

Holy, Holy, Holy, Who Signs This Deed?:

A Review of Real Property Transfer of Religious Organizations

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Some of the fiercest battles can take place within churches - battles which raise unique problems for title attorneys determining the parties who have authority to convey or pledge the real property of a church. Such a fight was highlighted in a recent case, *Fire Baptized Holiness Church of God of the Americas, Inc. v. McSwain*, N.C. App. Sep. 07, 1999 (No. COA98-694); 518 S.E. 2d 558 (1999), in which the Fire Baptized Holiness Church of God of the Americas, Mount Sinai Church voted to end its affiliation with the denomination known as the Fire Baptized Holiness Church of God of the Americas, Inc. The ensuing struggle between the denomination and the local church serves as a reminder that the title attorney must determine the proper authority to execute a deed of transfer for church property or a deed of trust to pledge church property as collateral for a loan. This article is an attempt to review problems inherent in church transfers, and to outline steps designed to minimize the chance for title problems to arise in the future.

A Brief History of Religious Organization Property Disputes

Prior to 1969, North Carolina courts followed dictum from *Kerr v. Hicks*, 154 N.C. 265, 70 S.E. 468 (1911) where the Supreme Court stated the premise that, "[i]n church organizations, those who adhere and submit to the regular order of the church, local and general, though a minority, are the true congregation." Thus, the courts would enforce the will of the majority in the church so long as it remained true to the fundamental usage, customs, doctrine, practice, and organization of the church. To identify the "true congregation," the courts would evaluate whether proper procedures were used for church decisions and whether the majority strayed from church doctrine in instances where a minority remained true to the tenets of the original church. In applying this test, the North Carolina Supreme Court has held that a minority of members of a missionary Baptist church were the true congregation as against a majority. *Reid v. Johnston*, 241 N.C. 201, 85 S.E. 2d 114 (1954); *Dix v. Pruitt*, 194 N.C. 64, 138 S.E. 412 (1927).

Fortunately for the title attorney attempting to identify the proper parties to convey church property, the United States Supreme Court decided in 1969 that civil courts could not award church property based on controversies of religious doctrine and practice by virtue of First Amendment restraints as applied to the states through the Fourteenth Amendment. *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, et al.*, 393 U.S. 440 (1969). Therefore, civil courts must "decide church property disputes without resolving underlying controversies over religious doctrine." *Id.* at 606.

The North Carolina Supreme Court first applied this federal rule of law in *Atkins v. Walker*, 284 N.C. 306, 200 S.E. 2d 641 (1973). While overruling *Reid* and *Dix*, the Court stated, "[w]hat is forbidden by the First Amendment, as now interpreted, is a determination of rights to use and control church property on the basis of a judicial

determination that one group of claimants has adhered faithfully to the fundamental states, doctrines and practices of the church prior to the schism, while the other group of claimants has departed substantially therefrom." *Atkins* at 318. However, the Court noted that it remains the duty of civil courts to resolve property right controversies even though it is church property at issue. In doing so, a court must now determine 1) the governing body of the church, and 2) who the governing body has determined to be properly entitled to the use of the property. *Id.* at 319. The minority can contest the validity of a real property transfer or other action of the congregation which affects such minority's right to use church properties by demonstrating that the church acted outside the scope of its authority or failed to observe its own rules of procedure. *Id.* at 320.

The threshold issue becomes, therefore, a determination of the means by which a church is governed, which is often an analysis of whether the church is congregational or connectional in nature. In *A.M.E. Zion Church v. Union Chapel A.M.E. Zion Church*, 64 N.C. App. 391 (1983); 308 S.E. 2d 73, the court remanded the case to allow the trial court to make a determination of the connectional relationship for the control of the real property. A *congregational* church is an independent, self-governing unit and answers to the majority of congregation membership. Churches which are *connectional* in their government are to some measure controlled by the collective denominational church as a whole. Thus, in *Immanuel Baptist Tabernacle Church of the Apostolic Faith v. Southern Emmanuel Tabernacle Church, Apostolic Faith*, 27 N.C. App. 127, 218 S.E. 2d 223 (1975), the court set aside a deed on the basis that the plaintiff church was congregational in nature and the congregation had never approved, directed, ratified or confirmed a conveyance by its trustees. In order to properly convey the property, a meeting of the congregation was necessary to vote on the conveyance and approve the same in order for the trustees to validly execute and deliver the deed. Employing a similar analysis, the Court of Appeals has upheld the removal of a pastor by finding that the church was congregational in nature and had voted unanimously to remove that pastor. *Graham v. Lockhart*, 42 N.C. App. 377, 256 S.E. 2d 518 (1979).

In a recent decision, the North Carolina Court of Appeals concluded that a local church might be a connectional church for one purpose and a congregational church for another purpose. *Looney v. The Community Bible Holiness Church*, 103 N.C. App. 469, 405 S.E. 2d 811 (1991). And most recently, a local church was determined to have maintained sufficient independence from the denominational church with regard to its real property matters as to be deemed congregational for the purpose of maintaining control over its real property. *Fire Baptized Holiness Church*, N.C. App. Sep. 07, 1999 (No. COA98-694); 518 S.E. 2d 558 (1999). In this case, the local church proceeded to purchase new church premises despite the disapproval of the Bishop and mortgaged the property without denominational permission. The deeds for the new property were recorded in a manner inconsistent with denominational rules and the local church failed to obtain the approval of the denomination. The court cited *Looney* for the proposition that even though the denomination was a connectional church organization, the local church was able and did, in fact, maintain its property outside the connectional system.

Concerns for the Closing Attorney

The development of North Carolina case law on this issue raises concerns for the closing

attorney seeking to verify the parties with the necessary authority to enter into real property transactions on behalf of a religious organization. A determination needs to be made as to the manner in which the church is organized - whether incorporated pursuant to the North Carolina Nonprofit Corporation Act or unincorporated. A church is not required to be incorporated in order to hold title to property. *United Church of God, Inc. v. McLendon*, 81 N.C. App. 495, 344 S.E. 2d 373 (1986); *see also* N.C. Gen. Stat. § 61-2.

If the church is unincorporated, the closing attorney will need to review bylaws or other governing documents that have been approved and reduced to writing. If no bylaws or governing documents exist, the closing attorney must determine whether the church is congregational or connectional in nature and, whether the connectional system has documents setting forth the procedure and authority to conduct real property transactions.

If the church is incorporated, the closing attorney should inquire with the Secretary of State to obtain a certificate of existence. Though the local church may be incorporated, the inquiry as to governance should not end. If the religious organization is a connectional church, the title attorney should request a copy of the denomination's governing procedures with regard to purchase, sale and mortgage of its real property. If the church is incorporated as well as connectional, it may be necessary to make sure that the local church has complied with both the denominational rules and regulations and the local church's bylaws.

For an independent congregational church which meets none of these requirements and has no congregationally approved bylaws, the title attorney should inquire as to whether there has been congregational approval with regard to the real property transaction about to be taken.

Conclusions and Recommendations

For the closing attorney handling the transfer or encumbrance of church real property to rest easy, he must satisfy himself with regard to a number of issues. First, identify the type of entity the local religious organization has established and whether there is a connectional structure. Second, review all governing documents and obtain a certification from the church secretary, board members and/or the minister that all procedural votes outlined in these documents have been properly noticed and voted on affirmatively. Third, review any connectional obligations, and make sure denominational approval is not necessary. If denominational approval is necessary, obtain written verification from the denominational hierarchy that approval has been obtained. Finally, get written verification from the church secretary as to the current membership of the trustees and that the appropriate persons are signing the deed of trust or deed. By adherence to these guidelines, the title attorney should be able to rise from bended knee and walk to the deed vault in confidence.