

## Churches and Title to Real Estate Virginia

### Description

Church-owned real estate raises several issues which all real estate professionals in Virginia should be aware. Generally speaking, there are two different types of church governance that we see most often in Virginia affecting title to real estate, namely Congregational churches and Ecclesiastical churches. In a Congregational church, each local church congregation is independent and autonomous in managing its affairs. Most Protestant and Jewish churches are Congregational. An Ecclesiastical church, also known as a hierarchical church, is one with an existing authority structure outside of the local church. Most Catholic, Church of Jesus Christ of Latter-Day Saints, and Jehovah's Witnesses churches fall into this category.

### Acquisition of Title

Church governance impacts how churches hold title, and how they can convey title to real estate. In a Congregational church that has not incorporated, title is held by its court appointed trustees. No court order is necessary for a Congregational church to take title. Thus, if a Congregational church is involved, title should be taken in the name of the trustees of the local church. The title to the real estate passes to successor trustees without the need for a deed of conveyance. See Virginia Code Â§ 57-8. If an Ecclesiastical church is taking title, it is held for the church in the name of the elected Bishop, or other ecclesiastical officer. For example, the duly elected Bishop holds title to all properties acquired by the Catholic church.

In cases where a deed into a church is not to the trustees or ecclesiastical officer, Virginia Code Â§ 57-7 often applies to validate conveyances for the benefit of any church, church diocese, religious congregation or religious society even if there is insufficient designation of the beneficiaries in any case where the church . . . has lawful trustees in existence, is capable of securing the appointment of lawful trustees upon application as prescribed in Section 57-8, or has ecclesiastical officers pursuant to the provisions of Section 57-16. See Va. Code Section 57-7.

### Conveyance of Title

When conveying title, in the case of a Congregational church, assuming it is unincorporated, any sale or encumbrance of land owned by a Congregational church by its trustees must be approved by an order of the Circuit court. If the church is an Ecclesiastical church, no court order is typically required for the sale or encumbrance of the land. If the laws of a religious organization permit an elected bishop, minister or other officer the authority to administer the organization's affairs, then such officer has the power to acquire, sell and mortgage title to real estate. This is the case of the Catholic church where it is well-established that the Bishop holds title to all of its property, and can sign a deed conveying its property. Further, if the named officer or Bishop transfers, is removed, resigns or dies, title to the real estate passes to his successor without the need for a deed of conveyance. See Virginia Code Â§ 57-16.

### Incorporated Churches

In 2002, Rev. Jerry Falwell filed suit against the Virginia State Corporation Commission (â??SCCâ?•) in federal district court over its refusal to incorporate Thomas Road Baptist Church in Lynchburg, Virginia. In its decision in *Falwell v. Miller*, 203 F. Supp. 2d 624 (W.D. Va. 2002), the court found that the SCCâ??s refusal to incorporate Thomas Road Baptist Church violated the First Amendment to the United States Constitution. The Court stated â??unlike other groups in Virginia, members of â??a church or religious denominationâ?? are unable to incorporate the organization to which they belong. They are therefore denied the benefits of incorporation because of their religious status.â?• *Id.* at 631.

Immediately after this decision was announced, the SCC issued a corporate charter to Thomas Road Baptist Church and began issuing charters to other religious organizations submitting proper articles of incorporation. The SCCâ??s authority to issue such charters was based solely on the federal district courtâ??s decision until 2005 when the General Assembly added Â§ 57-16.1 to the Code of Virginia. This new section states that whenever the polity of a church allows it to create a corporation or other entity, to hold and manage its property, the corporation or other entity shall have the power to acquire and hold that property in accordance with church polity and Virginia law regarding such entities. For title purposes, incorporated churches acquire, hold and convey title similarly to other corporations and limited liability companies.

## Episcopal Church Litigation

The recent litigation involving the Episcopal Diocese and several of its local churches merits some discussion here. In short, several local Episcopal churches held title to real estate in the names of their respective trustees. When the churches left the Episcopal Diocese, a dispute arose as to the ownership of these properties.

Episcopal churches historically have held title to property in the names of trustees of the local congregation, and they normally independently petition the Circuit Court for authority to sell property. In the *Falls Church* lawsuit, the Virginia Supreme Court held that the local churches held title to its property in a constructive denominational trust for the benefit of the Episcopal Diocese and the Episcopal Church (â??TECâ?•). The Court stated:

Having determined that the property could be subject to a denominational trust, we now examine what effect, if any, Code Â§ 57â??7.1 has on the present case. TEC and the Diocese contend that canon I.7.4 of TECâ??s canons (the â??Dennis Canonâ?•) created an express trust in â??[a]ll real and personal property held by or for the benefit of any Parish, Mission or Congregation.â?• The Dennis Canon was enacted by TECâ??s General Convention in 1979. It was reportedly passed in direct response to the Supreme Courtâ??s recognition that â??the constitution of the general church can be made to recite an express trust in favor of the denominational church.â?• *Jones*, 443 U.S. at 606.

In conclusion, neither TEC nor the Diocese can claim a proprietary interest in the property by way of an express denominational trust. However, when one considers the constitution and canons, specifically the adoption of the Dennis Canon, and the course of dealing between the parties, The Falls Church, TEC and the Diocese intended, agreed and expected that the property at issue would be held in trust by The Falls Church as trustee for the benefit of TEC and the Diocese. As such, we find that the fiduciary relationship required to impose a constructive trust has been shown to exist. The fact that The Falls Church attempted to withdraw from TEC and the Diocese and yet still maintain the property represents a violation of its fiduciary obligation to TEC and the Diocese. Therefore, equity dictates that

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a constructive trust be imposed on the property for the benefit of TEC and the Diocese.

*The Falls Church v. The Protestant Episcopal Church in the United States*, \_\_\_ Va. \_\_\_, 740 S.E.2d 530, 541 (2013) (Cert. denied)

As such, the Court held that the local churches held title for the benefit of the Diocese and Episcopal church in a constructive trust. Therefore, the local churches that left the Episcopal church were required to convey their properties to the Episcopal Church in order to confirm record title in the Episcopal Church. The United States Supreme Court declined to grant the local churches' appeal. Per the Episcopal Diocese of Southern Virginia's website, local trustees, with proper authority from the local vestry, and by Order of the Circuit Court, may convey title to the church's real estate.

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VLTA Examiner

### **Jerry C. Booth, Jr.**

Jerry has practiced in real estate and title insurance law for 25 years, and is currently underwriting counsel in Virginia and West Virginia for Fidelity National Title Insurance Company. A graduate of Wake Forest University and the University of Richmond School of Law, he was previously a title attorney, agency counsel and claims counsel for Lawyers Title, LandAmerica and Fidelity. Prior to joining Fidelity as underwriting counsel, he was engaged in the private practice of law where his practice focused on commercial real estate transactions and real estate related litigation.

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2. Uncategorized

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[vltaexaminer](http://vltaexaminer)