the “prudent investor” approach to investments. This leaves Quebec the only province still using the “legal list” approach. Article 1339 of the *Code civil du Québec* lists “presumed sound investments” that Trustees are restricted to making. Mutual funds may be invested in, provided that at least 60 percent of the investments comprising a fund are themselves presumed sound.

44. What is the “prudent investor” approach to investments, and where does it apply?

With the exception of Quebec, all other provinces and territories now use the “prudent investor” approach. In investing trust property, trustees “must exercise the care, skill, diligence, and judgment that a prudent investor would exercise in making investments,” and “may invest trust property in any form of property in which a prudent investor might invest.” (Ontario *Trustee Act*, R.S.O. 1990, c. T.23, ss. 27(1) and 27(2), as amended.)

The Ontario *Trustee Act*, for example, sets out seven criteria trustees must consider in planning the investment of trust property:

1. general economic conditions
2. the possible effect of inflation or deflation
3. the expected tax consequences of investment decisions or strategies

4. the role each investment or course of action plays within the overall trust portfolio
5. the expected total return from income and the appreciation of capital
6. needs for liquidity, regularity of income, and preservation or appreciation of capital
7. an asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries

The legislation states that these seven criteria are in addition to any other criteria that are relevant to the circumstances.

A Trustee is not liable for a loss by reason of continuing to hold an investment that is no longer authorized by the terms of the trust or by general law.

Mutual funds, pooled funds, and segregated funds are specifically permitted by the Ontario legislation notwithstanding that they might be construed as amounting to a delegation of Trustee powers or duties. But Trustees must still take into account the investment criteria listed above when considering investing in mutual funds.

The legislation obliges Trustees to diversify the investment of trust property to the extent that is appropriate to the requirements of the trust and the general economic and investment market conditions.

Trustees are permitted to obtain advice in relation to the investment of trust property, and to rely on that advice where a prudent investor would rely on the advice under comparable circumstances.

The legislation specifies that it does not serve to authorize Trustees to invest in a manner

inconsistent with the terms of the trust—in this case, the Trusts of Model Deed.

A Trustee is not liable for a loss arising from the investment of trust property if the conduct of the Trustee that led to the loss conformed to a plan or strategy for the investment of trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances.

The legislation in the other provinces and territories (except Quebec) is similar to the Ontario legislation in the treatment of the “prudent investor” approach to investments. But Trustees in all provinces and territories should ensure that they are aware of the up-to-date provisions of their own jurisdiction’s legislation.

45. Should the congregation have an investment policy?

Yes. This gives the congregation, through the Official Board or Church Board or Church Council, an opportunity to wrestle with issues such as how much return on those assets it needs, how much risk it is willing to undertake, and whether it wishes to make socially responsible investments only. It also protects the Trustees from becoming the object of ill feeling over investment decisions that don’t pan out as hoped for.

An investment policy sets out financial goals for the investment of church funds, as well as policies for how investment funds are administered. Although individual investment decisions are the responsibility of the Board of Trustees, the investment policy should be considered and approved by the Official Board or Church Board or Church Council.

In developing an investment policy, receiving the advice of lawyers and investment professionals

will help ensure that the policy complies with the trust legislation of the province or territory where the congregation is located and meets the financial needs of the congregation.

Among the points an investment policy may address, depending on the size of the asset portfolio, are

1. the amount of income needed from the fund
2. the level of acceptable risk
3. the mix of different types of assets (fixed income, equities, cash, real estate, community economic development funds)
4. the way the assets will be held (directly or through a financial institution)
5. criteria for evaluating investments, including social and environmental performance and corporate governance
6. roles and responsibilities of those responsible for investment decisions
7. rules for dealing with conflicts of interest
8. the process for regularly reviewing investment performance
9. the process for periodically reviewing objectives and policies
10. reporting to the Official Board or Church Board or Church Council, and to the congregation

Further information may be found in *Mission and Investing*, which is available from United Church Resource Distribution.

TAXES

46. What is the responsibility of the Board of Trustees with respect to taxes?

This relates to taxes such as property taxes on property not exempted, such as a manse. The Board of Trustees is to make sure that the property is not lost through a tax sale by reason of failure to pay property taxes. Although the first line of recourse is not necessarily to pay those taxes out of the trust assets—and the Board of Trustees would need the direction of the Official Board or Church Board or Church Council to do that—the Trustees must assure themselves that those taxes are being paid.

INSURANCE

47. What is the responsibility of the Board of Trustees with respect to insurance?

One of the most important functions of the Board of Trustees of each congregation is to ensure that the congregation carries adequate property and liability insurance at all times. Our polity is silent on the Trustees' responsibility for insurance, but the law courts have held that any Trustee who fails to insure the trust property adequately is deemed personally to be the insurer; that is, the Trustee is personally liable for any insurable loss.

As will be seen below, many questions arise in connection with adequately insuring the trust property. The Board of Trustees must assure itself that some body in authority within the congregation has considered these questions.

If the Board of Trustees is unable to persuade the Official Board or Church Board or Church Council to insure adequately, then it ought to request a resolution exonerating the Trustees

from liability; if that proves ineffectual, then it ought to notify the presbytery; and if that proves ineffectual, then the Trustees ought to resign. The opinion of any resigning Trustee as to necessary insurance coverage cannot be kept quiet, since his or her resignation is not automatically effective but must be accepted at a congregational meeting.

48. Which kinds of insurance ought to be taken out?

1. **Property Insurance** Property insurance insures against the physical loss of or damage to buildings and contents for which the congregation is responsible. Coverage should also include related extra expenses associated with maintaining ongoing operations during the transition after a loss (for example, rental of alternative premises or equipment) and loss of church income due to interruption caused by the loss. Coverage commonly referred to as “all risks,” including flood and earthquake coverage, is the preferred policy type.
2. **Comprehensive General Liability Insurance** Comprehensive general liability (CGL) insurance insures against liability to third parties arising out of bodily injury or personal injury and property damage. Consideration should be given to a broad form CGL policy that includes coverage for errors and omissions in the rendering of or failure to render counselling services. Defence costs should also be provided over and above the limit chosen.

A CGL policy should also have a broad definition of “insured,” including employees, volunteers, and clergy. It should also include, but not be limited to, the following features: non-owned automobile liability, tenants' legal liability, sudden and accidental

pollution, employer's liability, wrongful dismissal, and medical payments.

3. **Crime Insurance** Crime insurance is designed to protect the congregation against loss of money or securities, such as theft overnight or on the way to the bank, by employee fraud or dishonesty, and robbery. The term "employee" should include volunteers while acting within the scope of their duties as such.
4. **Boiler and Machinery Insurance** Boiler and machinery insurance provides coverage for the sudden and accidental breakdown of boilers, pressure vessels, or electrical and mechanical equipment such as air conditioning units, heat pumps, electrical distribution panels, and wiring. A boiler and machinery policy complements the exclusions contained within a property policy. Therefore, this coverage should be carefully considered even if a congregation does not actually have a boiler.
5. **Directors' and Officers' (D&O) Liability Insurance** A D&O policy is intended to protect the personal assets of the officers against a loss for which they may become legally obligated to pay on account of a claim made against them for an alleged or actual "wrongful act."

A "wrongful act" is any error, misstatement, misleading statement, act, omission, breach of duty, or neglect allegedly committed or attempted by an insured individual or otherwise in his or her capacity as an officer of a congregation.

A D&O policy for a congregation should be written on a "non-profit" form. This provides a broader definition of "insured" that includes employees, Trustees, volunteers,

or committee members, and any other person acting on behalf of the congregation or at the direction of an officer of the congregation.

D&O policies are usually written on a "claims made" basis. This means that the policy in force at the time the claim is made, not when the "occurrence" actually took place, applies. These types of policies contain strict claim reporting requirements, which should be discussed with the congregation's insurance broker to ensure the reporting obligations are fully understood.

49. Who within the congregation should pay the insurance premiums?

Although the first line of recourse is not necessarily to pay those insurance premiums out of the trust assets—and the Board of Trustees would need the direction of the Official Board or Church Board or Church Council to do that—the Trustees must assure themselves that those premiums are being paid.

50. Who should be shown as the named insured?

The named insured should be stated as "Trustees of the [full name of congregation]," for example, "Trustees of XYZ United Church."

For comprehensive general liability purposes, the named insured should be further defined to include Trustees of the congregation plus members of the clergy, church officials, employees, and volunteers, while acting within the scope of their duties on behalf of the insured, and any person who was formerly in one of these capacities with respect to acts performed on behalf of the insured. "Acts performed" should include failure or omission to act.

Further, those for whom the congregation has agreed to provide insurance must be included. Examples include landlords of the congregation-occupied properties, secured lenders, and government bodies. Such coverage should, however, apply solely to liability arising out of the operations of the congregation.

51. Should user groups take out their own insurance coverage?

Yes. Organizations or groups using congregational premises should have their own liability policy. Such users might include

- day care, Scouts and Guides, or community groups
- contractors doing work on congregational premises
- neighbouring organizations whose clients have permission to use the congregation's parking lot
- church-related organizations that are separate and distinct entities from the United Church

The congregation should request that the user add the congregation as an additional insured in the user's liability policy, and should obtain a certificate of insurance confirming this addition. Certificates of insurance are effective in two ways. They provide evidence to the congregation that the user does in fact have its own insurance. And when the congregation is added as an additional insured, the user's policy can protect the interest of the congregation. Certificates of insurance may be obtained from the user's broker or insurer. Normally there is no charge for adding a congregation as an additional insured. Certificates of insurance should be kept on file and updated annually before their date of expiry.

52. How much property insurance should be taken out?

Buildings and contents should be insured at full replacement value unless the Board of Trustees has received direction from the Official Board or Church Board or Church Council, with valid reason, to take out some lesser amount of coverage.

53. How much liability insurance should be taken out?

The minimum liability insurance coverage should be \$2 million.

54. Should an inventory of contents be maintained?

Yes. The Board of Trustees should keep an up-to-date inventory of contents in a safe place off church premises. The inventory should show the replacement value of the items to be replaced in the event of a loss. This supplies the data needed for submission of a proof of loss. Once a loss has occurred, it is difficult to remember, describe, and evaluate the lost contents without a complete inventory. A video recording would also complement an inventory list.

55. Should an appraisal of church property be done?

Yes. The Board of Trustees should see that an up-to-date appraisal, showing replacement cost for buildings and significant contents (such as an organ), is kept in a safe place off church premises.

56. What other risk management and insurance tips ought to be followed?

Risk management is the process of protecting an organization's assets and income by reducing

potential losses before they occur, and by minimizing the damage from unavoidable losses that do happen. The steps of risk management include identifying and evaluating risk exposure, eliminating or reducing risks, and financing unavoidable risks by such means as insurance.

Here are some risk management and insurance tips the Board of Trustees may wish to take under advisement. The congregation's insurance broker and insurer will undoubtedly be able to offer more tips addressing the congregation's specific situation.

- Buildings should be checked throughout daily, especially first thing in the morning and last thing in the evening, for security reasons and to detect any damage or loss.
- Consider using a deposit bag to deliver the offering to the bank immediately after it is counted rather than keeping it in a safe on the church premises or at someone's home overnight. Two people should take the deposit bag to the bank.
- The congregation's fire prevention program should include installation and regular maintenance of smoke detectors, fire doors (which should never be blocked open), and fire extinguishers.
- Ushers and Sunday school teachers should be trained in what to do in an emergency for a calm, orderly, and safe evacuation.
- Maintenance staff and volunteers should be made aware of dramatically increased responsibility for pollution of the environment. For example, if a janitor accidentally pours a toxic substance down a drain, the congregation could be automatically liable for the cost of clean-up. There need not be any negligence involved in a spill to create liability. Most liability policies now carry an exclusion for

environmental pollution. Chemicals and flammable materials should be stored in a safe place and manner.

- Congregational insurance policies usually insure only church-owned buildings and contents, and against the liability of the congregation, but do not provide coverage for furnishings and other personal effects of, or against liability of, individuals, ministers, or tenants. All occupants of manses and other congregation-owned buildings should be advised to obtain their own adequate contents and liability insurance coverage.
- The congregation's insurer should immediately be notified of any occurrence or accident that might later give rise to a claim for property damage or personal injury. Many insurers have changed liability coverage from the standard "occurrence" basis to a much more restricted "claims made" basis, which makes prompt reporting all the more important.
- Check with your insurance broker when the congregation is changing its activities or adding property values.
- Insurance policies should be checked regularly with the assistance of a competent insurance broker.

MAINTENANCE AND REPAIRS; IMPROVEMENTS

57. What is the responsibility of the Board of Trustees with respect to maintenance and repairs?

The Board of Trustees should ensure that there is in place within the congregation a definite procedure for maintenance and repairs. Typically this responsibility is delegated to a group within the congregation, such as the Committee of Stewards or a property committee, on which the

Board of Trustees is usefully represented. This committee should recommend repairs and see that they are carried out and paid for by monies provided by the congregation either in its annual expense budget or by special arrangement.

If the Official Board or Church Board or Church Council instructs the Board of Trustees itself to undertake work or to carry out repairs, it must give directions about the payment for that work. If the repairs consist of routine maintenance, that cost should be provided for in the budget adopted at the annual meeting of the congregation. If, however, the repairs amount to renovations, alterations, or extensions, the cost of which will require the congregation to draw upon trust assets or to make a substantial financial effort not contemplated by the budget, there must have been a special congregational meeting to authorize the unbudgeted expenditure.

The Board of Trustees has no authority to undertake work or to carry out repairs, and thus to incur expenses in connection with the property, unless authorized by the Official Board or Church Board or Church Council. The Board of Trustees should, however, ensure that procedures are in place within the congregation for dealing with emergencies so that all reasonable steps are taken to minimize damages as a result of storm, fire, explosion, or other emergency, all of which is a part of the legal responsibility of any Trustee.

If the Board of Trustees considers certain work or repairs necessary, its recourse is to notify the group responsible within the congregation, such as the Committee of Stewards or property committee; if that proves ineffectual, then to notify the Official Board or Church Board or Church Council and request a resolution exonerating the Trustees from liability; if that proves ineffectual, then to notify the presbytery

requesting an investigation and decision; if that proves ineffectual, then to resign. The opinion of any resigning Trustee about necessary repairs cannot be kept quiet, since her or his resignation is not automatically effective but must be accepted at a congregational meeting.

58. Does the Board of Trustees constitute a building committee by virtue of office?

No. Trustees are in a position to be helpful, especially in the areas of finance, experience, and congregational leadership. Their cooperation is needed in securing permission to buy property if more land is to be acquired, in securing permission to mortgage congregational property, and in signing the documents to carry out the undertaking. Some Boards of Trustees might make acceptable building committees, but they are not charged with that duty by virtue of office.

In some congregations, the Board of Trustees is understood to have oversight of major expenditures (repairs other than ongoing maintenance) or expenditures of a capital nature (other than operating expenditures). Again, they are not charged with that duty by virtue of office. A group such as the Committee of Stewards or a property committee is charged with overseeing all repairs, major or minor. True, the need for such work may be pointed out by the Board of Trustees, and indeed must be pointed out by the Board of Trustees, if not attended to promptly. And, depending on the congregation's attitude toward encroaching on capital, the Board of Trustees may be asked to pay for any such expenditures. But its action always depends on receiving directions from the Official Board or Church Board or Church Council.

A congregation desiring to acquire property, to build, or to make extensive alterations must first

obtain the consent of the presbytery, and this consent should be sought before the congregation takes any irrevocable steps toward carrying out its plans. (By-Laws, section 267)

The money for the building must be provided by the congregation. The procedure for raising it could be delegated to the Board of Trustees, but it is not an inherent part of the duties of their office, and others skilled in raising capital funds should be involved. If money is to be raised by mortgage or debenture issue, the Board of Trustees should follow the procedure authorized in the By-Laws and referred to elsewhere in this handbook. The money raised for building purposes may be disbursed by the Board of Trustees in accordance with directions given to it, and money pledged may be collected by it, but this again is not an inherent part of its duties.

A congregation having secured the consent of the presbytery may or may not delegate to the Board of Trustees or to a building committee the authority

- to select a site, a plan, and specifications
- to retain a solicitor and an architect
- to engage a contractor or contractors or workers
- to arbitrate and settle differences with contractors, workers, neighbours, and the general public, including public authorities and others
- to negotiate building loans, including issuing debentures
- to solicit contributions
- to receive contributions
- to make disbursements to contractors, suppliers, and workers on an architect's warrant or certificate

If the congregation does delegate any such powers, it should do so clearly and definitely, and if it desires to withhold certain powers, it should say so. Procedure and authority should be established and defined before specific problems arise and while all parties can be objective.

In order to provide clear lines of delegation of authority and accountability, congregations intending to undertake new construction or extensive alterations often appoint a building committee to plan and carry out the work.

A building committee should include representation from the Committee of Stewards or equivalent, since they will be concerned with financing the enterprise. The committee should also include people competent in determining that the proposed building is well planned, people specially qualified in building work, and people skilled in raising the capital funds that are needed.

An insurance broker should be consulted regarding insurance aspects of any construction projects.

FUNDRAISING

59. May the Board of Trustees issue debentures as a way of raising funds for a building project?

Provided that the Board of Trustees has first received the directions of the Official Board or Church Board or Church Council, and the consent of the presbytery to the mortgaging of congregational property has been given, the Board of Trustees has the power to issue debentures. The repayment of such debentures and the interest thereon may be secured by a mortgage of the congregational property in favour of a Trustee or Trustees for the debenture holders.

The power to issue debentures is very useful, and it is unfortunate that it is not used more often, especially when mortgage loans from lending institutions to congregations are difficult to arrange and congregations both old and new need capital funds. Issuing debentures enables a congregation to gather the required capital from a number of sources instead of seeking one lending institution.

Such debentures can sometimes be issued at a lower interest rate than lending institutions require. They can be purchased by members of the congregation and by others as well. It is necessary to consult with a lawyer to arrange the legal details.

One of the positive consequences of discharging the responsibility to see that adequate insurance coverage is in place is that Trustees then have legal representation and indemnification for any actions in which they are named as defendants in their capacity as Trustees.

Trustees have the right to indemnification out of the trust estate.

(See also the answers to question 44 regarding liability arising from investments, question 47 regarding liability arising from insurance, question 57 regarding liability arising from repairs, and question 85 regarding liability arising from congregational debts.)

LIABILITY

60. What liabilities, if any, does an individual Trustee assume?

The Trusts of Model Deed provides that an individual Trustee shall not be responsible for the failure of any investment made by the Trustees or for anything done in connection with the trust estate. There is, however, an exception where the failure is a result of Trustees' individual acts. So it is important that all actions taken by the Board of Trustees be taken collectively, by motion duly moved, seconded, debated, voted on, and minuted, or by recorded consensus. Further, individual Trustees must account for any monies coming into their hands. An individual Trustee shall not be liable for injury done by others to any of the trust property. (Appendix II, Trusts of Model Deed, paragraph 10)

Organization

61. Who may serve as Chairperson of the Board of Trustees?

Normally, Trustees elect a Chairperson from among themselves, or a nominating committee within the congregation's organizational structure recruits a Trustee for this purpose. This is, however, one instance where the minister has the right to assume the chair. Specifically, the settled or appointed member of the Order of Ministry or the Pastoral Charge Supervisor has the right to preside as Chairperson at all meetings of the Board of Trustees. (By-Laws, section 261; Appendix II, Trusts of Model Deed, paragraph 8) Not only that, but the settled or appointed member of the Order of Ministry or the Pastoral Charge Supervisor may appoint a deputy to act as the Chairperson. (By-Laws, section 261; Appendix II, Trusts of Model Deed, paragraph 8) Presumably, in order to further the empowerment of the laity of the congregation, the settled or appointed member of the Order of Ministry or the Pastoral Charge Supervisor may decide not to exercise those rights. In the absence of the settled or appointed member of the Order of Ministry or the Pastoral Charge Supervisor and of any such deputy, the Trustees present may elect a Chairperson from among themselves. (By-Laws, section 261; Appendix II, Trusts of Model Deed, paragraph 8)

62. Can the Chairperson vote?

No, except in the event of a tie, when the Chairperson may vote to break the tie. (By-Laws, section 254, also section 261; Appendix II, Trusts of Model Deed, paragraph 8)

63. Must the Board of Trustees have a secretary?

Although the office of secretary to the Board of Trustees is nowhere mandated, it would be wise for the Board to appoint a secretary. If the secretary appointed is not a Trustee, that secretary would not have a vote and the Board of Trustees would be responsible for his or her actions. The office of secretary may be combined with that of treasurer.

64. Must the Board of Trustees keep minutes?

Yes. The Board of Trustees is obliged to keep a minute book showing correctly all minutes of its meetings and of resolutions passed and proceedings taken at those meetings. (Appendix II, Trusts of Model Deed, paragraph 7) Instructions to secretaries for writing and keeping minutes of meetings of the Board of Trustees are found in section 092 of the By-Laws. Further information may be found in *Guidelines for Record Keeping in The United Church of Canada*, which is available from the Conference Archives Committee, the Central Archives, and www.united-church.ca/archives/pdf/guidelines.

65. Must the Board of Trustees have a treasurer?

Although the office of treasurer to the Board of Trustees is nowhere mandated, it would be wise for the Board to appoint a treasurer. If the treasurer appointed is not a Trustee, that treasurer would not have a vote and the Board of Trustees would be responsible for her or his

actions. The office of treasurer may be combined with that of secretary.

66. What arrangements should be made for signing officers?

It is advisable that the Board of Trustees require at least two of its number to sign all cheques. Further, it is advisable that the Board of Trustees authorize at least three of its number, preferably specified by office rather than by name, to sign all cheques, so that two authorized signatories are available in the case of the unavailability of a third signatory. No authorized signatory should sign a batch of cheques in advance, since this defeats the safeguard of requiring two signatories. Since for the most part the Board of Trustees cannot delegate its decision-making responsibilities, the authorized signatories may sign cheques only in pursuance of a decision made by the Board of Trustees.

67. Can the treasurer be paid for serving as such?

To honour and preserve the spirit of voluntarism, the United Church does not encourage the practice of paying an honorarium to people carrying out such duties as those of the treasurer of the Board of Trustees.

68. May the Board of Trustees delegate some of its duties to, say, the Chairperson, the treasurer, an investment committee, or an investment manager?

Since the Board of Trustees as a whole has been entrusted with certain duties and responsibilities, generally delegating duties to something less than the entire Board to act on its behalf is improper. Delegating duties to someone outside the Board, such as a paid staffperson, is also

improper. Nor is it sufficient for such delegation to be approved by the Official Board or Church Board or Church Council, since that body is not the only part of the United Church with an interest in seeing the Board of Trustees act in accordance with the Trusts of Model Deed.

This presents a practical problem with respect to investment-related duties: Making a decision regarding an individual investment in a timely manner—say, in response to changed market conditions or opportunities—is not usually compatible with notice requirements for a meeting of the entire Board. This problem has been addressed by legislation in some provinces, whereby trustees are permitted to retain agents for the purpose of investment of trust property provided that doing so is not inconsistent with the terms of the trust, in this case the Trusts of Model Deed. The Trusts of Model Deed does not address such delegation of responsibility.

So the Board of Trustees may delegate its responsibility—for investment only—to, say, the Chairperson, the treasurer, an investment committee, or an investment manager. The enabling legislation contains certain restrictions, however: There must be in place a written plan or strategy, such as an investment policy; the delegation must be only to the extent that “a prudent investor, acting in accordance with ordinary investment practice, would authorize an agent to exercise any investment function”; the Trustees must exercise prudence in selecting the agent; there must be a written agreement with the agent in which the agent agrees to abide by the investment policy and to report at regular stated intervals; and the Trustees must exercise prudence in monitoring the agent. (Ontario *Trustee Act*, R.S.O. 1990, c. T.23, s. 27.1, as amended.) So the Board of Trustees continues to retain significant responsibility for investment decisions.

It would be wise for the Board of Trustees to obtain the informed approval of the congregation if it chooses to delegate to an agent its responsibility for investment decisions.

The provinces that currently have such legislation allowing for delegation of investment decisions are Alberta, British Columbia, New Brunswick, Nova Scotia, Ontario, Prince Edward Island, and Saskatchewan.

Although the other provinces—Manitoba, Newfoundland, and Quebec—and the territories have in their trustee legislation provision for employing bankers, lawyers, and stockbrokers as agents, that legislation does not specifically address investment decisions and contains none of the restrictions referred to above. If delegating investment decisions is contemplated at all in those jurisdictions, those restrictions ought to be observed as part of the responsibility of the Board of Trustees to act with due diligence.

69. Must the Board of Trustees keep accounts?

Yes. The Board of Trustees is obliged to keep accounts showing all monies received and disbursed by them. Further, those accounts must be produced upon the request of the minister, the Chairperson of the Committee of Stewards or equivalent such as the finance committee chairperson, his or her nominee, or the Committee of Stewards or equivalent itself. (Appendix II, Trusts of Model Deed, paragraph 7)

70. Is there any requirement that the accounts of the Board of Trustees be audited?

Yes. This is contemplated, although not required, in paragraph 7 of the Trusts of Model Deed, but is required by section 167 of the By-Laws dealing

with the duties and powers of the Committee of Stewards. An audit is a wise precaution for the protection of the United Church, the congregation, and the Trustees themselves. The audit should be performed annually. The auditor is to be appointed by the Committee of Stewards or equivalent, and should be someone who is at arm's length from the congregation, or at least its governance structure, to avoid the appearance of bias in favour of a particular outcome. The audit should be paid for to ensure objectivity. The audit requirement may be satisfied by retaining an accountant to carry out an audit meeting professional standards, or alternatively a simpler form of audit known in the accounting profession as a "review engagement."

71. How does the Board of Trustees relate to the rest of the congregational governance structure? How is it accountable?

This depends on which form of organization is followed by the pastoral charge.

Where the pastoral charge has an Official Board as described in sections 180 to 190 of the By-Laws, the membership of the Official Board must include one representative from the Board of Trustees. That representative is to be elected by the Board of Trustees. She or he must be a member of a United Church congregation, although not necessarily the one served by the Board of Trustees. In a multiple-point pastoral charge, the appointment of that one representative is to be made by the Boards of Trustees of the congregations acting jointly. (By-Laws, section 183)

Where the pastoral charge has a Church Board as described in sections 200 to 213 of the By-Laws, people elected to leadership positions in the Board of Trustees may be corresponding members of the Church Board. (By-Laws, section

203) It would be incumbent upon the Church Board to decide what privileges that status entails—receiving notice of a meeting, attending a meeting, taking part in the deliberations of the Board, receiving minutes of a meeting. Corresponding privileges do not include an entitlement to make or second motions or to vote on questions.

Where the pastoral charge has a Church Council as described in sections 215 to 223 of the By-Laws, the membership of the Council may include the Chairperson of the Board of Trustees or an appointee, as determined by the pastoral charge. (By-Laws, subsection 219(d))

72. What about Trustee representation on the Committee of Stewards or finance or property committee?

Nothing in our polity requires that the Board of Trustees be represented on the Committee of Stewards or a body such as a finance or property committee that exercises similar functions. But in view of the overlap of interests, the congregation may want to consider this, even if the provision is for no more than corresponding privileges, such as attending meetings or receiving minutes.

73. What about Trustee representation on the Manse Committee?

Representation from the Board of Trustees is to be included on the Manse Committee, a standing committee of the Official Board or Church Board or Church Council. (By-Laws, subsection 243(a)) That representation would be determined by the pastoral charge.

74. How and to whom should the Board of Trustees report?

The Board of Trustees should report regularly—perhaps quarterly—to the Official Board or Church Board or Church Council, and should make a report to the annual meeting of the congregation. Such a report assists the congregation in its financial planning.

That annual report should include the following:

1. A list of Trustees and their addresses, and a statement of how many of the Trustees are members of the congregation or a congregation of the United Church.
2. Recommendations for dismissing individual Trustees, if necessary.
3. A financial statement, including both a statement of receipts and expenditures, and a statement of assets and liabilities. (There is a certain risk, with disclosure of assets, that financial supporters may not be inclined to be as supportive of the congregation's operating fund while the Board of Trustees has significant assets invested. The congregation is, however, entitled to this information. It may be pointed out to financial supporters that the assets of the Board of Trustees constitute a stock, rather than a flow, and as such should be applied to capital expenses and specific projects mandated by the congregation, and not to core operating expenses. It may also be argued that Trustee assets may be needed for a "rainy day." Some congregations may direct that a percentage of interest income be contributed to the operating budget.)
4. Recommendations for specific repairs to the property (but as a courtesy, the group responsible within the congregation, such as

the Committee of Stewards or property committee, should already have been made aware of this).

5. A report on the amount and type of insurance carried, together with recommendations on these.

6. A statement that an inventory and an appraisal of congregational property are up to date and on file in a safe place.

It is recommended that this report, as part of the annual report, be printed and circulated among the members (and adherents) of the congregation prior to the annual meeting of the congregation. (By-Laws, section 114)

Dealing with Congregational Property

75. For what kinds of transactions is the consent of the presbytery required?

The Board of Trustees may not do any of the following:

1. acquire, sell, mortgage, exchange, lease, or otherwise deal with the Real Property of any congregation
2. acquire, sell, mortgage, exchange, lease, or otherwise deal with the major Personal Property of any congregation
3. erect, enlarge, demolish, rebuild, or effect major renovations to any building held or to be held for any congregation

without the prior consent of the presbytery in writing. (By-Laws, section 267; Appendix II, Trusts of Model Deed, paragraph 6)

76. What constitutes major Personal Property?

This is decided by each presbytery for congregations within its jurisdiction. The By-Laws provide that each presbytery is to determine what constitutes “major Personal Property” for the area within its jurisdiction, and is to communicate that determination to each pastoral charge and congregation within its jurisdiction. (By-Laws, subsection 335(a))

77. What constitutes a major renovation?

This too is decided by each presbytery for congregations within its jurisdiction. The By-Laws provide that each presbytery is to

determine what constitutes “major renovations” for the area within its jurisdiction, and is to communicate that determination to each pastoral charge and congregation within its jurisdiction. (By-Laws, subsection 335(a))

78. Who requests the consent of the presbytery on behalf of the congregation?

After having received the directions of the Official Board or Church Board or Church Council, the Board of Trustees makes the formal request to the presbytery for its consent.

79. At what point in the process is the consent of the presbytery required for dealings with property?

To avoid disappointed expectations on the part of the congregation, it is wise for some authorized representative of the congregation to inform the presbytery of the congregation’s intentions well before they are finally determined, and to get a sense of what sort of dealing would meet with the approval of the presbytery and what conditions, if any, might be attached to its consent. Our polity requires that consent be sought in the first instance at the preliminary planning stage, certainly at the time of listing in the case of a sale, and at such other times as the presbytery may direct. (By-Laws, section 267) Before submitting the application, it is wise to find out from the presbytery what supporting material is required, to avoid delays in receiving an answer. Also, be aware that presbyteries need enough lead time to give a considered response to the application.

80. What information does the presbytery require?

The application for such consent is to be in writing. The Trustees are to submit such material as the presbytery may require. (By-Laws, section 267)

For a listing, the terms to be communicated to the presbytery would include the agent, any exceptions, the commission rate, the asking price, and the proposed possession date.

For a sale, the terms to be communicated to the presbytery would include the purchaser, the sale price, the deposit, the balance due, the terms of any mortgage back, conditions, warranties, and the scheduled closing date.

For a purchase, the terms to be communicated to the presbytery would include the vendor, the purchase price, the deposit, the balance due, conditions, warranties, and the scheduled closing date.

For a mortgage, the terms to be communicated to the presbytery would include the principal, the interest rate, the term, payments, and prepayment privileges.

For a lease, the terms to be communicated to the presbytery would include premises and exclusive use premises, fixtures and chattels, rental, commencement date, term, responsibility for taxes, insurance, repairs, rights to assign or sublet, dispute resolution and arbitration, early termination, renewals, and options.

In the case of transactions requiring funds, the application must state the source from which funds will be made available. (By-Laws, subsection 267(a))

In the case of transactions generating proceeds, the application must propose a disposition of the proceeds arising from the transaction, after providing for all costs and payment of indebtedness of the Board of Trustees.

The Board of Trustees must be given directions by the Official Board or Church Board or Church Council in sufficient detail so as to be able to convey the required information to the presbytery with due authority.

81. Why is the consent of the presbytery required?

This requirement is in place not to put up obstacles but to provide a way

1. for congregations to be encouraged and challenged as they pursue wise stewardship of property and develop a sense of mission
2. for presbyteries to offer their wisdom and experience
3. for presbyteries to gain wisdom and experience for subsequent similar applications
4. to safeguard the denomination's interest in the property

82. Is the presbytery supposed to be an active player?

Formally, no. The presbytery is to wait for a proposal and then give or withhold its consent. But a more satisfactory outcome is likely if the congregation and the presbytery work together, or at least are in regular and full communication from the start.

There is one specific instance where working together is mandated. The Official Board or

Church Board or Church Council is to develop, in consultation with the presbytery, a proposal with respect to the disposition of the proceeds from any sale, mortgage, exchange, lease, or other disposition of Real Property or major Personal Property. (By-Laws, subsection 267(b))

83. What procedure does the Board of Trustees follow in requesting the consent of the presbytery?

The following procedure should be followed in carrying out the orders and directions of the Official Board or Church Board or Church Council of the pastoral charge or congregation in connection with any acquisition, sale, mortgage, lease, exchange, construction, enlargement, major renovation, demolition, or rebuilding:

1. A (special) meeting of the Board of Trustees shall be called, giving each Trustee at least seven days' notice in writing, specifying the time, place, and purpose of the meeting.
2. The Board of Trustees should pass a resolution setting out
 - a. the decision to acquire, sell, mortgage, lease, exchange, construct, enlarge, effect major renovations, demolish, or rebuild
 - b. the legal description of the Real Property, or an adequate description of the Personal Property
 - c. the price or costs
 - d. the terms
 - e. the proposed application to be made of the proceeds, or the proposed source of funds

and authorizing application to be made to the presbytery for its consent.

3. The resolution should be entered in full in the minutes of the Board of Trustees. A copy of the resolution should also be made, accompanied by a certificate that should be signed by the Chairperson and Secretary of the Board of Trustees. The format of a certificate of the Board of Trustees asking the consent of the presbytery can be found in Appendix A (page 53).
4. That certificate should be sent at once to the Secretary of the Presbytery.

84. How should title to Real Property be taken?

The conveyance should be made to named individuals, being all of the Trustees of the congregation, in the form normally used in the land registration system in the jurisdiction in which the property is located.

For example, in land registration systems where it is permissible to describe transferees as Trustees, the conveyance would be made in favour of all of the Trustees of the congregation, as follows:

Brown, Mary
 Jones, John
 Smith, Jane
 being all of the Trustees of XYZ United Church,
 a congregation of The United Church of Canada

In land registration systems where it is not permissible to describe transferees as Trustees, the conveyance would be made in favour of all of the Trustees of the congregation, as follows:

Brown, Mary
 Jones, John
 Smith, Jane

and at the time the conveyance is made, each of those Trustees should execute an acknowledgement that they hold the property under the Trusts of Model Deed.

(In Ontario, the Ministry of Consumer and Business Services will accept “Trustees of XYZ United Church” as a transferee, without the individual Trustees being named.)

Since transactions involving registration of documents are authorized by legislation affecting the United Church that is not in frequent use, the Board of Trustees is well advised to consult in advance with both a lawyer and the land registry office in the jurisdiction in which the property is located, to determine how to effect the registration.

85. How should Trustees sign documents?

Trustees are not personally liable for the congregation’s debts unless they specifically undertake to be liable. Their signatures and covenants in their capacity as Trustees bind the property of the congregation and not their own personal assets. To clear away doubt, there should be a recital in the document that the Trustees are acting in their capacity as Trustees and not in any personal capacity. If such a recital is not included, then each of the Trustees should add after their signature the words “as Trustee and without personal liability.”

86. Our Trustees have changed since the property was acquired. What should we do?

This situation is common. Where the current Trustees are not the Trustees in whose names the title to the property is registered, and it is intended either to convey, charge, lease, or otherwise deal with the property by means of a document to be registered, the problem may be

addressed by recitals in the document accompanied by a supporting affidavit, typically one sworn by the “minister in charge” and setting out a full and complete list of the Trustees of the congregation. (By-Laws, section 272)

87. What documentation needs to be attached to the document?

If it decides to give its consent to a transaction, the presbytery will pass a resolution to that effect. The Secretary of the Presbytery will issue a certificate appended to this resolution. The format of a certificate of the Secretary of the Presbytery to the resolution giving the consent of the presbytery is found in Appendix B (page 55). That certificate should then be attached to the document for registration in the appropriate Land Registry Office. (By-Laws, subsection 271(f))

Again, since transactions involving registration of documents are authorized by legislation affecting the United Church that is not in frequent use, the Board of Trustees is well advised to consult in advance with both a lawyer and the land registry office in the jurisdiction in which the property is located, to determine how to effect the registration.

88. Are there any limitations on the term of a lease?

Where a congregation is considering entering into a long-term shared use arrangement with an outside user, it should consult a lawyer to ascertain whether there are any legislated limitations on its ability to do so. For example, in Ontario, the *Religious Organizations’ Lands Act*, R.S.O. 1990, c. R.23, s. 10(1), limits the term of a lease and any renewals to 40 years.

89. Are there any restrictions when the manse is to be rented to someone other than the minister?

It may be that the Official Board or Church Board or Church Council has decided that the manse is not required for the use of the minister or is not desirable for the use of the minister, and has further decided to rent the manse instead and obtained the consent of the presbytery to do this. The Trusts of Model Deed provides that the manse may be rented only with the written consent of the minister. Further, the rental income therefrom must be applied to fund a housing allowance for the minister. (Trusts of Model Deed, Appendix II, paragraph 5)

90. What happens to the proceeds from the sale of a manse?

It may be that the Official Board or Church Board or Church Council has decided that the manse is not required for the use of the minister, or is not desirable for the use of the minister, and has further decided to sell the manse instead and obtained the consent of the presbytery to do this. In parallel with the provisions of paragraph 5 of the Trusts of Model Deed dealing with rental income from a manse, many presbyteries require that all or some of the net proceeds from the sale of a manse be held by the congregational Board of Trustees and invested, the income therefrom going to fund a housing allowance for the minister. In this way an asset that has provided housing is converted into a different asset that provides the necessary housing allowance instead.

In a multiple-point pastoral charge, it may be necessary to ascertain whether the manse being sold was originally held, and perhaps still is held, for a single congregation. If this is the case, then, if, and when the manse is sold, it may be that that congregation—rather than the whole charge—has some entitlement to make proposals on the disposition of the proceeds. (While the charge is receiving the benefit of the manse, it would be appropriate for the charge to pay the operating costs—taxes, insurance, repairs, utilities—but maybe not capital improvements.)

Amalgamating; Disbanding; Ceasing to Exist

91. What does the Board of Trustees have to do when the congregation amalgamates?

Until the effective date of amalgamation, the Board of Trustees takes direction from the Official Board or Church Board or Church Council. The presbytery is to consult with the pastoral charges or congregations that are parties to the amalgamation regarding the disposition of the property, both real and personal.

Amalgamation often reflects to some extent the need to reallocate resources away from traditional congregational ministry in a particular area. That consultation therefore provides an opportunity for the parties to the amalgamation to further the work of the wider church by proposing, for example, that proceeds from the sale of congregational property, beyond that found to be needed locally, be directed toward the Mission and Service Fund or toward presbytery or Conference priorities.

After the presbytery has consulted with the pastoral charges or congregations involved in the amalgamation, but before any amalgamation takes place, the presbytery is to determine what, if any, property of the amalgamating pastoral charges or congregations is no longer needed by the amalgamating congregations, and thus is “surplus.” With respect to that surplus property, the Board of Trustees must follow the directions of the Conference, which may be issued before or after the amalgamation is completed. (By-Laws, subsection 268(b))

Otherwise, with respect to property not determined by the presbytery to be surplus, the Board of Trustees follows the directions of the Official Board or Church Board or Church Council. The Board of Trustees should, however, make itself aware of any conditions to the amalgamation, including conditions respecting the assumption of liabilities or the disposition of assets, attached by the presbytery. (By-Laws, subsection 334(c))

92. In the case of an amalgamation, do the Boards of Trustees of the amalgamating congregations automatically form the Board of Trustees of the amalgamated congregation?

No. A Decision to effect this result often is made by the amalgamating congregations, but the result is not automatic in the absence of such a Decision. Some Decision needs to be made. The amalgamating congregations may decide as part of negotiations to elect a new Board of Trustees, in which case the then current Trustees either resign or are removed from office effective with the amalgamation and the election of a new Board.

Recall that, if there are more than 15 Trustees, all those Trustees remain in office but no vacancy in the office of Trustee is to be filled until the number of Trustees is reduced below 15.

93. In the case of an amalgamation, does the Board of Trustees of each amalgamating congregation need to make a conveyance of property to the

Board of Trustees of the amalgamated congregation?

No. Our polity provides that, where two or more pastoral charges or congregations have been amalgamated, all of the property, both real and personal, including any surplus property not yet disposed of, held by the Trustees of each of the amalgamated pastoral charges or congregations for their respective pastoral charges or congregations shall, from and after the amalgamation, be deemed always to have been property held by the Trustees of the amalgamated pastoral charge or congregation for the amalgamated pastoral charge or congregation, with no conveyance being required from the Trustees of the amalgamating pastoral charge or congregation. (By-Laws, subsection 268(c))

94. How does a congregation cease to exist?

A congregation may cease to exist in one of two ways: either by the presbytery approving a resolution passed by the congregation to disband, or by the presbytery making a Decision to disband the congregation.

A congregation does not cease to exist by reason of no longer functioning as an organized body but rather only after the action of the presbytery. And the presbytery may act to disband a congregation even while the congregation may not have made a Decision to disband, and may indeed wish to carry on.

Congregations do not cease to exist by reason of being parties to an amalgamation but rather continue as the amalgamated congregation.

95. What does the Board of Trustees have to do when the congregation decides to disband?

Until the effective date of the disbanding, the Board of Trustees takes directions from the

Official Board or Church Board or Church Council. The congregation is to submit to the presbytery a proposal regarding the disposition of its property, both real and personal. (By-Laws, subsection 269(b)) The circumstances when a congregation decides to disband provide a unique opportunity for that congregation to further the work of the wider church even after it has disbanded by proposing, for example, that proceeds from the sale of congregational property be directed toward the Mission and Service Fund or toward presbytery or Conference priorities.

If property remains undisposed of by the effective date of the disbanding and no arrangements have been made, then the remaining property is to be applied for such purpose for the benefit of the United Church as the Conference may determine after having consulted with the presbytery. (By-Laws, subsection 270(d); Appendix II, Trusts of Model Deed, paragraph 6) So, after the effective date of the disbanding, the Board of Trustees must follow the directions of the Conference.

96. What does the Board of Trustees have to do when the presbytery has made a Decision to disband the congregation?

When the presbytery has made a Decision to disband the congregation, its remaining property is to be applied for such purpose for the benefit of the United Church as the Conference may determine after having consulted with the presbytery. (By-Laws, subsection 270(d); Appendix II, Trusts of Model Deed, paragraph 6) So, in the event that the congregation is disbanded by the presbytery, the Board of Trustees must follow the directions of the Conference.

Conflict of Interest

97. What about a conflict of interest?

The congregation expects honesty, competence, integrity in decision-making, and care in managing its business from both employees and volunteers in elected positions.

A conflict of interest is defined as a conflict between the personal interest of an elected volunteer or an employee of the congregation (or that of his or her immediate family) and his or her responsibility as an elected volunteer or an employee that could have an impact on the ability of the individual to arrive at an independent decision with regard to the affairs of the congregation. Conflict of interest may exist whether or not a pecuniary advantage has been or may be conferred, and includes both actual and perceived conflicts. Immediate family includes the spouse or spousal equivalent, parents, and children, and may include other family members of the elected volunteer or employee.

If a Trustee is called on to participate in a decision in which the interests of the congregation may conflict with his or her personal interests, he or she shall refrain from participating in the discussion or voting on the decision in order to avoid even the appearance of conflict of interest. People serving in an elected role may do so within their field of professional expertise.

A Trustee must not accept any gift, gratuity, service, or special favour from any person or persons, agent, or business that provides goods and services to the congregation or that seeks to provide goods or services to the congregation in return for remuneration.

If a Trustee discovers that he or she may be in a conflict of interest, he or she must report this to the next meeting of the Board of Trustees.

Appendix A: Certificate of Trustees Asking Consent of Presbytery

[By following this format, Trustees will meet the requirements of section 271 of The Manual, The United Church of Canada (2004 edition). This format may be adapted to suit the local circumstances and, where the document is to be registered at a Land Registry Office, to satisfy the requirements of the Land Registrar.]

IN THE MATTER OF [legal description of Real Property];

AND IN THE MATTER OF [type of transaction] from [party] to [party].

CERTIFICATE OF TRUSTEES ASKING CONSENT OF PRESBYTERY

The United Church of Canada Act, [statute reference]

The Manual (2004 edition), section 271

We, the undersigned, do hereby certify that the following is a just and true copy of a resolution duly passed by the Trustees of [full name of congregation], a congregation of The United Church of Canada and part of the [full name of pastoral charge] Pastoral Charge, at a meeting of the Board of Trustees duly held for that purpose at [place of meeting], on the [day] day of [month], [year].

“Moved by [full name of mover], seconded by [full name of seconder], that the Trustees of [full name of congregation], a congregation of The United Church of Canada and part of the [full name of pastoral charge] Pastoral Charge, having received the direction of the [Official Board or Church Board or Church Council] of the said pastoral charge to do so, request the consent of [name of presbytery] Presbytery:

- (1) to the [type of transaction] of certain Real Property, the legal description of which is [legal description of Real Property], and the municipal address of which is [municipal address of Real Property], pursuant to an agreement between the Board of Trustees of [full name of congregation], a congregation of The United Church of Canada, as [capacity], and [other party], as [capacity], dated the [day] day of [month], [year], and subject to presbytery approval, the terms of which are as follows:

[for a listing, the terms would include the agent, any exceptions, the commission rate, the asking price, the proposed possession date]

[for a sale, the terms would include the purchaser, the sale price, the deposit, the balance due, the terms of any mortgage back, conditions, warranties, the scheduled closing date]

[for a purchase, the terms would include the vendor, the purchase price, the deposit, the balance due, conditions, warranties, the scheduled closing date, the source of funds]

[for a mortgage, the terms would include the principal, the interest rate, the term, payments, prepayment privileges]

[for a lease, the terms would include premises and exclusive use premises, fixtures and chattels, rental, commencement date, term, responsibility for taxes, insurance, repairs, rights to assign or sublet, dispute resolution and arbitration, early termination, renewals, options]

- (2) [in the case of transactions generating proceeds] to the following disposition of the proceeds arising from the transaction: [disposition of proceeds]”

and in pursuance of the said resolution, we hereby apply to [name of presbytery] Presbytery for its consent to the [type of transaction].

Dated this [day] day of [month], [year].

[full name of presiding Trustee], Presiding Trustee

[full name of Secretary], Secretary

Appendix B: Certificate of Secretary of Presbytery to Resolution Giving Consent

[This format may be adapted to suit the local circumstances and, where the document is to be registered at a Land Registry Office, to satisfy the requirements of the Land Registrar.]

IN THE MATTER OF [legal description of Real Property];

AND IN THE MATTER OF [type of transaction] from [party] to [party].

CERTIFICATE OF SECRETARY OF PRESBYTERY TO RESOLUTION GIVING CONSENT

The United Church of Canada Act, [statute reference]
The Manual (2004 edition), section 271

I, [full name of Secretary of the Presbytery], of [place of residence], do hereby certify and declare as follows:

1. That I am the Secretary of [name of presbytery] Presbytery, in the [name of Conference] Conference of The United Church of Canada;
2. That the following is a just and true copy of a resolution duly passed by the said presbytery at a meeting of the said presbytery held at [place of meeting], on the [day] day of [month], [year];

“Moved by [full name of mover], seconded by [full name of seconder], that [name of presbytery] Presbytery give its consent:

- (1) to the [type of transaction] of certain Real Property, the legal description of which is [legal description of Real Property], and the municipal address of which is [municipal address of Real Property], pursuant to an agreement between the Trustees of [full name of congregation], a congregation of The United Church of Canada, as [capacity], and [other party], as [capacity], dated the [day] day of [month], [year], and subject to presbytery approval, the terms of which are as follows:

[for a listing, the terms would include the agent, any exceptions, the commission rate, the asking price, the proposed possession date]

[for a sale, the terms would include the purchaser, the sale price, the deposit, the balance due, the terms of any mortgage back, conditions, warranties, the scheduled closing date]

[for a purchase, the terms would include the vendor, the purchase price, the deposit, the balance due, conditions, warranties, the scheduled closing date]

[for a mortgage, the terms would include the principal, the interest rate, the term, payments, prepayment privileges]

[for a lease, the terms would include premises and exclusive use premises, fixtures and chattels, rental, commencement date, term, responsibility for taxes, insurance, repairs, rights to assign or sublet, dispute resolution and arbitration, early termination, renewals, options]

(2) [in the case of transactions generating proceeds] to the following disposition of the proceeds arising from the transaction: [disposition of proceeds]”

[for a purchase] the said Real Property to be held by the Trustees of [full name of congregation], a congregation of The United Church of Canada and part of the [full name of pastoral charge] Pastoral Charge, in trust for the use and benefit of the congregation of [full name of congregation] as a part of The United Church of Canada.”

3. [if true] The Real Property referred to in the above resolution is within the bounds of [name of presbytery] Presbytery;
4. The said Real Property is held by the Trustees of [full name of congregation], a congregation of The United Church of Canada and part of the [full name of pastoral charge] Pastoral Charge, in trust for [full name of congregation] as a part of The United Church of Canada;
5. The said congregation and pastoral charge are subject to the oversight of [name of presbytery] Presbytery.

Dated this [day] day of [month], [year].

[full name of Secretary], Secretary

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