




DALTON
TOMICH



A GUIDE TO LEAVING THE PRESBYTERIAN
CHURCH (U.S.A.) DENOMINATION AND
RETAINING PROPERTY

Lead your Congregation to a New Beginning

Daniel P. Dalton
Dalton & Tomich, PLC
June 1, 2024

The deliberations have taken place. The meetings are complete. The decision has been made. Your local church is leaving the Presbyterian Church (U.S.A) denomination and wants to retain its property.

What happens next?

I have prepared this white paper based on my decades of experience working with hundreds of local churches throughout the United States who have left their denominations and kept their property. It's a process my colleagues and I understand well, which is why we want to work with you and your church to implement it.

This eBook provides answers to many of the most common denominational separation questions. The critical issue your church must address is the ownership of property. Unfortunately, there is no single solution under state law. While this paper will not answer all your questions and should not be interpreted as providing legal advice, I hope you find it helpful as your local church embarks on a new journey. Please, do not hesitate to contact me to answer your specific questions.



Daniel P. Dalton
Attorney at Law
ddalton@daltontomich.com
313.859.6000

DALTON
TOMICH

Leaving the Presbyterian Church (U.S.A) and Retaining Local Church Property

STEP ONE: Form a Leadership Team

The process for leaving the Presbyterian Church (U.S.A.) will be time-consuming and challenging. It is important to create a leadership team with defined responsibilities to lead the congregation out of the denomination and into a new independent church or new denomination.

Ideally, the team should include people with backgrounds in management, finance, and human resources. There should also be a liaison for a legal team. The team should schedule weekly meetings to keep the process moving forward. There should be a record of minutes of meetings and charts showing who does what job until the task is finished.

The team needs to keep information confidential and should not communicate their desire to leave the presbytery until the time is appropriate.

In most situations, the Presbytery will not have any idea about the departure until the church stops paying their apportionments. It is very important to stay ahead of the Presbytery and have your leadership team selected, your new corporation created, and your legal strategy in place prior to announcing your departure. A strong and trusted leadership team is essential to creating an advantageous exit. It is equally important to understand who should not be on the leadership team. Local church Presbytery-appointed clergy, trustees, officers, and other board members, under the Book of Order, are all subject to removal or replacement by the conference. You should assume that once a decision is made to leave the denomination, the Presbytery will become aware of it and will take steps to preserve the property and assets.





STEP TWO: Inventory the Assets of the Church

One of the very first steps in the process is to find out what you own and how the asset is titled with respect to ownership. This is important for two reasons. First, it gives you and your professionals a baseline assessment of the type of property with which you are dealing with. Second, it allows you to re-evaluate your property insurance coverage as the insurance coverage is based on the property you own.

It is important to understand what property the local congregation owns, how the assets are titled, and decide what the church wants to do with its assets when it departs from the congregation.

Knowledge of what the church owns will help the leadership team, the Presbytery, and a court determine the best strategy to move forward and ultimately reach a resolution.

Once the local church has gathered the necessary documents and answered the questions, the attorney can then advise the local church on the best path forward. Furthermore, the attorney can potentially help retain all or a portion of the property and assets. That is why knowledge of what the church has, what they own, and the title of ownership is critically important when creating a legal strategy to move away from the denomination.

STEP THREE: Create a New Church Entity

The church must create and file new articles of incorporation, bylaws, and a statement of faith with the state in which it is located. This separates the formed PC-USA Church from the new Church and allows members to donate to the new entity rather than the old one.

Next, secure an Employer Identification Number from the IRS. In some states, you will need a state tax number. Once you have the tax identification number, you can open a bank account with the articles of incorporation.

Third, hold an initial organizational meeting to adopt bylaws, resolutions and take other steps to protect your property. As there are procedural steps that need to be taken pursuant to state law, it is important to work with someone familiar with state law when adopting your new governance documents.

Finally, apply for tax exempt status through the Internal Revenue Service. This protects your donors and clarifies your status for vendors and others who wish to do business with the church.

It is essential, therefore, to work with an attorney experienced in this area of law. If you do not do this properly, you will not prevail in a declaratory action. Whatever type of religious organization you are starting, you must work with your founding members to write your church's doctrine, beliefs, mission, and purpose.

A key step is to establish the church as a non-profit corporation primarily because it offers protection from personal liability from any debts it may incur.

Different states use different terms for this organizing document: some call it the Articles of Incorporation; other states call it the Certificate of Formation. It is strongly advised that you work with an attorney experienced in non-profit laws in your state.

The certificate, typically filed with the Secretary of State's office in the state in which you incorporate, becomes a public document. It defines what the corporation will do and who will be initially responsible for the management of the corporation. As a religious organization, a church would be considered a non-profit corporation.

In some states, local churches cannot incorporate as a legal entity. Please check your state's laws to make sure that your church can incorporate within your jurisdiction.

Be very clear as to the separation of money from the prior entity to the new entity. Our firm uses a variety of strategies to clearly provide evidence that all new money is being held separately from the prior accounts to make sure that the conference will have no claim over the funds. Please work with a professional in this regard. It is not as simple as opening up a new bank account.

You can find several great resources at the Evangelical Council of Financial Advisors website: ECFA.org. Founded in 1979, ECFA provides accreditation to leading Christian nonprofit organizations that faithfully demonstrate compliance with established standards for financial accountability, transparency, fundraising and board governance. The Christ-centered ministries accredited by ECFA include churches, denominations, educational institutions, rescue missions, camps, and many other types of tax-exempt 501(c)(3) organizations.



STEP FOUR: Prepare for Litigation to Retain your Property

The U.S. Supreme Court has explained that states have “an obvious and legitimate interest in the peaceful resolution of property disputes.” For that reason, civil courts are permitted to address such disputes, but the Religion Clauses in the U.S. Constitution “severely circumscribe [limit] the role that civil courts may play in resolving church property disputes.”

In other words, courts may only go so far. They must take great care that their approach to resolving these disputes neither impinges on the right to engage in religious exercise nor has the effect of establishing a religion.

Prior to making the decision to leave the denomination, the local church will need to understand how the Presbytery views the ownership of property.

There are many factors to consider. It is important to take a breath, outline what needs to be done, and take incremental steps in working toward separation.

A local congregation is free to walk away from the PC-USA at any time. Just like any congregant who decides to leave a congregation, a local church can vote to leave the denomination. That is a rule without exceptions. The critical question is what implications such a decision has on the employees and the property and assets the local church believes it is entitled to (e.g., real property such as buildings, personal property, bank accounts, investments, endowments, and other property bestowed on the local congregation)?

The issue of property is a bit more challenging to address. The PC-USA denomination will point to the “Trust Clause” in the Book of Order.

This argument is centered around the belief that the local churches hold the property and assets “in trust” and therefore, they are not entitled to them once they leave the PC-USA. While the Presbytery will point to the Book of Order to assert control over property, they will pointedly ignore other provisions of the Book of Order that reduces their authority on property.

- **ADDRESSING THE TRUST CLAUSE WITH THE CHURCH**

Most, if not all, members of the local church probably have never heard of the Trust Clause. Many will argue that they and their ancestors funded the property and assets through their faith tithes and gifts. Other people in the local church might say they want no part of a contentious fight and therefore, advocate that the congregation should simply walk away from the property and start anew.

There are strong arguments for each path. If your congregation owns no real estate, holds no major investments, has not grown in several years, and lacks the will or resources to fight a protracted legal battle, then it may be in the congregation’s best interest to walk away from the denomination or negotiate the purchase of the property from the Presbytery. Similarly, if the smaller local congregation is housed in an older building that has significant renovation and upkeep cost, it may be in the best interest of the church to walk away from the building and consider renting a space while the congregation accumulates the necessary funds to build anew.

However, if the local congregation owns its property outright and has the financial means and local support for litigating matters, it may be worth their while to challenge the ownership of real and personal property in state court. The leader of the congregation must gauge and continually support the members on which path they take when moving forward on this issue.

In the event of a local congregation withdrawal or a denominational division, courts must consider many factors before determining the rightful owner of local church property. A breakaway parish may have church doctrine and structural trends on its side, but in the eyes of the law that may not be enough. The discussion below examines what PC-USA congregation needs to keep in mind when contemplating the pursuit of legal remedy.

- **DEFERENCE AND NEUTRAL PRINCIPLES**

Resolution of a church property dispute is critically influenced by the First Amendment, which provides that “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof[.]” This, however, did not provide a clear method for litigating ownership of the property. In the Supreme Court’s 1872 *Watson v. Jones* decision, the Court adopted an approach called “hierarchical deference.”

This method bound courts to defer to the judgment of the highest ecclesiastical tribunal of the denomination. Such an approach was initially thought to be the best way for courts to steer clear of unconstitutionally meddling in religious affairs. Then, the Supreme Court drew attention to another new alternative.

In *Watson v. Jones*, the Court gave passing endorsement for civil courts to examine “the deed or will of the donor, or other instrument by which the property is held” to determine ownership. But it wasn’t until the Court decided *Blue Hull Memorial Church* in 1969 that the Court endorsed “neutral principles,” as the path forward to analyze a religious property dispute. The *Blue Hull Memorial Church* opinion recognized that “there are neutral principles of law, developed for use in all property disputes, which can be applied without ‘establishing’ churches to which property is awarded.”

Although this idea was now established, it was not yet fleshed out. The following year, Justice William Brennan noted that this approach is consistent with the First Amendment only if it is applied “without the resolution of doctrinal questions and without extensive inquiry into religious polity.”

However, in *Jones v. Wolf* (1979), the leading church property case to date, the United States Supreme Court held that neutral principles “rel[y] exclusively on objective, well-established concepts of trust and property law familiar lawyers and judges,” thereby producing outcomes reflecting “intentions of the parties.”

Though the Court has given states the option to choose between deference and neutral principles, most states have adopted the latter.

• STATE LAWS

Within your state, trust laws are one of the most important things to understand. Trusts are essentially a conditional transfer of property. Like contracts, trusts are dependent on mutual consent. In trust law, the one creating a trust is referred to as the settlor. The settlor transfers property to a trustee under certain agreed upon conditions, creating a fiduciary duty for the trustee. This means that the trustee has a responsibility to abide by the terms of the trust in fulfilling the prescribed duties.

State-to-state there are many similarities in trust law, but it is important to remember that states, whether through jurisprudence or statutory interpretation, create their own standards for trust law. Your state’s stance on the revocability of trusts is one of the most important things to consider. In some states, trusts are revocable. In others, they may not be. Most commonly, only the settlor will be able to modify or revoke a trust. But in any event, there are often rules and exceptions that must be analyzed closely for alignment with your situation.

With a conceptual understanding of trusts, a careful analysis of the Supreme Court’s *Jones v. Wolf* decision becomes even more important. That is why you need an attorney that understands this decision to help you move forward. Basic comprehension of this decision may suggest that a denomination may simply adopt an express trust, and that courts will be bound to enforce that trust if it’s in legal form; however, this is not the case. The decision does not state that one party—the denomination—can make such modification. To the contrary, it requires plural participation—meaning the denomination and local congregation—to have reached a mutually understood agreement.

A question most courts will ask in these cases is whether the local congregation consented to the trust. Considering how little attention is given by local congregations to church property management, this may not be as simple a question for the leadership team of a local congregation.





Conclusion

We have outlined a sound strategy for local churches seeking to disaffiliate from the Presbyterian Church (U.S.A.) while retaining their property. Keep in mind the following points and context when thinking through this issue:

Key Considerations:

- **Denominational Trust Clause:** The PC(USA) Book of Order typically includes a trust clause stating that church property is held in trust for the denomination. Understanding the specific language and implications of this clause is crucial in developing a legal strategy.
- **State Law Variations:** While many states employ neutral principles of law, the specific legal precedents and statutes can vary significantly. Thorough research and consultation with experienced legal counsel specializing in religious property law are essential.
- **Preparation is Key:** As you emphasized, meticulous preparation of governance documents and a clear understanding of the legal landscape are crucial for a successful outcome. Proactive planning allows churches to anticipate challenges and avoid potential pitfalls.
- **Communication and Transparency:** Open communication with the congregation and denominational officials can help manage expectations and potentially lead to amicable resolutions.

Additional Considerations:

- **Timing:** Choosing the right time to initiate the process can be critical. Factors like denominational trends, state law developments, and local community dynamics may all play a role in the timing decision.
- **Financial Implications:** Disaffiliation can have financial consequences, such as the loss of denominational support or potential obligations related to pension plans. Churches should carefully assess the financial implications of their decision.
- **Emotional and Spiritual Impact:** Disaffiliation can be emotionally charged and spiritually challenging for both the congregation and its leadership. Open dialogue and pastoral care are essential to navigate this process in a healthy way.

Role of Legal Counsel:

- Experienced legal counsel can:
 - Assess the legal landscape: Research and analyze relevant state laws and case law to develop a tailored legal strategy.
 - Review governance documents: Ensure that articles of incorporation, bylaws, and other documents align with the church's goals for disaffiliation and property ownership.
 - Guide the legal process: File necessary legal actions, such as declaratory judgments or quiet title actions, to secure the church's property rights.
 - Negotiate with denominational officials: Engage in dialogue and potentially negotiate agreements regarding property and financial matters.

*To lead your church to a new beginning,
contact us today.*

www.daltontomich.com
info@daltontomich.com
313.859.6000



About the Author

Daniel P. Dalton is one of a handful of attorneys in the United States who specialize in religious land use matters.

He is the author of several books, including, *Religious Property Disputes and the Law: House of God, Laws of Man*; and *Litigating Religious Property Disputes* both published by the American Bar Association, which covers the topics in this ebook.

Dan litigates these types of cases for most religious organizations throughout the United States. You can reach his office at 313.859.6000 or email Dan at ddalton@daltontomich.com to set up a time to talk about your case.



DALTON
TOMICH