

# ■ Protecting Your Church's Property ■

## Part I

by  
Bruce A. McIntosh, Esq.

It's all over the news: Mainline Christian denominations are rethinking the divinity of Christ, the authority of Scripture, and other once-settled doctrines; they are pursuing progressive stands on gay ordination, marital fidelity, indeed, questioning the very definition of Christian morality. Progressive theology and worldviews have insinuated themselves into the Church.

With social and doctrinal issues taking center stage, many local churches are beginning to reconsider their relationship to the national denominations. But most national churches have created legal barricades, laying claim to the local church's property. Local church leaders wonder what can be done to protect the local church property if the local church decides to leave the national church.

Church property disputes between a local church and a national denomination implicate both state and federal law—law which is in transition.

In 1979, in the case of *Jones v. Wolf*, the U.S. Supreme Court invited national churches to amend their governing documents to assert that local church property is held by the local churches in trust for the benefit of the national church.<sup>1</sup> Most major denominations accepted the invitation.

In particular, the *Constitution* of the Presbyterian Church (USA) was amended in the early 1980s to add provision G-8.0200 which presumes to impose a trust on local church property in favor of the denomination.

Other provisions of the *Constitution* give the presbytery the power to dissolve local churches,<sup>2</sup> to require “constitutional” action by the presbytery whenever a local church wants to sever its ties,<sup>3</sup> and to determine the identity of the “true church” whenever the *presbytery* determines there is a schism.<sup>4</sup>

When combined with the trust provision, these powers create a powerful stick in the hands of presbyteries to keep local churches in line.

Presbyteries across the country have used these provisions as a threat to local churches unhappy with the direction the denomination is taking on social and theological issues.

Indeed, under the guise of “enforcing” the presumed trust, some presbyteries have literally locked the doors of “wayward” churches, kicking out the local members and “claimed” the property for the benefit of the national church. In Hollywood, the presbytery imposed an administrative committee, suspended local control and fired the two senior pastors. In Findlay, Ohio, the presbytery seized the local church's property, forcing the confessing members to start a new church without the property.

In some cases, the local churches have “bought” out the denomination's “trust interest”, often by paying a “tithes”—that is, ten percent of the value of the property. Rivermont Pres. in Lynchburg, Virginia paid \$1.1 million to leave with its property. Other local churches see this for what it is: extortion.

(Over, please.)

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<sup>1</sup> *Jones v. Wolf* (1979) 443 U.S. 595

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<sup>2</sup> G-8.0300

<sup>3</sup> G-8.0600

<sup>4</sup> G-8.0600

Recent case law in California suggests there are steps a local church can take to protect its property. These steps should not be taken frivolously or without careful planning and legal consultation. But if a local church wants to separate from a wayward denomination, it must, at a minimum, start here.

In *California-Nevada Annual Conference v. St. Luke's United Methodist*, the court held that the trust provision in the national church's governing documents could be revoked by the local church.<sup>5</sup>

The United Methodist denomination is governed by its *Book of Discipline*, which contains a trust provision similar to the one found in the PCUSA *Constitution*.

After theological disputes arose between St. Luke's, a local United Methodist church, and the denomination, the general church sued St. Luke's for breach of the presumed trust.

The court held that a trust interest in St. Luke's property in favor of the general church did exist. However, it further found, employing neutral principles of state trust law and a fair reading of the relevant statutes,<sup>6</sup> that such a trust could be revoked. Moreover, the court found that St. Luke's effectively did revoke the trust by amending its articles of incorporation.

After the lawsuit was filed, St. Luke's amended its articles of incorporation to state a change in the purposes of the religious corporation, removing words of fealty to the national church and providing that its property was held for its own benefit only.

The *St. Luke's* case may provide a strategy for protecting church property bound by a presumed trust.

<sup>5</sup> *California-Nevada Annual Conference v. St. Luke's United Methodist* (2004) 121 Cal.App.4<sup>th</sup> 754

<sup>6</sup> Primarily, Ca. Corp. Code § 9142.

A local church contemplating disaffiliating from its general church, but wanting to keep its property, should first carefully review its governing documents—its bylaws and articles of incorporation—and determine whether revisions should be made to remove references of allegiance and subordination to the general church.

It should also review the deeds to its realty, even re-vesting them to remove any language that might be construed as imposing a trust. In addition, the titling and beneficiary information of bank accounts should likewise be reviewed, and modified as necessary.

These steps need to be taken *before* the presbytery gets involved. The local church leaders need to proceed cautiously, being sure to educate the congregation all along the way, knowing that taking even precautionary steps could bring confrontation.

Avoiding confrontation may seem more Christian. But sometimes even when we seek to avoid confrontation, it drops upon us uninvited. It is wise to be prepared. Christian unity should be based on trust, *not a trust clause*. ■



**Bruce A. McIntosh** chairs the Religion and Church Property Law Group for Shapiro Buchman Provine Patton, a law firm in Walnut Creek, California. He is a non-ruling elder in the Presbyterian Church (USA) and a member of Walnut Creek Presbyterian Church. He earned his undergraduate degree from Westmont College and his law degree at Hastings College of the Law, where he was the president of the Hastings Christian Legal Society. Mr. McIntosh has represented denominational and congregational churches and was the lead attorney representing Open Bible Standard Churches in the matter of *Concord Christian Center v. OBSC* (2005) 132 Cal.App.4<sup>th</sup> 1396. You can contact Mr. McIntosh by email at [bmcintosh@sblp.com](mailto:bmcintosh@sblp.com), or by telephone: (925) 944-9700.