



Trustees and Trust Deeds

When we think of congregational life, some of the activities that leap to mind are worship services and gatherings for mission, education, prayer, music and fun. Along with these important activities, a congregation will occasionally deal with legal matters, such as buying or selling property. Instead of having all the members of the congregation line up at the office of the realtor or lawyer to sign the necessary documents, the congregation elects trustees to act on its behalf. Each congregation, therefore, needs a trust deed that describes how trustees are chosen and what they are to do. (See Book of Forms, section 149.)

In 2012, the General Assembly approved a [Trust Deed Template](#) for congregations to use that may be adapted to meet their requirements. It is found in Book of Forms Appendix C. A Word version of the template is available at presbyterian.ca/gao in the General Resources drop-down menu. This article answers some questions that might be asked about the template.

149. The property of the congregation is held by trustees appointed by the congregation, in the manner provided for in the trust deed. Trustees must be professing members of the church. Great care should be taken to define clearly the purpose of the trust and the powers, duties, obligations and mode of appointment of the trustees and their successors, and the perpetuation of the trust, this last point being specially important (Declaratory Act: A&P 1991, pp. 250, 37).

Is it a Trust Deed or a Declaration of Trust?

While Book of Forms, section 149, refers to the need for a trust deed, the official name of this document as it appears in Book of Forms Appendix C is “Declaration of Trust.” This title was recommended by legal counsel as a more accurate description of the purpose of the document. The trust deed is a *declaration* that describes how the property of a congregation is held in *trust* for the benefit of the congregation and for the denomination if the congregation is dissolved. Hence, the name, Declaration of Trust. For the purposes of this article, the more common “trust deed” is used.

Does a Session need presbytery permission to prepare a trust deed?

No. Since the polity of our denomination requires all congregations to have a trust deed as part of the good order and effectiveness of dealing with certain legal matters, a congregation can prepare it at any time.



Who approves each trust deed?

The Session should have their trust deed reviewed by legal counsel to ensure it complies with provincial law. It is then approved by the congregation and the presbytery. This gives the presbytery an opportunity to confirm that it is in harmony with the law and general procedures of the church as expressed in Book of Forms, section 173. When a congregation includes the statement that appoints the presbytery moderator and clerk as temporary trustees if a congregation finds itself without its own trustees, the presbytery would need to be aware of this possibility. (See Trust Deed Template, section 4E.) There is a place for the moderator and clerk of presbytery to sign the trust deed once the presbytery has approved it. These signatures indicate the trust deed is complete.

173. The congregation may adopt such further rules and regulations for the administration of the temporal affairs of the congregation as may be deemed advisable, but such rules and regulations shall be of no effect until submitted to, and approved by, the presbytery of the bounds as in harmony with the general procedure of the church.

What is the difference between a trustee and an agent for the congregation? (See Trust Deed Template, section 1B.)

Both terms are defined in the trust deed glossary. Acting as an agent of the congregation means fulfilling tasks as instructed by the congregation. The term, "trustee," implies an added level of responsibility. Imagine that a congregation decides to sell a parcel of land and instructs the trustees to look after the details within specified parameters. Before the sale goes through, the trustees discover that an oil tank lies buried in the middle of the property. As agents, they would fulfil the request of the congregation and sign all the necessary documents to complete the sale. As trustees, they would assume the added responsibility of bringing the existence of the tank to the attention of the congregation so that it can be dealt with in a legal and environmentally responsible way before the land is sold.

How many trustees should a congregation elect? (See Trust Deed Template, section 3C.)

A minimum of three trustees is recommended, but it is not a legal requirement. Having three trustees allows for one to be hang gliding in Switzerland while the others fulfil trustee responsibilities at the church that arise during their absence. Having multiple trustees provides a greater diversity of experience, expertise and wisdom. Nevertheless, it is permissible for a congregation to elect the number of trustees deemed necessary to serve the congregation.



Do the trustees own the church property? (See Trust Deed Template, section 5C.)

Trustees do not own church property. They hold it in trust for the purposes of the congregation while it remains a congregation of The Presbyterian Church in Canada. If the congregation is dissolved by the presbytery, then the property and all assets vest with the Trustee Board of The Presbyterian Church in Canada for the benefit of the denomination.

What does “without limiting restrictions” mean? (See Trust Deed Template, section 5J, and glossary.)

Trustees normally have no authority to decide on the receipt or distribution of bequests or legacies beyond instructions issued by the congregation. “Without limiting restrictions” means congregations may assign trustees additional authority beyond the usual restrictions, such as by giving them permission to make certain decisions regarding bequests.

If the executor for the estate of the late M.T. Banks informed a Session \$50,000 had been left to the congregation, it would be the prerogative of the congregation, under the leadership of the Session, to decide whether to accept the bequest. If the congregation agreed to accept it, and if the trustees are asked to look after it, the congregation would give the trustees instructions regarding how the funds should be held and used, usually with direction to report to the congregation on a regular basis.

It is not compulsory for trustees to handle this type of fund. A congregation may assign this responsibility to the Session, board of managers or a committee appointed for this task.

What does it mean that trustees are not restricted to making investments “authorized by law”? (See Trust Deed Template, section 5L.)

Some corporations are restricted by law regarding the categories of investment they may use. Congregations are not restricted in this way. Trustees, nevertheless, are expected to exercise good judgement on behalf of the congregation.

Can trustees be held liable for their actions? (See Trust Deed Template, section 7.)

Congregations are to indemnify (protect against damage, loss or injury) trustees. That means congregations share responsibility for the activity the trustees carry out on behalf of the congregation. Nevertheless, it is recommended that congregations have directors and officers of liability insurance as part its overall insurance coverage. If a trustee wilfully acts outside the direction of the congregation or outside the law, that trustee could be subject to discipline or face liability.



What if a trustee disagrees with the instructions of the congregation?

If a trustee is directed to take an action they feel is not in the best interests of the congregation, the trustee may ask for the direction to be reviewed. If, after the review, the congregation still wants the trustee to carry out the request, the trustee may choose to comply with the direction or to offer their resignation from the office.

What happens if the title to the church property is in the names of trustees who are no longer trustees?

Sometimes a church property title deed (not to be confused with a trust deed) is in the names of the original trustees who may no longer be trustees or even alive. This should not pose a legal problem. With an extract of a congregational meeting certifying the names of the current trustees, any land transaction can still be facilitated.

Nevertheless, it is recommended that congregations review their property title deed to ensure it is current. It is further recommended that it be registered in the name of "Trustees for the congregation of [Name of Congregation]" to avoid having to change names on the title deed whenever a new trustee is elected. There may be some legal fees associated with this.

What does Declaratory Act: A&P 1991 (pp. 250, 37) say?

A declaratory act is a statement or "declaration" that a General Assembly can adopt that it affirms what it understands the law of the church to be regarding any particular matter. In case you are wondering, the declaratory act noted at the end of Book of Forms, section 149, makes the following five points, all of which are covered by the trust deed.

1. If a trustee shall cease to be a member of the congregation, they cease automatically to be a trustee of that congregation.
2. Trustees have only the power delegated to them by duly called congregational meetings and such power can be amended or withdrawn by another duly called meeting of the congregation. Trustees are accountable to the congregation for the full and faithful performance of tasks delegated to them.
3. Trustees have no power to decide on the receipt or disposition of bequests and legacies. This prerogative remains with duly called congregational meetings.
4. Trustees cannot alter or go beyond the instructions of the congregation.
5. A trustee who cannot, for the sake of conscience or any other reason, carry out the wishes of the congregations must necessarily resign. A trustee is no more and no less than a pen in the hand of the congregation.