

Memorandum

To: Detroit Annual Conference of the United Methodist Church (“DAC”) file;
West Michigan Conference of the United Methodist Church (“WMC”) file;
Bishop; Cabinet

From: Renard J. Kolasa, Chancellor DAC; Andrew J. Vorbrich, Chancellor WMC

Re: **Guidelines for Discontinuation or Abandonment of United Methodist Churches in Michigan**

Date: April 2, 2015/Revised April 24, 2015

This memorandum is intended to provide general guidelines for the discontinuance or abandonment of United Methodist churches in Michigan. This material should not be used without the guidance of an attorney, who may need to make significant changes based on the circumstances of those involved.

The United Methodist Book of Discipline (the “Discipline”) distinguishes between discontinuance and abandonment. The terms have different meanings and application. The correct term should be used when describing an action under consideration.

Discontinuance is a function of the Annual Conference, meeting in session, (provided all other steps have been taken) and does not happen just because a congregation decides to stop their worship services.

1. **DISCONTINUATION.** (Paragraph 2459.2) Discontinuance is an ending, stopping or termination of an entity. If the church plans to discontinue, the DS starts by running through the paragraph 213 process. The DS consults with the "agency assigned the responsibility of the conference parish and community development strategy" while working through the 213 process. Then, if appropriate, the DS makes a recommendation to discontinue. That recommendation includes the future use of the property and where the membership and property ownership shall be transferred. Then, with the consent of the (1) Bishop, (2) majority of the district superintendents, and (3) the district board of church location and building, the annual conference can declare the church discontinued. The Annual Conference is involved only once to act on the DS's recommendation that arrives in front of it with the consent of these three entities. Once the AC votes to discontinue, the Conference Trustees could control the property consistent with the recommendations as to the future use of the property.

The Discipline requires:

A. The DS must guide the local congregation in an assessment of potential under Discipline paragraph 213.

B. A recommendation as to the future use and title transfer of all property must be included in a recommendation for discontinuance. This recommendation is likely to convey all assets to the Conference, but could include leaving the property in the name of the existing local church (for example if the property is a liability due to debts or environmental issues), continuing the local church's legal existence, but terminating its pastoral appointments and activities. This

flexibility may be significant. With worthless property, the best technique may be for the local church to transfer it to third parties. Under 2549.2b), if a church is discontinued by an annual conference without direction concerning the disposition of property, then the property shall be disposed of as if it were an abandoned local church. This may or may not be desirable and should be carefully considered.

C. A recommendation for transfer of the church's membership must be provided.

D. After the above, on a DS recommendation that the local church no longer serves its purposes under Discipline paragraphs 201-204, discontinuance may be declared after approval by all of the following: (1) the Bishop, (2) the majority of the DSs, (3) the district board of church location and building, and (4) the annual conference. The Discipline does not appear to require any approval or vote at the local church level.

F. The Conference trustees are given authority to "assume control" and dispose of the local church assets, to sell assets, to retain proceeds, and to recommend disposition of proceeds. Gifts in trust "pass to" the Conference trustees if not otherwise directed by the annual conference. Discipline paragraphs 2549.3 and 4. This wording could be more specific and clear.

2. ABANDONMENT. (Paragraph 2549.3) If a congregation no longer uses or maintains its building for worship, and it no longer serves the purpose for which it was organized and incorporated, then the bishop, a majority of the cabinet and the district committee on church building and location can declare the property abandoned (3 parties have to agree) and the Annual Conference Trustees may, at that time, assume control of the property. This does not require action of the annual conference session. Once they have control of the property, the Trustees can sell or lease the property and keep the proceeds in accordance with conference policy. It may be appropriate to report this action to the Annual Conference to remove that local church from the roles.

The Discipline requires:

A. Abandonment applies "when a local church property is no longer used, kept or maintained by its membership as a place of divine worship,... and" it no longer serves its purposes under 201-204. Whether both requirements must be met, or only one, is not clear.

B. The consent of the Bishop, majority of DSs, the district board of church location and building. The Discipline does not appear to require any approval or vote at the local church level or approval by the local pastor.

C. The result is that the annual conference trustees "may assume control" of the property and may sell or lease it. Title should not be transferred to the trustees if the property is worthless (e.g. having environmental liability).

It is possible for church property to be abandoned before the congregation is discontinued. In fact, a church could be abandoned without the congregation ever being discontinued. If property is declared abandoned by the three parties listed above, the

Conference Trustees can take over the property at that time (or upon receiving the consent of the third party).

Logically, there would have to be some time between the last worship service and a declaration of abandonment. To declare that the property is no longer used, kept, or maintained as a place of worship, it would seem that there would have to be some period of time after the most recent worship service before anyone could conclude that it was not going to be used again. It is possible that a church would announce that they are planning to never worship again, but in that case, they might have gone through the process of discontinuation. Also, it will take some time to obtain the consent of the three parties listed above, and they will each want to look at the facts surrounding situation for themselves.

3. With either abandonment or discontinuance, the following items are required or recommended:

A. Obtain copies of all deeds, title insurance and/or abstracts of title. The DS must obtain the opinion of legal counsel as to the existence of any reversion or similar restriction on the real property involved. Discipline paragraph 2549.1.

A title search and title insurance should be considered. Are there any debts or environmental concerns regarding any real estate? If so, do not have the conference trustees take title to problem property, but deal with it in the name of the existing church corporation. The new owner would be liable for required environmental cleanup. A Phase I environmental review should be considered. The UM GCFA website has an extensive checklist of concerns to consider regarding real estate transfers.

An abandonment, discontinuance, or dissolution (noted below) does not automatically transfer the assets of a local church. Deeds, bills of sale, changes to brokerage and bank account registrations, assignments of contracts, and other documents must be completed and signed by the appropriate people.

B. Obtain copies of all documents involving gifts to the church. Examples might include charitable gift annuity contracts, charitable trusts, letters transferring memorial gifts to the local church with some restrictions, and the like. An attorney should review these looking for wording that could cause these gifts to be lost or that imposes ongoing obligations. All gifts held in trust (which should include memorial funds) and endowment are to pass as directed by the annual conference via Discipline paragraph 2549.5.

C. Obtain copies of the Articles of Incorporation, all amendments, and the latest Michigan annual report. The legal status of the church involved must be determined. Is it a corporation? Is it in good standing? Copies may be obtained from the Michigan Secretary of State. Some may be available on line.

D. Obtain a detailed list of all assets of the church, including:
i. Address and description of all real estate.

- ii. List of all bank, brokerage and similar accounts, including numbers, access codes and authorized signers.
 - iii. List of all memorial accounts, pending estates, interests in gift annuities or charitable trusts and any restrictions.
 - iv. List of all insurance, including policy numbers and policy limits.
 - v. List of all potential inheritance amounts the church is aware of.
- E. Obtain a list of all the liabilities of the church, including:
- i. Purchase agreements for land or personal property; land contracts.
 - ii. Charitable gift annuity contract obligations.
 - iii. Employment agreements.
 - iv. Any tax obligations.
 - v. Mortgages or loans.
 - vi. Leases.
 - vii. Office equipment contracts.
 - viii. All other contracts the church is a party to.
- F. Obtain and review copies of all written contracts and policies of the local church (employment, leases, utilities, services, product purchases, insurance, employee benefits, warranties, deferred compensation agreements, etc.). The Conference (through its trustees) may end up being liable for these. Be sure there are no gaps in insurance coverage. Will contracts be terminated? Are notices required? Are there any penalties?
- G. Confirm there is no pending litigation for any entity.
- H. Confirm all taxes, apportionments, bills and other obligations are paid to date. This may include federal and state income tax withholding submissions. Most churches are not required to and do not file a federal income tax return (Form 990), but there are exceptions.
- I. Obtain and review copies of any mortgages and other loan documents. Do debts need to be paid off under the documents upon discontinuance/abandonment?
- J. Obtain a list of financial accounts and a copy of signature authorizations. These will need to be changed, closed or transferred when the discontinuance/abandonment occurs.
- K. Obtain the federal identification number of the church.
- L. Obtain keys, safe combinations, security access codes and the like.
- M. List all insurance, review coverage with the providers, and continue or modify coverage as necessary.
- N. Obtain a copy of the IRS determination letter showing the church's tax exempt status if it has one (Most do not, relying on the group exemption of the United Methodist Church).

4. Comply with Michigan civil law requirements. See Discipline paragraph 2506. Michigan has an Ecclesiastical Corporation Act, 450.178 and following, and a Nonprofit Corporation Act, 450.2101, and following ("NCA")(Michigan statutes are cited as "MCL"). These defer to certain church practices and the latter does not apply to the extent inconsistent with prior incorporating Acts. MCL 450.178, 450.185, 450.2123).

A. The local church corporation could continue its legal existence indefinitely under state law after an abandonment or discontinuance under the Discipline. However, appointments and ministry would stop. This may be desirable if certain assets need to be disposed of or retained without conference trustees taking title. Michigan annual reports would need to be filed or the corporation would terminate by law for failure to file.

B. Most nonprofit corporations that dissolve are required to first obtain the approval of the Michigan Attorney General by filing the Michigan Form CTS-04 Dissolution Questionnaire, with required attachments. Ecclesiastical corporations are not required to file this form, but may request a letter from the Attorney General stating that approval is not needed. Such a request would be sent, with a copy of the Articles of Incorporation, to the address listed in the form. If the local church is not incorporated as an ecclesiastical corporation, query whether CTS-04 must be filed.

C. Churches that are dissolved should file a Certificate of Dissolution with the Michigan Department of Licensing and Regulatory Affairs ("LARA") using Form CSCL/CD-531.

D. Within 60 days after submitting a Certificate of Dissolution, the church must request a tax clearance from the Michigan Department of Treasury. Form 5156 is currently used. A Notice of Change or Discontinuance should also be filed using Form 163.

E. When a nonprofit corporation is terminated voluntarily and dissolved under Michigan law, a proper vote of the "directors" or "members" is required. With an abandonment or discontinuance this should not be needed immediately, since that action is under the Discipline to terminate the church's ministry and to dispose of its assets, without explicitly terminating its corporate existence. The corporation could be dissolved by not filing subsequent Michigan annual reports (automatic under state law and likely to be the typical case where the church's assets and members are transferred and its ministry ends, MCL 450.2801), by the local church charge conference cooperating and voting to dissolve the local church corporation, or by the Conference trustees or Annual Conference voting for dissolution (This last option could potentially be contested by members of a local church).

Even a "dissolved" corporation continues its existence in order to "wind up" its affairs. MCL 450.2833. Winding up includes collecting assets, paying debts and liabilities, and making final distributions of remaining assets.

The local church charge conference has final authority over the existence of the church corporation. Discipline paragraph 246-247. The members of the charge conference are the members of the church council (administrative board) "or other appropriate body". Discipline paragraph 246.2. However, a church conference is recommended to approve dissolution.

Discipline paragraph 2540. A church conference is broader in representation and a charge conference may be called as a church conference via Discipline paragraph 246.7. Although local church trustees have responsibility in dealing with church property until discontinuation or abandonment, that body may not have authority over the legal status of the local church corporation for purposes of approving dissolution.

The only members entitled to vote at a church conference are those present at the meeting. Discipline paragraphs 248, 2540. The Discipline constitutes the Bylaws for UM churches and MCL 450.2304(3), 2441 provide the Bylaws may limit voting rights of members. Further, MCL 450.185 provides the statute is not to interfere with practices of any church heretofore established. MCL 450.183 provides the right to convey real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, articles or by-laws of the church corporation involved. The NCA provisions (for example, 450.2703) only apply "to the extent not inconsistent with the act under which a corporation has or has been organized."

MCL 458.28, a statute initially applicable to Methodist Episcopal churches, requires a 2/3 vote of all members of the quarterly conference to amend Articles of Incorporation. This could be interpreted to require a 2/3 vote of the administrative council/charge conference.

Ten (10) to sixty (60) days advance notice of a meeting concerning a dissolution proposal is needed. MCL 450.2404(1), 450.2804(6).

F. The Michigan statutes have procedures for notifying creditors when a nonprofit corporation is dissolved. In appropriate cases, these may be used when a local church is abandoned, discontinued, or dissolved. MCL 450.2841a and following.

5. The UM Church GCFA legal department should be notified if and when a church entity is abandoned, discontinued, or dissolved, to update the information on the United Methodist IRS group tax exempt ruling.

Approval of Discontinuance/Abandonment

In accordance with the Book of Discipline, the undersigned recommend and consent to the Discontinuance/Abandonment (strike out one) of the _____ United Methodist Church, effective _____. The future use of the property shall be as specified by the undersigned.

Bishop
Michigan Area, United Methodist Church

Rev.
District Superintendent

Rev.
District Superintendent

Rev.
District Superintendent

Rev.
District Superintendent

Rev.
District Superintendent

Rev.
District Superintendent

Rev.
District Superintendent

Rev.
District Superintendent

District Board of Church Location and Building

By:
Its:

Approved by Resolution of the Annual Conference on _____.

Secretary
_____ Annual Conference