

Welcome!
Dealing with Churches
by
Richard Black

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**DEALING WITH CHURCHES:
SALES, PURCHASES, AND LOANS
BY RELIGIOUS ORGANIZATIONS**

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WHAT IS THE EASIEST CHURCH TRANSACTION TO HANDLE?

ROMAN CATHOLIC CHURCH

- Basic geographical unit of the Church is the Diocese.
- Each Diocese is presided over by a Bishop.
- Bishop has complete and automatic authority over all Church property within his Diocese (no resolution needed!).
- Authority passes from Bishop to Bishop.
- Title is taken in and conveyed by the Bishop by name, e.g. "The Most Reverend Gregory M. Aymond, Bishop of Austin, and his successors in office." (continued)

ROMAN CATHOLIC CHURCHES continued

- Land titled in the name of a parish church is still controlled by the Bishop (example: defunct church).
- To be distinguished: Affiliated organizations, such as Knights of Columbus, are independent entities similar to fraternal organizations.

PROTESTANT CHURCHES: DIFFERENT ENTITIES, DIFFERENT DENOMINATIONS, DIFFERENT RULES

Beginning questions in any church transaction:

1. "What kind of legal entity is your local church?"
2. "Does your church have any bylaws, constitution, or other governing document that affects its real estate transactions?"
3. "Is your local church affiliated with any denomination or larger church organization?"
4. "Does any superior authority in your denomination or organization have a role in local church real estate transactions?"

FORMS OF ENTITY FOR PROTESTANT CHURCHES
(there are two):

- Not-for-profit (nonprofit) corporation
- OR
- Unincorporated nonprofit association

(If an unincorporated church incorporates, there is no automatic merger/conversion. The unincorporated association's title must be transferred by deed to the new church corporation.)

TEXAS NONPROFIT CORPORATION:

- Church holds a corporate charter issued by the Texas Secretary of State.
- Church may be exempt from state taxes, not appearing in the Texas Comptroller of Public Accounts database. (Fallback: Confirm active status with the Corporation Division of the Texas Secretary of State—but, first, ask the church for its charter number!)
- Failure to timely file a Periodic Report required by the Secretary of State may result in involuntary dissolution of the corporation (but there is no time limit on reinstatement).
- Loss of its legal status as a nonprofit corporation changes a church to a nonprofit association.
- Title is usually taken directly in the name of the church-corporation, but can also be taken in the name of trustees for the church.

UNINCORPORATED NONPROFIT ASSOCIATION:

- Definition: "an unincorporated organization consisting of three or more members joined by mutual consent for a common, nonprofit purpose." §252.001, TEXAS BUSINESS ORGANIZATIONS CODE.
- Title for an unincorporated association should be taken by named trustees for the association, e.g. "**John Jones, Jim Smith, and Joe Brown, Trustees for Main Street Baptist Church, an unincorporated nonprofit association.**"
- Trustees' capacity is institutional/ex-officio and succeeds to replacement church trustees (no trust agreement required).

WHAT TO DO IF TITLE WAS TAKEN IN THE NAME OF THE UNINCORPORATED CHURCH AND NOT IN TRUSTEES FOR THE CHURCH?

- Fallback procedure: Texas Uniform Unincorporated Nonprofit Association Act (Texas Civil Statutes Art. 1396—70.01, §§ 4, 5, and 6)
- Warning, though: TUUNAA is due to “sunset” on January 1, 2010.

HOW DOES THE TUUNAA WORK?

- Governing body (congregation or board of trustees/elders/deacons) meets to authorize the proposed transaction AND to elect one person as “Authorized Member” of the association.
- Permanent or acting secretary of the governing body executes a “Statement of Authority” concerning the Authorized Member (must be a different person than the secretary).
- Statement of Authority must be filed in real estate records prior to a sale or loan closing and is conclusive evidence of the Authorized Member’s authority to execute documents on behalf of the unincorporated church.
- Statement of Authority remains in force for five years or until a revocation by the governing body is filed in the real estate records.

FYI—

The TUUNAA (Texas Uniform Unincorporated Nonprofit Associations Act) and its procedure using the Authorized Member and Statement of Authority is not limited to churches, but can also be applied other unincorporated organizations holding title in the organization name and not in the names of trustees for the organization, such as:

- unincorporated cemetery association
- unincorporated civic association
- unincorporated social club

SPECIFIC CHURCHES: ASSEMBLY OF GOD

- Individual churches are generally unincorporated
- Title to a church's property is held in the name of Trustees who may act when specifically authorized by the church's congregation
- Any business meeting of the congregation must be the subject of notice given at two prior regular meetings of the church
- Pastor's affidavit acts as a certificate verifying the facts of the congregation's meeting, preceding notice, presence of a quorum, and the specific consent/authorization given to the Trustees
- Deed to Trustees of a local church must recite that, if the congregation disbands or severs its affiliation with the national organization, title completely reverts to the appropriate District Council of the Assemblies of God, Inc.

SPECIFIC CHURCHES: BAPTIST

- Incorporated/unincorporated: no rule.
- Title to real estate is supposed to be held by Trustees in all cases.
- Actions of the Trustees must be approved by a majority of the congregation voting at a called meeting where a quorum is present.
- Notice of the meeting must be announced at a prior meeting of the congregation.
- Affidavit by an acting/permanent church secretary certifies to the pre-meeting notice, presence of a quorum at the meeting, majority vote of approval, and identity of the incumbent trustees who will act for the church.

SPECIFIC CHURCHES: CHURCH OF CHRIST (UNITED)

- Denomination is a "federation" of Congregational Christian Church and the Evangelical and Reformed Church.
- General Synod provides overall governance.
- Individual churches are autonomous and operate under local customs/practices that each congregation is free to modify.
- Incorporated versus unincorporated: no general practice among local churches.

SPECIFIC CHURCHES: CHURCHES OF CHRIST (RESTORATIONIST)

- No organized denomination as such.
- Local churches are entirely independent and autonomous, loosely affiliated with each other through common doctrine.
- Local churches are typically unincorporated associations, meaning that title should be found in the names of Trustees for the church.
- Local governance is usually by a plurality of church elders elected by the congregation, and the elders function as the trustees holding title.

SPECIFIC CHURCHES: EPISCOPAL CHURCH

- Geographically organized by dioceses presided over by bishops.
- Local churches are usually incorporated.
- Parish church congregation meets to give general authority/approval to the Church Vestry.
- Vestry approves specific transaction and authorizes the church's Senior and Junior Wardens to execute transaction documents.
- Transaction documents must be supported by resolution of the Vestry Chairman and Clerk certifying actions of the congregation and Vestry.
- Deeds of Trust given by parish church require joinder by the President and Secretary of the Protestant Episcopal Church Council of the Diocese.

SPECIFIC CHURCHES: LATTER-DAY SAINTS, CHURCH OF JESUS CHRIST OF (MORMON)

- Denomination is one unincorporated religious society.
- Local churches are unincorporated associations that do not hold title to real estate.
- Title to church real estate is held by the **Corporation of Presiding Bishop of the of the Church of Jesus Christ of Latter-day Saints**, a "corporation sole" chartered in the State of Utah.
- Corporation (i.e. Presiding Bishop) has authority to dispose of real estate in the Corporation name without approval of local church members.
- Corporation delegates its authority to agent(s) within Texas through certificate filed with the Texas Secretary of State.

SPECIFIC CHURCHES: LUTHERAN CHURCH (ELCA & MISSOURI SYNOD)

- Two denominations are geographically organized into synods presided over by Bishops (ELCA) or into districts presided over by District Presidents (Mo. Synod).
- Governance is local in incorporated churches.
- Meeting of congregation is required to approve transaction proposed by notice given in a prior meeting/service of the congregation.
- Congregational resolution identifies the incumbent officers and authorizes the congregation's President and Secretary, the Pastor, and the church's Board of Trustees all to conclude the transaction.
- Further resolution of the Board directs the President to execute documents on behalf of the church-corporation with attestation by the church Secretary.

SPECIFIC CHURCHES: METHODIST CHURCH

- Denomination is organized geographically into Conferences under Bishops, further divided into Districts under District Superintendents (minister in the District who assumes the duties for a certain period of time).
- Methodist "Discipline" (book of rules and practices) encourages local churches to be incorporated wherever possible.
- Under the Methodist Discipline, governance is divided between the local congregation and the District Superintendent of the District in which the church is located.
- Regular or called "Charge Conference" or "Quarterly Conference" is a business meeting of the congregation presided over by the District Superintendent or his delegate (continued)

SPECIFIC CHURCHES: METHODIST CHURCH cont'd

- Notice of a Charge Conference must be given from the pulpit or in the weekly church bulletin not less than 10 days prior to the meeting.
- Majority of the Charge Conference must approve action to be taken and must authorize any two officers of its Board of Trustees to execute necessary documents.
- Resolution of the Charge Conference is certified by the Conference Secretary.
- Written consent of both Pastor and District Superintendent must be on or affixed to any deed or Deed of Trust from the local church.*
- Title to abandoned church property reverts to the Trustees of the Methodist Church Conference in which the property is located and may be disposed of by them.

SPECIFIC CHURCHES: PENTECOSTAL CHURCH OF GOD IN AMERICA

- Denomination is incorporated on a national basis and is presided over by Bishop General (f/k/a "Overseer) and divided into Districts under District Bishops.
- Individual congregations function as chapters of the national corporation.
- All transactions within a District are approved and conducted by the District Board of Trustees (i.e. executive committee) composed of District Bishop, District Secretary-Treasurer, and District Presbyter.
- Certificate of resolution and documents are signed by the same individuals in those capacities.

SPECIFIC CHURCHES: PRESBYTERIAN CHURCH

- "Book of Church Order of the Presbyterian Church in America" governs church operations.
- Board of Deacons controls church property, subject to direction by the Church Session, a congregational board composed of the minister and the Ruling Elders.
- Incorporated church: Chairman and Secretary of the Board of Deacons are the chairman and secretary of the corporation, and Board of Deacons is the board of directors.
- Unincorporated church: Board of Deacons functions as trustees of the unincorporated association.

INCORPORATED UNAFFILIATED CHURCHES---BASIC RULES TO FOLLOW WHERE NO ORGANIZING/OPERATING DOCUMENT EXISTS:

- Require voted action/approval by both the congregation and its governing board, if any (authorization of church transaction can begin with congregation's approval and end with board's resolution or vice versa).
- Notice of the congregation's meeting to authorize the transaction should be sufficient to promote attendance, e.g. announcements at two prior meetings/services or announcement and notice in church bulletin/newsletter.
- Action taken by congregation and board must be reduced to certificates of resolution signed and acknowledged by permanent/acting secretary of each body. (continued)

INCORPORATED UNAFFILIATED CHURCHES cont'd:

--Congregation and board resolutions must authorize the church president (who can be the minister) to act for the church in execution of documents, with attestation by the church secretary.

AD VALOREM TAX ISSUES:

--Basic rule for all sales to or by a church: Talk to the local Appraisal District ahead of closing!
--Not all church-owned property is tax exempt, only what is involved in the operation of the church and its ministries.
--Sale to a church for exempt use by a non-exempt person/entity: Appraisal District may compute and accept payment of seller's tax obligation for the current year before annual taxes have been assessed.
--Sale of exempt-use property by a church to a non-exempt buyer: BEWARE OF TEX. TAX CODE §11.201! Once the sale is closed, Appraisal District can roll back and collect 5 years of taxes plus 7% interest. Lien to secure the roll-back amount attaches to the land immediately on transfer of title by the church.

SHARIA-COMPLIANT MORTGAGES:

--Program is designed to comply with Muslim law and its prohibition against payment of interest.
--Program example:
--Program "Financier" provides funds for purchase/refinance.
--"Consumer" is the individual borrower.
--Single-purpose LLC is created to be a co-owner with the Consumer (takes title with Consumer in a purchase or is deeded undivided interest by Consumer in a refinance).
--Undivided interest of LLC declines as Consumer makes payments to Financier. (continued)

SHARIA-COMPLIANT MORTGAGES cont'd:

- Documents:
- Co-Ownership Agreement between Consumer and LLC
- Obligation to Pay from Consumer to LLC
- Co-Ownership Assignment Agreement from LLC to Financier
- Non-Recourse Not from LLC to Financier
- Deed of Trust (Insured Mortgage) from Consumer and LLC to Financier
- Vesting Deed to Consumer and LLC for a purchase (from Consumer to LLC in a refinance)
- Optional: Deed back to Consumer from LLC (usually done to maximize local tax exemptions), to be recorded after Deed of Trust (continued)

SHARIA-COMPLIANT MORTGAGES cont'd:

- Underwriting Requirements:
- Review all documents.
- Confirm that sale, if any, is from an unrelated third party or that lien being refinanced is valid.
- Require joinder in the Deed of Trust by both spouses involved as Consumer and by the LLC.
- Require the deed necessary to vest title in both the Consumer and the co-owning LLC.
- Do not file any deed back from the LLC to the Consumer until the Deed of Trust has been recorded. (continued)

SHARIA-COMPLIANT MORTGAGES cont'd:

- Underwriting Requirements continued:
- Except in Schedule "B" to the terms and conditions of the documents, both recorded and unrecorded (Co-Ownership Agreement is not recorded).
- Confirm that the Co-Ownership Agreement subordinates Consumer's rights to the Deed of Trust (if it does, no exception to the Agreement will appear in the Loan Policy).
- Named Insured in the Owner Policy may be shown as the Consumer and co-owning LLC, as their interests may appear.

--For more detailed information, see Stewart Bulletin No. SLS2009002 dated 2/12/08.

Thank you!

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- Attorneys email bar card number to Ken for CLE credit
- Next Texas TIPS Online September 18, 2008, "Entities and Their Documentation" by Fred Schraub
- Questions/Comments? Email fred.schraub@stewart.com
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