

1 **Policy for Discernment**
 2 **Regarding Gracious Dismissal**
 3
 4 **Recommended by the Cabinet to**
 5 **Susquehanna Valley Presbytery**
 6 **28 Feb 2015**
 7

8
 9 Given the number of PC(USA) congregations recently considering departure from the
 10 denomination, wisdom and the recommendation of the General Assembly lead us to establish a
 11 guide by which Sessions and congregations might discern their future with the denomination.
 12

13 This document was inspired by the policy from Salem Presbytery; however, our work has
 14 rendered it unique and, we hope, fitting to the particular circumstances of Susquehanna Valley.
 15 You will note, however, that Appendix B is an unaltered document from Genesee Valley
 16 Presbytery, which we hope will give some clarity to legal questions specific to New York.
 17

18 Note that the Cabinet has made two changes to this document since its first reading: page 5, line
 19 20, #3 under "Proceeding to Votes on Dismissal" now reads "two-thirds (2/3)" instead of "one-
 20 third (1/3)"; and page 6, line 6, under "If the Resolution for Dismissal Passes" now reads "A
 21 simple majority of presbyters present and voting" instead of "Two-thirds (2/3) of presbyters . . .
 22 .ö"

23 **At adoption on February 28, 2015 Presbytery amended the document in several ways -**
 24 **first of all, returning the quorum requirement on Page 5 back to 1/3 rather than the 2/3**
 25 **noted above, changing the document from "Guidelines" to "Policy", adding language**
 26 **about dismissal being to another Reformed Body, and changing the capitalization of the**
 27 **word Presbytery in several places.**
 28

29 As in all things, we have established this policy in the hope and prayer that they may equip the
 30 saints better to fulfill their calling to faith, hope, and love in the Lord Jesus Christ. Far from
 31 desiring the separation from any of the saints, we offer this document as a means of grace for a
 32 time when we do not yet see as clearly as we wish, and do not yet know as fully as we are
 33 known. Please receive them in this Spirit.
 34
 35
 36

1 **The Presbytery of the Susquehanna Valley: Discerning God’s Will**
 2 **When A Congregation Is Considering Dismissal**
 3 **from the Presbyterian Church (USA)**
 4

5 *“As you, Father, are in me and I am in you, may they also be in us, so that the*
 6 *world may believe that you have sent me. The glory that you have given me I have*
 7 *given them, so that they may be one, as we are one, I in them and you in me, that*
 8 *they may become completely one, so that the world may know that you have sent*
 9 *me and have loved them even as you have loved me.” (John 17:23)*

10
 11 *“For now we see in a mirror, dimly, but then we will see face to face. Now I know*
 12 *only in part; then I will know fully, even as I have been fully known. And now*
 13 *faith, hope, and love abide, these three; and the greatest of these is love.”*
 14 *(1 Corinthians 13:12-13)*

15
 16 **The Unity of the Church**

17 It is the will of the Triune God that the Church be one. This is the testimony of the Scriptures
 18 from beginning to end. The unity of the Church gives expression to the one-ness of the Triune
 19 God. In its unity, the Church better fulfills its calling to do the work of Christ. Individual
 20 believers unite in congregations, and congregations unite in denominations because as members
 21 of the Body of Christ we are strengthened by community, held accountable by partners, and
 22 encouraged by common faith and works.

23 The diverse expressions of faith in the Church do not negate the Church’s unity in the
 24 Sovereign God.¹ The Spirit of Unity is revealed in the Father, Son and Holy Spirit, a unity
 25 which enlivens the Church and overflows into the world.²

26 Division or schism in the Church is not God’s will. The inclination of the human heart is
 27 wickedness³ and all fall short of the glory of God.⁴ Divisions in the Church are human
 28 demonstrations of sin, and the healing of such divisions is the task of reconciliation, work to
 29 which all Christians are called.

30 We recognize, however, that Sessions and congregations understand their mission in
 31 Christ, and therefore their relationship to the wider Church, in various ways. This understanding,
 32 when derived from obedience to Jesus Christ, under the authority of the Scriptures and the
 33 guidance of the Confessions,⁵ may so differ with the mission of a particular denomination in
 34 our present case, the PC(USA) that they sense a need to affiliate with another denominational
 35 expression of the Body of Christ.

36 Likewise, concerns for the purity of the Church may so convict a congregation that
 37 departing from one branch of the Body of Christ remains the only option which will answer the
 38 consciences of its members. We believe that the Church of Jesus Christ should always seek to
 39 hold together the high goals of peace, unity and purity. We recognize, however, that our human
 40 brokenness often prohibits the manifestation of more than two of these three goals at a given
 41 time. We welcome the return of Christ as the only sure guarantor of all three in perfect harmony.

¹ Second Helvetic Confession, 5.141.

² Scots Confession, 3.18.

³ Genesis 8:21.

⁴ Romans 3:22.

⁵ W-4.4003(d).

1 Since we now see ðas in a mirror, dimly,⁶ discernment is necessary when congregations feel
2 they must leave the PC(USA).

3 With the aforementioned in mind, this policy are meant to assist those congregations who
4 are questioning their covenantal bond with the Presbyterian Church (USA).

6 **The Nature of Discernment**

7 ðDo not be conformed to this world, but be transformed by the renewing of your minds, so that
8 you may discern what is the will of Godð what is good and acceptable and perfect.ö⁷

9 The Presbytery of the Susquehanna Valley lives to serve and encourage congregations as
10 we seek together to be faithful to our calling to Jesus Christ. Part of service is walking with
11 congregations in the work of discernment, especially in matters that pertain to a congregation's
12 relationship to the Presbytery and the PC(USA).

13 Discernment is a means by which believers submit themselves to God, relinquishing their
14 own desires in order to understand God's will for themselves. Seeking God's will means
15 engaging in a season of disciplined conversation, prayer, fasting, and study.

17 **The Process of Discernment**

18 As soon as the Cabinet, ordinarily through the Committee on Ministry (COM), becomes aware
19 that a congregation or its leadership is considering dismissal from the Presbyterian Church (USA)
20 to another Reformed Body, a season of discernment will take place, focusing on the following
21 questions:

- 23 1. How is the mission of Christ being accomplished through this congregation?
- 24 2. Are the grounds for dissent from the PC(USA) truly a matter of essentials?
- 25 3. What are the implications for the congregation and the Presbytery should this
26 congregation cease to be a partner in mission?
- 27 4. What are the implications for the congregation and the Presbytery should the
28 congregation remain?
- 29 5. How would the faith formation and spiritual growth of the members of the congregation
30 be affected should the congregation be dismissed or remain?

31 In order to answer these five questions, the following process shall be undertaken:

- 32 1. The Presbytery Cabinet shall appoint a Discernment Team whose purpose shall be to join
33 the Session and the congregation in a season of discernment focused on the above
34 questions.
- 35 2. The Session and Discernment Team will ensure that structured, congregation-wide
36 opportunities occur for the following elements:
 - 37 a. Questions about the reasons for considering dismissal and implications of
38 dismissal, including the impact on pastors and staff;
 - 39 b. Study of the Scriptures and Confessions pertinent to defining both the mission of
40 the congregation and the desire for dismissal;
 - 41 c. Prayer seeking the guidance of the Spirit;
 - 42 d. Fasting;

⁶ 1 Corinthians 13:12.

⁷ Romans 12:2.

- 1 e. Consultation of outside sources of wisdom, if needed; and
 2 f. Clear articulation of responses to focal questions 1-5 above.
- 3 3. The duration of the time of discernment will be established at the discretion of the
 4 Session and Discernment Team, giving due consideration to the dangers both of undue
 5 haste and undue delay. Congregation, Session, and Discernment Team members are
 6 expected to participate in all elements of the discernment process. The Session will vote
 7 to approve the details of the process of discernment.
- 8 4. Members of the Discernment Team and the congregation shall work together in mutual
 9 trust; shall be open and honest with each other in all dealings; shall provide to each other
 10 all relevant and useful information and documents; shall respect and hear minority
 11 voices; and shall proceed both in hope that reconciliation is possible and in wisdom
 12 regarding the consciences of all involved. The Session shall maintain the membership
 13 roll(s) with integrity and transparency during this process.
- 14 5. If, after a time of discernment which includes the above elements, it is determined that
 15 the Session and congregation are called to remain in the Presbytery and PC(USA), the
 16 Discernment Team shall report the closure of its work to the Cabinet, which may then
 17 dissolve the Team.
- 18 6. If, after the time of discernment, the Session and Discernment Team determine that, in
 19 obedience to Jesus Christ, under the authority of the Scriptures and guidance of the
 20 Confessions, the congregation senses a call to separate from the PC(USA), the
 21 Discernment Team will report this conclusion to the Cabinet.
- 22 7. Should the congregation (or its leadership) refuse visits and discussions with the
 23 Discernment Team, the Cabinet shall, at its earliest opportunity, recommend to the
 24 Presbytery that the Presbytery appoint an Administrative Commission (G-3.0109b) with
 25 authority to act for the Presbytery, to resolve tentatively all matters. No final action shall
 26 be taken until the Presbytery in a full meeting shall approve such final action. Any
 27 Administrative Commission appointed under the authority of this policy shall be charged
 28 with addressing all of the issues addressed above and with working toward ultimate
 29 resolution of the matter with the congregation. All of the considerations listed above
 30 shall be taken into account by such an Administrative Commission.

31 32 **Proceeding to Votes on Dismissal**

- 33 1. If the time of discernment reveals that a request for dismissal is in order, the Cabinet may
 34 authorize the Discernment Team to: 1) aid the Session in drafting a resolution to request
 35 dismissal from the Presbytery to another, specified Reformed body, for the
 36 congregation's advisory vote,⁸ and 2) to draft a resolution for dismissal for vote by the
 37 Presbytery Assembly. (These resolutions will both seek the same end and reflect the same
 38 information, though they will be directed to different bodies.)
- 39 a. Both resolutions will be drafted in such a way as to reflect the abundant grace of
 40 Jesus Christ, trust in the ultimate justice of God, and the mercy expected of Jesus' disciples.
 41
- 42 b. Both resolutions will take into full account the issues raised during the time of
 43 discernment, including the fiduciary responsibility of the Presbytery for property

⁸ The use of "advisory vote" is noteworthy. According to G-1.0503, voting to depart or be dismissed from a presbytery is not within the power of a congregation. Only the Presbytery may act effectively to change a congregation's relationship with the Presbytery.

1 held in trust, so that the congregation and Presbytery need each vote on only one
 2 final resolution (and see **Miscellany** section below).⁹ Courses of action necessary
 3 should the resolutions pass will be outlined in the resolutions.

4 c. Crafting of the resolutions will take into consideration Per Capita apportionments
 5 paid to and anticipated by the Presbytery.

6 d. However, financial arrangements should not be punitive; they should take into
 7 account the needs of the congregation as it continues to fulfill the ministry of
 8 Jesus Christ in its community, as well as of the Presbytery as it loses the
 9 fellowship and financial contributions of the congregation.

10 e. The Cabinet shall review both resolutions before either is put before its respective
 11 body.

12 2. After Cabinet's review and approval of the resolutions, the Session *will* call for a meeting
 13 of the congregation for its advisory vote to request dismissal.¹⁰ Advance notice of the
 14 meeting shall be by written letter to each member of the congregation and as well as
 15 through Sunday worship announcements. The letter shall be mailed at least thirty days in
 16 advance of the meeting date and public worship announcements shall be made at all
 17 worship services between the date of the call and the actual congregational meeting.
 18 Members of Cabinet and Discernment Team members shall also be invited to the meeting
 19 with the right to address the body.

20 3. The quorum for this congregational meeting shall be **one-third (1/3)**¹¹ of the members
 21 eligible to vote, the attendees being recorded by name. Since the vote is advisory, the
 22 Session may make provision for absentee ballots for members unable to attend. *These*
 23 *ballots will be reported at the beginning of the meeting, but counted separately.*

24
 25 4. At least two-thirds (2/3) of the votes cast (õyesö/önoö votes only; an abstention does not
 26 count as a vote) must be in favor of the resolution in order for the resolution to pass.¹²

27 28 **If A Quorum of the Congregation Is Not Present**

29 If a quorum for the congregational meeting is not satisfied, the Session and Discernment Team
 30 will discern whether rescheduling the meeting would serve the needs of the congregation. If the
 31 Session and Discernment Team determine that the lack of quorum reveals the need for more
 32 discernment, they shall continue the discernment process, and delay holding another
 33 congregational meeting for at least three months. These actions shall be reported to the Cabinet.
 34

35 **If the Resolution for Dismissal Fails**

36 The Cabinet will confer with the Discernment Team as to how best to fulfill a ministry of
 37 reconciliation at this time. The Discernment Team will offer pastoral care and seek the healing of
 38 the Session and congregation.
 39
 40

⁹ See the document published by the General Assembly titled "Frequently Asked Questions: Gracious Dismissal Policies After Tom v. Pby of San Francisco (GAPJC Remedial Case 221-03)".

¹⁰ See note 8 above.

¹¹ **The quorum in the draft for first reading was one-third (1/3).**

¹² For more on the counting of votes and abstentions, see *Roberts Rules of Order, Newly Revised, 11th Edition*, Sections 44 and 45.

1 **If the Resolution for Dismissal Passes**

2 Upon passage of the resolution for dismissal at the congregational meeting, the Discernment
3 Team will bring the results to the Cabinet.

4 The Cabinet will then finalize and present to the Presbytery Assembly the resolution from
5 the Discernment Team regarding the congregation's dismissal.

6 A simple majority¹³ of Presbyters present and voting must vote in favor of the resolution
7 in order for it to pass.

8
9 **If the Presbytery Vote for Dismissal Passes**

10 The moderator will lead the Assembly in a time of silence and prayer, calling upon the grace of
11 Jesus Christ to prevail in a time of apparent division. The prayer will include supplication for the
12 Presbytery and for the blessing of the congregation just dismissed.

13
14 **If the Presbytery Vote for Dismissal Fails**

15 In the event that the vote for the terms of dismissal, as worked out by the congregation,
16 Discernment Team, and Cabinet, does not attain the required level of affirmative votes, then the
17 congregation may pursue one of the two following options:

- 18 1. The Session may, with the continued assistance of the Discernment Team, seek different
19 terms for dismissal, and then offer these to the congregation for another vote (under the
20 same terms as the previous meeting and voting requirements), then bring it again to the
21 Presbytery Assembly; or
- 22 2. The Session may choose not to continue pursuit of dismissal at this time, in which case it
23 must, by appropriate congregational meeting and with simple majority approval vote,
24 rescind its earlier action requesting dismissal. (The Discernment Team will be available
25 to work with the congregation through this process.)

26
27 **Miscellany**

- 28 1. All discussions about property and financial obligations of the congregation to the
29 Presbytery, shall conform to the General Assembly Permanent Judicial Council decision
30 of Tom v. Presbytery of San Francisco in that the Presbytery must fulfill its fiduciary
31 duty under the Trust Clause (G-4.0203) to consider the interest of the PC(USA) as a
32 beneficiary of the property. Moreover, the Presbytery must also consider a congregation's
33 financial position and valuation of property and take into consideration the PC(USA)'s
34 use and benefit of the property in every decision concerning disposition of property. This
35 would include exercising due diligence regarding the value of the property of the
36 congregation seeking dismissal, to include doing a financial analysis of the value of the
37 property. (Refer to: ADVISORY OPINION: THE TRUST CLAUSE AND GRACIOUS
38 SEPARATION: IMPLEMENTING THE TRUST CLAUSE FOR THE UNITY OF THE
39 CHURCH.)
- 40 2. A congregation that is approved for dismissal may take its name with it, provided that
41 there is no mention or retention of affiliation with the Presbyterian Church (USA) or the
42 Presbytery of the Susquehanna Valley.
- 43 3. In the event that any congregation is approved for dismissal, the Presbytery and the
44 congregation shall take all steps possible in order to provide for the pastoral care and
45 congregational life of those members who do not wish to depart the Presbyterian Church

¹³ The language in the draft for first reading was "two-thirds (2/3) majority."

1 (USA). Their protection and nurture shall be a matter of paramount concern to both the
2 departing congregation and to the Presbytery.

- 3 4. In the event that any congregation's request for dismissal is approved, the Presbytery
4 shall, in conjunction with the congregation, hold a final worship service of
5 Commissioning, to celebrate our common life in Jesus Christ and to pray for the
6 effectiveness and well-being of both the congregation and the Presbytery. Those
7 departing the Presbyterian Church (USA) will be commissioned by the Presbytery to
8 further their work for the kingdom as they go forward in ministry. The service will be
9 jointly planned by members of Presbytery's Cabinet and the Session, and all
10 congregations of the Presbytery shall be invited.
 - 11 5. A dismissed congregation will be required to pay off any loans outstanding to any entity
12 of the Presbyterian Church (USA). Matters of loans of the congregation held by non-
13 Presbyterian entities are the responsibility of the congregation, and the Presbytery shall
14 be legally relieved of any responsibility related to such loans.
 - 15 6. A dismissed congregation will be required to close out its financial and membership
16 books as of the official date of dismissal, and to file all reports required by the Presbytery
17 for statistical record-keeping.
 - 18 7. A dismissed congregation will be required to work with the Presbyterian Board of
19 Pensions to address any issues raised by the Board of Pensions.
 - 20 8. A dismissed congregation will work closely and diligently with the Presbytery to assist in
21 the transfer of membership of members who do not desire to remain with the dismissed
22 congregation.
 - 23 9. This policy shall take effect immediately upon being approved by the Presbytery.
 - 24 10. The status of the minister(s) currently called by the congregation: whether they shall
25 remain with the congregation and transfer their ministerial status to the new
26 denomination, or whether they choose to remain within the PCUSA, and thus need to
27 look forward to seeking a new call.
 - 28 11. The status of any insurance policies held by the congregation with instrumentalities of the
29 PC(USA) may need to be changed.
 - 30 12. In the event that the tax status of a congregation as a 501©(3) non-profit tax-exempt
31 organization was established under the PC(USA) umbrella, it will need to be re-
32 established under the new denomination to which the congregation is being dismissed.
 - 33 13. The corporate status of the congregation may need to be revised.
- 34

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APPENDIX A
Presbytery of Susquehanna Valley
Chart for Discernment for Gracious Dismissal Policy

STEPS	REFERENCE IN POLICY	OTHER INFORMATION
1. Session prayerfully decides it is necessary to formally enter a discerning process.	öThe Unity of the Churchö (Page 2)	
2. Session informs the congregation and COM chairs of the need for a period of discernment.	öNature of Discernment,ö and öProcess of Discernment,ö (Page 3)	
3. Cabinet appoints a Discernment Team (DT) to work with the Session.	öProcess of Discernment,ö item 1 (Page 3)	
4. Session and DT lay out a process and tentative timeline.	öProcess of Discernment,ö items 2 and 3 (Pages 3 and 4)	
5. Session votes on and instructs the congregation about the process.	öProcess of Discernment,ö as above	
6. Session leads congregation through discerning process.	öProcess of Discernment,ö as above	
7. Session determines whether to call a congregational meeting to vote on realigning with another denomination. <i>If the meeting is called, continue below:</i>	öProcess of Discernment,ö items 5 and 6 (Page 4)	A decision <i>not</i> to call a congregational meeting may mean önoö (there is not sufficient support in the congregation) or önot yetö (more work is needed).
8. Session and DT draft a resolution including proposed terms of dismissal.	öProceeding to Votes on Dismissal,ö item 1 (page 4); öMiscellany,ö öAppendix Bö	
9. Session and DT take the resolution to Cabinet.	öProceeding to Votes on Dismissal,ö item 1(e) (page 5) öMiscellany,ö öAppendix Bö	
10. Cabinet approves (or calls for revision of) the proposal for recommendation to both the congregation and Presbytery.	öProceeding to Votes on Dismissal,ö item 2 (page 5) öMiscellany,ö öAppendix Bö	
11. Session calls a congregational meeting to vote on the resolution, including the terms of dismissal.	öProceeding to Votes on Dismissal,ö item 2 (page 5) öMiscellany,ö öAppendix Bö	From this point on, refer to the sections following öProceeding to Votes on Dismissal,ö for handling the possible outcomes.

APPENDIX B

**LEGAL AND CIVIL CONSIDERATIONS IN
SEPARATION OF CHURCHES FROM
PRESBYTERY OF GENESEE VALLEY AND PC(USA)**

This Appendix is included as a reference only, for the Presbytery and congregations of the Susquehanna Valley to consider how New York law may impact discernment and dismissal.

The process of discernment and resolution, and the action by the Presbytery approving the separation of a particular Church or Congregation from the Presbytery and the PC(USA), necessarily should consider applicable corporate and property issues under New York State Law. The action of Presbytery, in voting to dissolve or dismiss a particular church does not effect any change in the corporate documents, in applicable statutory provisions, or in title (as reflected in recorded Deeds). It is important that these issues be addressed, as failure to do so would adversely affect a church's ability to sell, mortgage or otherwise deal with its property.

Corporate Organization Issues

Statutory Background.

In New York State, Presbyterian Churches associated with the PC(USA) are incorporated under Article 4 (§§ 60 ó 70) of the Religious Corporations Law (abbreviated as "RCL"). Section 60 of that law provides that the Article applies "only to a Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.)." The initial incorporation process requires the filing of a certificate of incorporation in the Office of the Clerk for the County in which the church is located, and that certificate recites, for a Presbyterian church, that the church is being incorporated under Article 4 of the Religious Corporations Law.

The provisions of Article 4 and other "General Provisions" of the RCL "mirror" the trust clause and other property provisions of Chapter G-4 of the Book of Order, including:

- o Section 69, paragraph 3, provides that the Trustees of an incorporated Presbyterian Church "shall have the custody and control of all the temporalities and property belonging to the corporation and of the revenues from such property and shall administer the same in accordance with the constitution of the Presbyterian Church (U.S.A.), and with the provisions of law relating thereto." (Emphasis supplied.)
- o Section 12 of the RCL (in Article 2, General Provisions) relates to the sale, mortgage or lease of the real property of a church. Paragraph 1 of that section provides that:
 - o "A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without applying for and obtaining leave of the court therefor."

And Paragraph 5-a of that section then states:

"The trustees of an incorporated Presbyterian church in connection with the General Assembly of the Presbyterian Church (U.S.A.) shall not make application to the court for leave to mortgage, lease or sell any of its real property without the consent in writing of the particular Presbytery with which said church is connected." (Emphasis supplied)

- 1
2 ○ Section 17-b of the RCL relates to the disposition of property of an ðextinctö or dissolved
3 Presbyterian church and states in relevant part:

4 ðWhenever the presbytery having jurisdiction over a particular church in connection with the
5 General Assembly of the Presbyterian Church (U.S.A.) dissolves or declares extinct the particular
6 church, upon petition by the presbytery to the supreme or county court and upon satisfactory
7 proof of the facts leading to said dissolution, the court shall have jurisdiction to grant an order to
8 the effect that all property of whatever kind which may have belonged to, or have been held by,
9 said church shall vest in the presbytery of jurisdiction in as full and ample a manner as the same
10 shall theretofore have been vested in the church so declared to be dissolved and extinct.ö

11
12 There are numerous other Articles of the RCL which specifically relate to incorporation of
13 churches of other denominations ó for example, Protestant Episcopal (Article 3); Roman Catholic (Article
14 5); Reformed Dutch, Reformed Presbyterian and Lutheran Churches (Article 6); Baptist (Article 7); and
15 Churches of the Holy Ukrainian Autocephalic Orthodox Church in Exile (Article 8-B). And there are two
16 Article which apply to ðotherö churches ó ðIndependentö churches (Article 8 - Churches of the United
17 Church of Christ, Congregational Christian and Independent Churches) and Other Denominations (Article
18 10).¹⁴

19
20 Interestingly, there are no provisions in the RCL which refer to or which would in any way
21 provide for ðdismissalö of a church by the Presbytery to another denomination, nor are there any
22 provisions relating to the ðamendmentö of a certificate of incorporation so as to change the Article of the
23 RCL under which a church operates as a corporate entity. It thus would appear that a Presbyterian church
24 could not unilaterally simply amend its Certificate of Incorporation, and thereby become an
25 ðindependentö or ðcommunityö church, or even, by such an amendment, ðconnectö themselves with
26 another denomination. A few years ago, the Oakfield Church attempted to amend its Certificate of
27 Incorporation, and thus claim that the Presbytery no longer had any jurisdiction over it, and the Court
28 found that such an amendment was not proper and declared the amendment to be null and void.

29 30 Suggested Process

31
32 There would appear to be two different approaches which could be taken in order to accomplish a
33 ðre-incorporationö of the church, depending upon the nature of the agreed separation:

- 34
35 A. Incorporation of new religious corporation. The heart of this process would be the
36 incorporation of a new religious corporation under the applicable Article of the Religious
37 Corporations Law and, contemporaneously, dissolution of the old ðPresbyterianö corporation.¹⁵
38 Typically, this would be the relevant process when a Church is not being ðdismissedö to another
39 denomination but is either becoming an independent or ðcommunityö church, or is proposing to
40 associate with a denomination to which ðdismissalö is not authorized under the Book of Order.

41

¹⁴Section 172 in Article 8 states that: ðThis article applies only to churches of the United Church of Christ,
Congregational Christian churches, whether or not part of the United Church of Christ, and Independent churches.ö
Article 10 of the RCL specifically provides that it ðis not applicable to í a Presbyterian church in connection with
the General Assembly of the Presbyterian Church in the United States of America.ö

¹⁵ It is possible, however, that there could be a circumstance in which the existing Presbyterian church could
continue as a corporate entity if, for example, there was a group of members who wished to continue as
Presbyterian.

- 1 1. The incorporation process itself is fairly simple and does not require any Court approval
 2 or other judicial action. The specific process and requirements, contents of certificate of
 3 incorporation, etc., are spelled out in either Article 8 (Independent churches) or Article
 4 10 (Other Denominations) of the RCL, or in the specific Article applicable to the
 5 denomination with which the church proposes to associate. The certificate of
 6 incorporation is filed with the Clerk of the County in which the Church is located. Costs
 7 are minimal.
 8
- 9 2. The old Presbyterian Church is then dissolved pursuant to Section 17-b of the RCL (see
 10 above). This does require a Petition to Supreme Court, and the costs are more significant
 11 ó attorney time for preparation of Petition and Order, filing fees, etc.

12
 13 Note that incorporation of the new Church and dissolution of the old one does not effect any
 14 transfer of title to real property. See the next section for a description of that process.¹⁶

- 15
- 16 B. Court Approval of Change to Certificate of Incorporation (Dismissal). Where the agreed
 17 separation involves the dismissal of a church to another denomination, as authorized by the
 18 Book of Order, Court approval of the change is recommended. This would probably involve a
 19 joint Petition by both the Presbytery and the Church, and the resulting Order could specifically
 20 authorize the filing of an amended or restated Certificate of Incorporation, under the applicable
 21 Article of the RCL. (For example, Article 6 of the RCL, if dismissal is to the Reformed
 22 Presbyterian Church.) Because the system of government for each denomination can vary
 23 considerably ó particularly with regard to the title of the governing body (the Session, in PCUSA
 24 churches, but the deacons in other denominations) and trustees (which may or not be a
 25 separately elected body) ó it is recommended that an attorney be consulted to ensure that all
 26 necessary changes are identified and then addressed in the Court Order and proposed amended or
 27 re-stated Certificate, and that any transition issues are addressed.¹⁷

28
 29
 30 **Real Property Transfer Issues**

31
 32 Statutory Background.

33
 34 As discussed above, Section 12 of the RCL, and specifically Paragraph 5-a, provides that any
 35 mortgage, lease (for more than 5 years) or sale of real property by a Presbyterian church requires
 36 Presbytery consent, as a pre-condition to Court approval. This requirement has been interpreted broadly to
 37 include any transfer or conveyance of an interest in real property, including such things as easements.
 38 Section 17-b of the RCL, also discussed above, provides that any real property of an extinct or

¹⁶ This process ó the incorporation of a new religious corporation and dissolution of the old one ó is essentially what occurred with the Canaseraga Church. Although that was a federated church - a troika comprised of a Presbyterian church, a Methodist church and a Baptist church - the real property was still titled in the name of the First Presbyterian Church of Canaseraga. The congregation determined that it wanted to be a true community church, not associated with any of the three denominations. A new religious corporation was then formed and the Presbyterian church was dissolved. The ultimate outcome to the Oakfield situation also involved the incorporation of a new church and dissolution of the old one.

¹⁷ This process ó joint Petition by the Presbytery and the Church, and a resulting Order providing for the corporate change ó is essentially what occurred with the Parsells Avenue Church. That was also a federated church (Baptist and Presbyterian), but there the congregation wished to remain in connection only with the Baptist denomination. The joint Petition, reciting the agreement of separation between the parties, resulted in a Court Order terminating the Covenant of Union and dissolving the affiliation with the Presbytery and the Presbyterian Church (USA).

1 dissolved Presbyterian church vests in the Presbytery, upon satisfactory proof of the facts leading to
 2 dissolution, and a Court order.
 3

4 A change in the corporate structure of a church which is separating, as outlined above, does not
 5 effect a change in property title. Given the statutory provisions set out above, Court approval is required
 6 in order for such any change in title to take place. However, in the case of a separation in which there is a
 7 dismissal and court approval of the corporate change, it should be possible to consolidate, in one
 8 Petition, the request for the corporate change and any request for approval of the transfer of real property.
 9 Likewise, in the same Petition the Presbytery could request that the Court approve the dissolution and
 10 vesting of property title in Presbytery, and the conveyance of the property to the new church corporation.
 11

12 Suggested Process

13
 14 The following is the suggested process for accomplishing a change in title of real property in
 15 accordance with an agreed separation:
 16

17 A. Where Incorporation of new religious corporation. In the case of the incorporation of a new
 18 religious corporation, and an agreed plan of separation that provides for retention by the church of
 19 real property, the following are the necessary steps:
 20

- 21 1. The Presbytery will need to apply to the Court for (i) dissolution of the old Presbyterian
 22 church (which vests the property in Presbytery); and then (ii) conveyance of the real
 23 property to the new church corporation for the agreed consideration (if any). This can be
 24 accomplished in one Petition and Order.
 25
- 26 2. The Order is recorded in the County Clerk's Office, in the Book of Deeds, so that there is
 27 a permanent record as to the Court approval.
 28
- 29 3. A Deed conveying the real property will be executed by the Presbytery (typically by the
 30 Chair of Trustees) and delivered to the new church, and recorded in the County Clerk's
 31 Office.
 32

33 B. Where Court Approval of Change to Certificate of Incorporation (Dismissal). In the case of
 34 a dismissal of a church, in accordance with an agreed plan of separation, and change to the
 35 certificate of incorporation by Court Order, the request for approval of the transfer of title of real
 36 property to the dismissed church can be included in the joint Petition requesting approval of the
 37 change in corporate structure. As in above, the Court Order would be recorded in the Book
 38 of Deeds, and a Quit Claim Deed from the Presbytery to the Church would also be recorded,
 39 making a permanent record of the fact that the Presbytery no longer had any interest of any kind
 40 in the property.
 41
 42

43 Other Related Issues.

44
 45 As part of this transfer process, consideration must be given to any other issues which
 46 could affect the real property of the church or the Presbytery's interest in such property, including
 47 such things as:
 48

49 A. Outstanding obligations of the church to the Presbytery (such as loans from the Revolving
 50 Loan Fund). Given the trust clause in the Book of Order, and the New York State
 51 statutory provisions discussed above, loans have generally been made from the Revolving

1 Loan Fund without any requirement for a mortgage. If the Presbytery no longer has any
 2 interest of any kind in the property, consideration will need to be given either to payoff of the
 3 outstanding loan, or the execution and recording of a mortgage to the Presbytery as security
 4 for the loan.
 5

6 B. Guarantees by Presbytery of loans to the church. Loans from the General Assembly loan
 7 program (PILP) or the Synod loan program, generally require a Presbytery guarantee, and
 8 occasionally commercial loans may involve such a guarantee. The terms of the GA and
 9 Synod loan programs may require that any outstanding balance be paid off, if the church is no
 10 longer connected to the PC(USA), but if not, a release of the Presbytery guarantee should be
 11 obtained.
 12

13 C. Commercial mortgages. If a new religious corporation is formed, transfer of the property
 14 to the new church corporation may trigger a due on sale clause in the mortgage document,
 15 requiring that the outstanding balance be paid off immediately. Discussion with the lender,
 16 prior to any action, would be highly recommended. Although a change in the corporate
 17 structure per Court order may not have the same effect, consultation with the lender would be
 18 recommended, to avoid unnecessary problems.
 19

20 D. Insurance. Most churches in this Presbytery are covered by a Master Policy issued in the
 21 name of the Presbytery, which is predicated on all of the covered churches being part of
 22 Presbytery and subject to the statutory provisions discussed above. Separation from
 23 Presbytery will terminate eligibility for coverage, and new coverage should be arranged as
 24 early as possible.
 25

26 E. Restrictive covenants or conditions. Gifts to the church including bequests of money or
 27 stock, or conveyances of real property may include conditions or requirements that restrict
 28 the use of such gifts to a particular purpose that is specific to the _____ Presbyterian
 29 Church. Any documents relating to such gifts including Wills, Trust Agreements, Deeds, letters of
 30 instruction or intent should be reviewed, as continued use of such gifts by the church may
 31 require, or make it advisable, that a release of such conditions, and approval of the new use,
 32 be obtained, either from the donor or even by Court Order, which may also require notice
 33 to and approval by the Office of the Attorney General.
 34
 35

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