

Congregational Board of Trustees Handbook

April 2021



The United Church of Canada
L'Église Unie du Canada

Congregational Board of Trustees Handbook (April 2021)



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Introduction

This handbook is a resource for people who serve as trustees of a congregation. It summarizes and explains the role and responsibilities of trustees and the rules, policies, and procedures they must follow in doing this work (see [United Church property rules](#) below). It is also a resource for regional councils, congregations, and their governing bodies because they each have specific roles in congregational property matters.

The handbook also provides guidance on the best practices to comply with the United Church property rules and other legal requirements. You are encouraged but not required to follow these best practices.

For any situation involving congregational property not covered by this handbook, or for more detailed information, please refer to [The Manual of The United Church of Canada](#). There are references throughout this handbook to the applicable section numbers in *The Manual*.

You can also consult your Regional Council Executive Minister or the legal staff at the General Council Office for assistance.

1. Definitions and Explanations

United Church property rules

The United Church of Canada was created by an Act of Parliament in 1925, *The United Church of Canada Act*. The Act sets out the structure of the United Church and basic rules for congregational property.

The [Model Trust Deed](#) is an appendix to the Act and sets out more detailed rules (see united-church.ca/handbooks). There are additional property rules in [The Manual of The United Church of Canada](#). All of these rules, terms and conditions are referred to collectively in this Handbook as “the United Church property rules”.

Exceptions to the United Church property rules

All congregations must follow the United Church property rules with a few exceptions. See the chart below. June 10, 1925, was the date The United Church of Canada came into existence.

Congregations	Type of property excluded from United Church property rules
Congregations in Alberta or Saskatchewan that were Presbyterian before church union	Property they owned before June 10, 1925, and still own
Congregations anywhere in Canada that were Congregationalist before church union	Property they owned before June 10, 1925, and still own
Congregations that joined the United Church as existing congregations after church union	Property they owned when they joined the United Church, and property they acquired afterwards
Congregations that existed before church union	Property established as a special use trust for the congregation before church union

Even if a congregation fits into one of these exceptions, the United Church property rules may still apply. *The United Church of Canada Act* gave these congregations the option of making a formal decision to follow the United Church property rules. The only way to know for certain whether a congregation ever made that kind of decision is to check the minutes of congregational meetings held after church union. If the congregation made that decision, all of the United Church property rules apply. If it did not make that decision, the congregation is free to deal with its property on its own following the applicable laws of its province/territory.

Other definitions

Board of trustees means all the trustees together as a group. The terms “board of trustees” and “the trustees” are used interchangeably. A congregation may also have a “board” as its governing body, but that is different from the board of trustees.

Congregational property means all property and assets owned by the congregation, including land, buildings, funds, investments, and any other kind of property. Even if a property is held or registered in the name of the trustees, it is still considered congregational property. [G.2.1.1]

Designated lay/diaconal/ordained minister means the member of the order of ministry of The United Church of Canada who has been called or appointed to the pastoral charge, or the designated lay minister who has been recognized by the regional council and appointed to the pastoral charge.

Pastoral charge supervisor means the person appointed by the regional council to fulfill the responsibilities of a designated lay/diaconal/ordained minister with respect to the trustees, property, and other matters. The regional council makes this appointment when a congregation does not have a designated lay/diaconal/ordained minister because it is between pastoral relationships or because it is served by a person who is in the process of becoming a recognized designated lay, diaconal, or ordained minister.

2. Trustee Basics

Trustees' relationship to congregational property

Under secular law, a congregation is not permitted to hold a building, land, and many other kinds of property in its own name.

In all provinces and territories except Quebec, the trustees hold all congregational property as the legal owners, which means they are listed as the owners on title documents for land and other kinds of congregational property. The trustees must follow the lawful directions of the governing body of the congregation. [B.7.4.6]

In Quebec, The United Church of Canada is the legal owner of all congregational property, and the trustees act as its sole representatives (as mandataries) under the terms of sections 5 and 6 of *The United Church of Canada Act* as ratified by the Quebec Parliament.

Property held for congregation

As a general rule, the trustees hold congregational property in trust for the congregation as part of The United Church of Canada in all provinces and territories except Quebec [G.2.2.1]. Note the exceptions listed in "Exceptions to the United Church property rules" set out in section 1, above.

The congregation is the beneficial owner of the congregational property as long as the congregation is in existence. If the congregation ceases to exist (closes or disbands), The United Church of Canada automatically becomes the beneficial owner of any remaining congregational property. From that point, the trustees hold the property in trust for The United Church of Canada and must follow the directions of the regional council for the sale or other use of the property. [G.1.5.7]

In Quebec the same result occurs, but the law declares that The United Church of Canada is always the full owner, and the trustees administer the property for the congregation or for the regional council as noted above.

Trustees are mandatory

Every congregation must have trustees. Even if a congregation does not own land or a building, it may still own other kinds of congregational property, such as investments. [G.3.1]

Separate board of trustees for multi-point pastoral charges

A multi-point pastoral charge may need to have its own board of trustees in addition to the boards of trustees for each of the congregations in the pastoral charge. It depends on whether any property is owned by the pastoral charge separate from property owned by each of the congregations.

For example, in a two-point pastoral charge, each of the congregations may own a church building, held by that congregation's trustees. If the pastoral charge owns the manse, there needs to be another board of trustees to hold the manse as pastoral charge property. [G.3.2]

Eligibility requirements

A majority of the trustees must be United Church members [G.3.3.2]. The remaining trustees may be adherents or others.

All trustees must be of the legal age of majority in their province or territory, at least 18 (Alberta, Manitoba, Ontario, Prince Edward Island, Quebec, Saskatchewan) or 19 (British Columbia, New Brunswick, Newfoundland, Northwest Territories, Nova Scotia, Nunavut, Yukon) years of age, since a person under the age of majority cannot hold title to most kinds of property. In Quebec, this is because the officeholder must have unrestricted capacity to make decisions.

Number of trustees

The congregation decides on the exact number of trustees, with a minimum of three and a maximum of 15. [G.3.3.4]

Term of office

The congregation sets the term of office for the trustees. [G.3.3.5]

In some congregations, the trustees are appointed for life.

In most congregations, the trustees serve for a fixed period of one year or multiple years. It is a good practice to stagger their terms. For example, if a trustee's term of office is four years, the congregation appoints half of the trustees every two years. That way, the board of trustees includes both experienced and new trustees.

How a person becomes a trustee

The designated lay/diaconal/ordained minister is automatically a trustee of the congregation they serve. [G.3.3.3]

If there is no designated lay/diaconal/ordained minister, the pastoral charge supervisor is automatically a trustee. The remaining trustees are appointed by the congregation at a congregational meeting. [G.3.3.3]

Process for appointing trustees

1. Congregational meeting is called: The meeting is called by the designated lay/diaconal/ordained minister, the chair of the congregation, or the pastoral charge supervisor. [B.5.3.1]
2. Notice of congregational meeting is given: The designated lay/diaconal/ordained minister or other worship leader reads notice of the meeting during the worship service

on two Sundays. [B.5.4.2.b] The notice includes the date, time, place, and purpose of the meeting.

3. Timing of congregational meeting: The earliest possible time to hold the meeting is on the second Sunday on which the designated lay/diaconal/ordained minister reads the notice of the meeting. The meeting may take place immediately following the worship service on that second Sunday or at some later time/date, as indicated in the notice of the meeting.
4. Business at the congregational meeting: A member of the congregation makes a motion to appoint the trustee(s). Another member seconds the motion. An adherent may also move or second the motion if the congregation has given voting rights to adherents. The congregation votes on the motion, and if approved by a majority (50 percent plus 1) of those voting, the motion passes. Voting must be by a show of hands unless the congregation decides on another way of voting. Proxy voting or voting by mail in ballots is not permitted. [B.5.6]

How the board of trustees relates to the congregation's governing body and committees

It is up to the congregation to decide how the board of trustees relates to the congregation's governing body and committees as part of its governance structure.

One option is to have a trustee representative on the congregation's governing body as a member with voting rights or a corresponding member. Corresponding members have the right to attend meetings and participate in meeting discussions but do not have voting rights. In addition—or as another option—there could be a trustee representative on committees, such as the stewards, finance, property, or manse committee.

3. Trustee Meetings

Chair of the trustees

The designated lay/diaconal/ordained minister or pastoral charge supervisor has the right to serve as the chair or to name a deputy chair to chair trustee meetings.

If both the chair and the deputy chair are unavailable for a particular meeting, the trustees at the meeting elect a chair for that meeting. The designated lay/diaconal/ordained minister or pastoral charge supervisor may also choose not to exercise this right and leave it to the trustees to elect a chair from among themselves. [G.3.5]

To avoid any conflict with the pastoral duties of the designated lay/diaconal/ordained minister, it is wise to elect a lay person as chair.

Regular meetings

There is no required frequency of trustee meetings. It is a good practice for the trustees to meet *at least* annually to prepare their report for the annual congregational meeting. Boards of trustees may hold regular meetings quarterly, bimonthly, semi-annually, or at other intervals they consider appropriate or as set by the congregation.

Calling meetings of the board of trustees

Meetings are called by the designated lay/diaconal/ordained minister, the pastoral charge supervisor, or at least two of the trustees. [G.3.6.1]

The person calling the meeting is responsible for notifying the other trustees about it.

Notice of regular trustee meetings

For regular trustee meetings, at least one day's advance notice must be given by announcement at a public worship service or by one of the ways required for special trustee meetings (see below). [G.3.6.2]

Special trustee meetings

A special trustee meeting is one where the trustees are considering the sale, mortgage, lease, renovation, addition, or similar major action regarding congregational property, or considering any legal action involving the trustees.

Notice of special trustee meetings

Written notice is given to each trustee in person or via mail at least seven days before the meeting. The notice includes the date, time, place, and purpose of the meeting. [G.3.6.2]

Business at trustee meetings

The meeting takes place only if a minimum number of trustees is present. For boards of

trustees with 3–9 members, a majority of the trustees must be present. For boards of trustees with 10 or more members, at least five trustees must be present. [G.3.6.4]

The trustees make all decisions by the majority vote of the trustees who are present at the meeting. The chair votes only if there is a tie in the voting. [G.3.6.5]

Since the board of trustees is not a council of the church, the designated lay/diaconal/ordained minister is not required to be present to ensure quorum.

Minutes of trustee meetings

The board of trustees must keep minutes of its meetings that include all decisions made by the board. [G.3.4.3]

They must make the minutes available to the designated lay/diaconal/ordained minister and the governing body for review and copying purposes.

4. Special Circumstances

More than 15 trustees

When two or more congregations amalgamate, all their trustees automatically continue to serve as trustees for the newly amalgamated congregation. [G.1.4.5]

This may result in the amalgamated congregation having more than the maximum number of 15 trustees. A congregation may also find itself with more than 15 trustees because of an error in voting or a lack of awareness of the rules. In those situations, all the trustees continue to act, but no vacancies (due to resignations or expiry of a trustee's term) are filled until the number of trustees is reduced to 15 or fewer. [G.3.3.4.b]

Often, in the case of an amalgamation, all the trustees of both congregations resign following the amalgamation, and the newly amalgamated congregation elects a new board of trustees.

Vacancies on the board of trustees

The board of trustees may continue to act even if there are vacancies, as long as there are at least three trustees. [G.3.3.4.a]

The vacancies should be filled as soon as practicable, following the process for appointing trustees set out above.

Fewer than three trustees

If only one or two trustees remain due to a number of vacancies, an officer of the regional council (chair, secretary, or other equivalent officer) automatically becomes a trustee. They serve with the remaining trustees until all the vacancies are filled by the congregation following the process for appointing trustees set out above. If the congregation fails to appoint new trustees, the regional council may appoint them. [G.3.3.4.c]

The regional council may give notice to the congregation requiring it to appoint the full number of trustees. If this occurs, the person presiding at worship reads the notice to the congregation on two consecutive Sundays. The congregation has four weeks after the second Sunday to appoint new trustees following "Process for appointing trustees" in section 2, above. The new trustees take office when the regional council gives notice of their appointment to the congregation during public worship. [G.3.3.4.c]

No known or living trustees

A congregation sometimes loses track of the identities of its trustees, particularly if they were appointed for life. The information may have been lost from institutional memory over time and can't be ascertained from the church records. Or a congregation may realize at some point it has no living trustees (other than the designated lay/diaconal/ordained minister). In either of those situations, the congregation must appoint new trustees following "Process for appointing trustees" in section 2, above, as soon as possible after the issue comes to light.

Trustee resignation

A trustee may wish to resign before the end of their term. Here are the steps to be followed:

1. Trustee submits resignation: The trustee gives their written resignation to the secretary of the congregation with a copy to the Board of Trustees.
2. Congregational meeting is called: The designated lay/diaconal/ordained minister, chair of the congregation, or pastoral charge supervisor calls the meeting. [B.5.3.1] The regional council may also call the meeting. [B.5.3.5]
3. Timing of congregational meeting is set: The earliest possible time to hold the meeting is on the second Sunday on which the designated lay/diaconal/ordained minister reads the notice of the meeting. The meeting may take place immediately following the worship service that day or at some later time/date.
4. Notice of congregational meeting is given: The designated lay/diaconal/ordained minister or other worship leader reads notice of the meeting during the worship service on two Sundays. [B.5.4.2.b] The notice includes the date, time, place, and purpose of the meeting.
5. Congregational meeting is held: A member of the congregation makes a motion to accept the resignation of the trustee. Another member seconds the motion. An adherent may also move or second the motion if the congregation has given voting rights to adherents. The congregation votes on the motion, and if approved by a two-thirds majority of those voting, the motion passes.

Removing a trustee from office

The congregation may decide that a person is no longer a trustee before their term of office has ended.

The reason may be that the person has moved away, left the United Church, not attended trustee meetings for at least a year, or any other reason the congregation considers appropriate, such as the trustee being convicted of a criminal offence. [G.3.3.6]

Here is the process to be followed:

1. Congregational meeting is called: The designated lay/diaconal/ordained minister, chair of the congregation, or pastoral charge supervisor calls the meeting. [B.5.3.1]
2. Notice of congregational meeting is given: The designated lay/diaconal/ordained minister or other worship leader reads notice of the meeting during the worship service on two Sundays. [B.5.4.2.b] The notice includes the date, time, place, and purpose of the meeting.

3. Timing of congregational meeting is set: The earliest possible time to hold the meeting is on the second Sunday the designated lay/diaconal/ordained minister reads the notice of the meeting. The meeting may take place immediately following the worship service that day or at some later time/date.
4. Special notice to trustees is given: If a trustee is personally responsible for any congregational debts, all the trustees must be given at least eight days' advance notice of the meeting in writing or in person, in addition to the notice given during the worship service. [B.5.4.2.b]
5. Congregational meeting is held: A member of the congregation makes a motion to remove the person as a trustee. Another member seconds the motion. An adherent may also move or second the motion if the congregation has given voting rights to adherents. The congregation votes on the motion, and if approved by a two-thirds majority of those voting, the motion passes.
6. Trustee's personal responsibility for debts is considered: If the trustee is personally responsible for any congregational debts, the congregation may only decide that the person is no longer a trustee if arrangements are in place to protect the person from this personal responsibility. [G.3.3.6.c]

Other events ending the term of a trustee

Under secular law in all provinces, a trustee's term ends automatically with death, legal incapacity (in Quebec, inaptitude), or bankruptcy or other event removing the eligibility of that trustee.

Conflicts of interest

The United Church of Canada has a policy to guide the members of all decision-making bodies within the church, including congregational Boards of Trustees. When participating in decisions, they must not put themselves in a position where their own interests may conflict with their duty to act in the best interests of the beneficiary of the trust: the congregation and, if the congregation ceases to exist, the wider United Church. For a copy of the policy, see Appendix A.

5. Trustee Responsibilities

Note: *These responsibilities may also be known by a legal term: “fiduciary duties.”*

Following property rules

Trustees are responsible for following all United Church property rules. [G.3.4.2.b]

Standard of care

Trustees must give the same care and attention to congregational property as a reasonable person would give to their own property. The individual responsibilities set out below are all part of meeting this standard and complying with the United Church property rules. [G.3.4.1]

Ensuring proper use

Trustees must ensure the congregational property is used for purposes allowed under the United Church property rules. Here is the exact wording from the [Model Trust Deed](#) of 1925 (still in effect) for how congregational property may be used:

For the use and benefit of the...congregation, as a part of The United Church of Canada, as well for the site of a church, chapel, meeting house, school, manse, parsonage or minister's dwelling or other place for religious, charitable, educational, congregational, or social purposes, glebe or burial ground, as the said congregation may direct, as for the support and maintenance of public worship, and the propagation of Christian knowledge, according to the doctrine, discipline, by-laws, rules and regulations of The United Church of Canada.

If the trustees are concerned that any particular or proposed use of the property doesn't fit within those purposes, they should raise their concern with the congregation's governing body and, if still not addressed to their satisfaction, with the regional council.

The same rules apply to any gift of property to the congregation. The trustees must ensure that the donor has not set any terms or conditions for the gift that conflict with the permitted purposes. If the purposes do conflict, the trustees must refuse to accept the gift.

Complying with decisions

Trustees must comply with all lawful decisions about congregational property made by the governing body of their congregation and the regional council. [G.3.4.2.a]

If they disagree with a particular decision, they may voice their objections first to the governing body and then, if not satisfactorily addressed, to the regional council. However, as long as the decision is a lawful one, the trustees must comply with it. If they feel they cannot comply in good conscience, they have the option of resigning.

An example of an unlawful decision might be a decision by the governing body to install equipment in the church building without obtaining the required permits from governmental authorities and directing the trustees to pay for the equipment and installation work out of assets they hold. If trustees are unsure about the legality of a particular action, they can seek legal advice.

If the decision is unlawful, the trustees should refrain from complying with the decision, raise their concern with the congregation's governing body and, if still not satisfactorily addressed, with the regional council.

Caution: The congregation elects the trustees to exercise their fiduciary duty with respect to congregational property. The governing body must not assume the trustees' role and responsibility, and the trustees must leave the governing body to decide on the life and work of the community of faith. These different roles may require balancing, with the regional council assisting in resolving disagreements that may arise.

Books and records

As noted above, trustees are responsible for keeping records of their meetings and of all funds received and disbursed by them. They must make those records available upon request to the designated lay/diaconal/ordained minister or to another person designated by the congregation's governing body. [G.3.4.3]

Personal liability

A trustee is not personally responsible for any loss or damage to congregational property unless caused by that trustee's negligence, intentional act, or failure to follow United Church property rules and any applicable secular laws. [G.3.4.4]

Insurance

Responsibility

Trustees must ensure adequate insurance is maintained to protect buildings and other congregational property and to minimize the exposure of congregational assets. One of the positive outcomes of fulfilling the responsibility of ensuring adequate insurance coverage is that trustees then have legal representation and indemnification (payment for any losses) for any actions in which they are named as defendants in their capacity as trustees. Trustees have the right to compensation for any losses out of the trust estate.

While our polity is silent on trustees' responsibility for insurance, the law courts have held that any trustee who fails to insure the trust property adequately is deemed personally to be the insurer. In other words, the trustee is personally liable for any insurable loss. In Quebec, where trustees are regarded as mandataries administering the property of The United Church of Canada, the same duty applies.

Types of insurance coverage for congregations

The exact kind of insurance coverage necessary varies somewhat among congregations. Coverage can be arranged through the [UCC Protect](#) plan (Hub International, insurance broker) or the congregation's own insurance broker, who will advise on the coverage appropriate for a particular congregation. The following are common types:

Type of insurance	What is covered
Property	physical loss of or damage to buildings and contents
Commercial General Liability	personal injury, property damage, advertising, and tenants' legal liability; includes claims of abuse and harassment; counselling coverage
Umbrella Liability	increased liability limits above Commercial General Liability
Crime	employee dishonesty, loss of money, counterfeit currency, and cheque and credit card forgery
Equipment Breakdown	sudden and accidental breakdown of boilers, pressure vessels, air conditioning units, heat pumps, wiring, etc.
Directors and Officers Liability*	protects employees, trustees, volunteers, committee members, and any other people acting on behalf of the congregation or at the direction of an officer or the governing body for their personal liability arising out of actual or alleged negligence, errors, misstatements, or breach of duty in their oversight responsibilities*
Third Party Event Liability	third-party bodily injury and property damage arising out of an event held by an organization or individual on congregational property or property of other communities of faith
Property and Business Interruption	all risks of direct loss or damage of property of every description; optional gross earnings and payroll coverage

*The General Council Office provides and pays for [Directors and Officers Liability coverage](#) for all congregations. Congregations do not need to purchase this kind of coverage themselves.

Outside organizations or individuals

Those using space in the church building or other congregational property should have their own liability insurance coverage. Users should be required to provide a certificate of insurance before they begin to use the space. The certificate of insurance should indicate that the congregation has been named as an Additional Insured on the user's policy.

Trustees' recourse

If the governing body is not willing to approve insurance coverage that the trustees consider adequate, the trustees should inform the regional council of the situation. The trustees also have the option of resigning if they are unable to ensure adequate insurance is in place.

Maintenance and Repairs**Responsibility**

The trustees should ensure the buildings and other congregational property are maintained and repaired.

Procedure

Typically, a property committee or other body will oversee maintenance work and repairs and report to the governing body of the congregation and the trustees as the officers responsible for congregational property. The governing body may also direct the trustees to oversee the work themselves.

Trustees have no authority to take on this work and incur the cost unless authorized by the governing body or delegated to them by the bylaws of the congregation.

Trustees' recourse

If the trustees consider certain work necessary, they should inform the property committee (or equivalent). If the work is not carried out, the trustees should inform the governing body. If the governing body does not attend to the work, the trustees should inform the regional council of the situation. The trustees also have the option of resigning if, through these other actions, they are unable to ensure proper maintenance and repairs to the property.

6. Records and Reporting

Financial records

The board of trustees must keep account records showing all funds received and disbursed by them.

Treasurer

While there is no requirement for the board of trustees to have a treasurer, it is wise to appoint one.

If the person appointed treasurer is not a trustee, that person does not have a vote. The Board of Trustees is responsible for the treasurer's actions.

In the spirit of volunteerism, The United Church of Canada does not encourage paying an honorarium to someone carrying out the duties of a treasurer.

Signing officers

It is recommended that at least three members of the Board of Trustees, designated by office rather than by name, serve as signing officers.

It is wise to have two of the three signing officers sign all cheques. It is not appropriate to sign a batch of cheques in advance as this defeats the purpose of having two signatures.

Since, for the most part, the board of trustees cannot delegate their responsibilities, cheques should be signed only after the board has made a decision.

Availability of records

The board of trustees must make the records available to the designated lay/diaconal/ordained minister and to the chair of the governing body or appropriate committee. This may be for review, copying, audit (including providing all support documentation needed for an audit), or similar purposes. [G.3.4.3]

Trustees' financial statement

The trustees provide a statement of their receipts and expenses for the past year to the congregation's governing body to present at the congregation's annual meeting. This statement must be independently reviewed (see below) before presentation. This is a different standard than a compilation ("notice to reader") or formal audit.

Independent review of financial statement

An independent review [G.4.4.4] is an examination of financial records. The person performing the review of the trustees' financial statement must

- ensure that at least two unrelated people are responsible for signing all cheques and transaction documents
- examine for accuracy the books that record receipts and disbursements
- ensure that all transactions were authorized properly
- review bank reconciliations for the year
- review the procedures used for keeping records to ensure that the chance of error or fraud is minimized

This is a higher standard than a notice to reader.

Who performs an independent review

The person performing the independent review must be a public accountant or another person familiar with bookkeeping who understands the purpose of an independent examination of financial records. [G.4.4.3]

It is a good practice for this person to be from outside the congregation or at least outside its governance structure.

Other resources for trustee financial matters

For more information on independent reviews and best accounting practices, see the [Financial Handbook for Congregations](#).

Reporting to congregation

Beyond the trustees' providing their financial statement for the annual meeting, it is up to the congregation to decide on the frequency of trustee reporting as part of the congregational governance model.

For example, the trustees might report annually to the congregation and quarterly to the congregation's governing body. The trustees are ultimately accountable to the congregation, so their report should provide enough information for the congregation to be assured that trustee responsibilities are being fulfilled, such as

- a statement of assets and liabilities (if not included in the financial statement)
- any concerns about the condition of the congregation's land, building and other physical assets, including any recommended repairs or capital improvements necessary (this information should have already been shared with the governing body or, if applicable, the property committee)
- details on the amount and types of insurance carried for congregational assets
- details of any investments of congregational assets

7. Investing Congregational Assets

Trustees' responsibility

The trustees must ensure congregational funds are properly invested to obtain the best return possible, given the ongoing needs of the congregation to access cash and to preserve capital. In fulfilling this responsibility, the trustees must comply with provincial or territorial trustee legislation, which applies to trustees generally, not just church trustees.

Rule for trustee investments in Quebec

Because the trustees are considered mandataries rather than Civil Code trustees, the rules of “presumed sound investments” do not apply, and the trustees can make any investments permitted for The United Church of Canada. Essentially, these are what a reasonable person would do when administering funds as noted above.

Rule for trustee investments in all other provinces and territories

In other provinces and territories, no investments are specifically permitted or prohibited. Rather, the trustee legislation requires trustees to act as “prudent investors.” While the exact wording varies among provinces and territories, in general terms, the trustees must exercise the care, skill, diligence, judgment, and intelligence of a prudent investor (or reasonably prudent investor) in making any kind of investment.

In some provinces, the trustee legislation contains a list of criteria for trustees to consider in making investment decisions in addition to any other relevant factors. For example, in Saskatchewan, Ontario, Prince Edward Island, and Nova Scotia, those criteria are:

- general economic conditions
- possible effect of inflation or deflation
- expected tax consequences of investment decisions or strategies
- role of each investment or course of action within the overall trust portfolio
- expected total return from income and appreciation of capital
- needs for liquidity, regularity of income, and preservation or appreciation of capital
- an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries

Trustees in all provinces and territories should be aware of the legislative requirements in their own jurisdiction. For help in locating an up-to-date version of the relevant legislation, trustees can contact the legal staff at the General Council Office.

Trustees' liability for investments

Generally, trustees are not liable if an investment does not yield the returns expected as long as the trustees have met the “prudent investor” standard, considered any of the mandated criteria, and otherwise followed the rules for trustee investments in their province or territory. For example, the Ontario (*Trustee Act*, R.S.O. 1990, chapter T.23, section 28) and BC legislation

(*Trustee Act*, R.S.B.C. 1996, chapter 464, section 15.3) both provide that

A trustee is not liable for a loss to the trust arising from the investment of trust property if the conduct of the trustee that led to the loss conformed to a plan or strategy for the investment of the trust property, comprising reasonable assessments of risk and return, that a prudent investor could adopt under comparable circumstances.

However, a trustee may be held responsible if the failure of an investment is due to the individual act of the trustee acting alone instead of by collective decision of the trustees. Therefore, it is important that all actions taken by the Board of Trustees be taken (1) by motion duly moved, seconded, debated, voted on, and minuted, or (2) by recorded consensus.

Delegation of duties and professional advice

Since the trustees are given certain responsibilities as a collective board, it would be improper to delegate any of those responsibilities to an individual trustee, such as the chair or the treasurer, to act on the board's behalf. It is also improper to delegate the trustees' duties to someone who is not a trustee, such as a paid staff person.

One exception is in the case of an agent, like an investment manager. That is permitted under the laws of most provinces as long as the trustees choose and oversee the agent wisely in the same way as any prudent investor and comply with any other requirements under provincial law. Trustees are also permitted to obtain advice on investing trust property, and to rely on that advice where a prudent investor would rely on the advice under comparable circumstances.

If the trustees decide to delegate some investment decisions to an agent, in addition to meeting any requirements under provincial law they should have a written investment policy and obtain the agent's agreement in writing to follow the investment policy as well as to report to the trustees at regular stated times. It is also wise for the trustees to obtain the approval of the congregation to use an agent for investment decisions.

Investment policy

It would still be wise for the trustees to have an investment policy even if they are not delegating investment decisions to an agent as mentioned above. A policy provides useful guidance for the trustees when they are making day-to-day investment decisions and provides greater transparency for those decisions for the congregation. In addition, an investment policy helps to protect trustees from becoming the objects of ill feeling over investment decisions that don't work out as hoped for.

The trustees should obtain the advice of a lawyer and an investment professional to help ensure the policy complies with the trust legislation of their province or territory and meets the financial needs of the congregation.

8. Congregational Property Transactions

Determining the correct process to be followed

There are two possible processes for transactions and work involving congregational property. In this handbook, they are referred to as “Process 1” and “Process 2.” The applicable process depends on the kind of property and the kind of proposed transaction or other work, and the process can be determined by answering the following questions in this order:

1. *Is this a sale, purchase, or lease of congregational property?* If yes, Process 1 applies. If no, proceed to next question.
2. *Is it a mortgage or any other borrowing secured by congregational property?* If yes, Process 1 applies. If no, proceed to next question.
3. *Does this involve the demolition of an existing building on congregational property and/or construction of a new building?* If yes, Process 1 applies. If no, proceed to next question.
4. *Does the proposed work consist of renovations to the property?* If yes, proceed to next question. If no, proceed to question 6.
5. *If the proposed work consists of renovations to the property, are they considered “major renovations”?* Check with the regional council on whether the proposed renovations qualify as major renovations in that region (each regional council decides on the kind of work that is considered major renovations for that region). If yes, Process 1 applies. If no, Process 2 applies.
6. *Does the transaction involve “other major assets” rather than land or buildings?* Check with the regional council on whether the property involved is considered other major assets in that region (each regional council decides on the definition of other major assets for that region). If yes, Process 1 applies. If no, Process 2 applies.

Process 1 for a transaction involving land, buildings, or “other major assets”

- a. Governing body decision:** The governing body decides to enter into a congregational property transaction. If the governing body is considering leasing the manse, the designated lay/diaconal/ordained minister’s approval is required.
- b. Consultation with regional council:** The governing body consults with the regional council on how the congregation or pastoral charge will use any proceeds it receives in the transaction. The governing body must ensure that the transaction costs and any trustee debt are paid out of the proceeds.
- c. Governing body directs trustees:** The governing body directs the trustees to proceed with the transaction and seek regional council approval.

- d. **Trustee decision:** The trustees hold a special meeting. They follow the direction of the governing body (provided it is in compliance with their fiduciary duties) and decide to proceed with the transaction and seek regional council approval.
- e. **Request for regional council approval:** The trustees ask the regional council to approve the transaction. They give the regional council all the information and documentation about the transaction that the regional council requires to make a decision. This includes full details of
 - the terms of the transaction
 - the proposed source of any funds the congregation requires for the transaction
 - the proposed use of the proceeds that the congregation will receive in the transaction
- f. **Regional council consultation for new buildings:** If the transaction is to construct a new church building or manse, other communities of faith may be affected. The regional council must consult with them and consider their opinions before making a decision on the transaction.
- g. **Regional council decision:** The regional council makes a decision on whether to approve the transaction and the use of any proceeds received by the congregation or pastoral charge in the transaction. [G.2.3.2]

There may be additional steps to follow under the organizational structure of the congregation or regional council.

It is wise for the governing body to consult a local lawyer at step A to ensure compliance with all secular legal requirements that apply to the transaction. For example, if the governing body is considering entering into a long-term lease, it is important for them to know about any limitations on the length of term and renewals that apply where a congregation leases property.

If the transaction involves the sale, mortgage, or purchase of congregational property, a local lawyer's help will be needed to complete the transaction, including to prepare and register documents for land registry or land titles purposes.

Process 2 for a transaction involving any other kind of congregational property (not land, buildings, or "other major assets") and not "major renovations"

- a. **Governing body decision:** The governing body is responsible for making a decision to enter a congregational property transaction.
- b. **Governing body directs trustees:** The governing body is responsible for directing the trustees to proceed with the transaction.
- c. **Trustee decision:** The trustees are responsible for following the direction of the

governing body (provided it is in compliance with their fiduciary duties) and proceeding with the transaction.

- d. Regional council:** Regional council approval is not required. [G.2.3.3]

There may be additional steps to follow under the congregation's organizational structure.

Title to congregational property

How should the congregation be named as owner on title and other documents?

Land registration rules and practices vary among provinces and territories, and congregations must comply with them. It is unacceptable in any province or territory for the congregation to hold property in its own name alone—for example, "St. Andrew's United Church."

A couple of exceptions are named below, but generally title should be held in the name of the trustees, and all of them should be listed on the title. Here is an example if the congregation has five trustees:

Hana Takahashi
Sarah Smith
Yang Li
Jane Park
Emmanuel Abebe
as trustees of St. Andrew's United Church

In some provincial land registry and land titles systems, it is not permissible to include the words "as trustees of St. Andrew's United Church," so that the trustees' names are listed on the title. However, the trustees still hold the property as trustees for the congregation and must comply with United Church property rules.

In Quebec, generally title should be registered as "The United Church of Canada, as represented by the Trustees of St. Andrew's United Church (*address*)."

Updating title

More often than not, title to the congregational property will not be up to date in land registry or land titles records. Title may be held in the name of trustees who have died or left the congregation many years ago. If the congregation was in existence before 1925, title may be held in the name of trustees for one of the predecessor denominations of the United Church.

This often comes to light only when the congregation wants to sell or mortgage its property. At that time, the title must be updated by registering a document explaining the changes in trustee names and/or denomination over the years. Depending on the province or territory, and its land registration system, this information is included in the actual transfer or mortgage, or in a separate document that must be registered before the transfer or mortgage. The trustees will need to consult a local lawyer for advice on the correct procedure for their province or territory. The legal staff of the General Council office can provide the local lawyer

with the necessary information about the changes of denomination for a particular congregation.

In an ideal world, title to congregational property would be updated in land registry or land titles records every time there is a change of trustees, but realistically the work and expense involved does not justify making that a regular practice.

In Quebec it is sufficient that the notary in a deed record the various laws and transfers that have resulted in the current legal situation.

Amalgamations

Two or more congregations may choose to amalgamate. Each congregation must meet separately to make a decision on whether to amalgamate [G.1.4.1]. The regional council can be a resource to them throughout the process.

This is how the United Church property rules apply to the process of amalgamation [G.1.4]:

1. **Regional council consultation:** The regional council consults with the congregations on the property needs of the new amalgamated congregation. A congregation may ask its governing body to represent it in this consultation.
2. **Surplus property:** The regional council may decide that some of the congregations' property will not be needed for the new amalgamated congregation. Any property that will not be needed is called "surplus property."
3. **Use of surplus property:** The regional council is responsible for all surplus property after the amalgamation and decides how to use the surplus property for the benefit of the United Church.
4. **Change in property ownership:** Before an amalgamation, the trustees of a congregation hold all property for that congregation. After an amalgamation, the trustees hold surplus property for the United Church, to be used as the regional council decides. They hold all other property for the new amalgamated congregation.
5. **Amalgamations involving more than one regional council:** If the amalgamation involves congregations that are within the bounds of more than one regional council, the regional councils involved must
 - a. each approve the amalgamation as a change in the covenantal relationship between the regional council and the applicable congregation
 - b. agree on any conditions to be included
 - c. get the approval of the General Council, which may make adjustments to the boundaries of the regional councils involved
6. **Trustees of the amalgamated congregation:** The change in property ownership is automatic when the amalgamation takes place. This means the trustees of all the

amalgamating congregations form a large board of trustees that holds the property that previously belonged to each of the amalgamating congregations. This large board of trustees may continue to serve the amalgamated congregation (see the earlier section entitled “More than 15 trustees”). However, typically in amalgamations the trustees who previously served the amalgamating congregations resign and the amalgamated congregation elects a new board of trustees, which may or may not include some of the former trustees.

- 7. Updating records to reflect amalgamation:** It is a good practice to update the land registry or land titles records to reflect the amalgamation (new trustees and new name of congregation). If one of the church buildings or other properties is being sold, the title has to be updated as part of the closing of that transaction.
- 8. Congregation continues to exist:** A congregation’s life does not end when it amalgamates with another congregation. Rather, the congregation continues to exist as the new amalgamated congregation.
- 9. Gifts and bequests:** Gifts and bequests to one of the amalgamating congregations, whether made before or after the amalgamation, automatically go to the new amalgamated congregation even if the gift document or will refers to the congregation by its former (pre-amalgamation) name. The amalgamated congregation is a continuation of the amalgamating congregations and is entitled to the gift.

Disbanding

A congregation can choose to conclude its ministry as a community of faith by disbanding or closing. The regional council can be a resource to them throughout the process.

This is how the United Church property rules apply to the process of disbanding [G.1.5]:

- **Decisions to disband:** The congregation makes a decision to ask the regional council to disband the congregation, and the regional council makes a decision on whether to approve the disbanding. In extraordinary circumstances, the regional council may also decide to disband the congregation on its own initiative, without a request from the congregation.
- **Effective date:** The regional council may specify a future date that the disbanding will come into effect. If not, the disbanding comes into effect on the date that the regional council makes the decision (adopts the motion) to approve the disbanding.
- **Rule for dealing with congregational property:** The congregation should dispose of all congregational property before the disbanding is effective. This includes selling any land and buildings and transferring the proceeds along with any other assets to others. All of this property must be used for the mission of the congregation or the wider United Church.

- **Process for dealing with congregational property:** The first step is for the congregation's governing body to consult with the regional council about any guidelines it may have for the property of disbanding congregations. Then, the congregation decides on a plan and makes a proposal for it to the regional council. The regional council makes a decision on the proposal. It may decide to approve the congregation's proposal as presented, it may approve the proposal with changes, or it may decide to deal with the congregation's property in some other way than as set out in the proposal.
- **Trustees' role—change of ownership:** The trustees sell, transfer, or otherwise dispose of the congregational property as directed in the regional council's decision. After the congregation ceases to exist, the trustees hold any remaining property for the United Church and take *directions for it from the regional council*.
- **Remaining property:** If any congregational property remains after the disbanding is effective (due to error, oversight or some other reason), the regional council automatically assumes responsibility for it and must decide how to use it for the benefit of the United Church.

Appendix A: The United Church of Canada Conflict of Interest Policy

(Available at united-church.ca/handbooks.)

Purpose Statement

The purpose of this policy is to give guidance to members of decision-making bodies of the United Church. When participating in decisions, they must not put themselves in a position where their own interests may conflict with their duty to act in the best interests of the United Church.

Policy

Application of This Policy

1. This policy applies to all members and adherents of the United Church when they are participating in decision-making in communities of faith, governing bodies of communities of faith, regional councils and the Denominational Council, and their respective committees, task groups and commissions, and the denominational Office of Vocation. Each of these bodies is a “Governance Body” in this policy.

Responsibilities

2. Members of a Governance Body must not participate in decision-making where their duty to the United Church is in conflict with the duty they owe to another organization. For example, that could happen where a member of the Body serves another organization as an employee, contractor or in an elected leadership role.
3. Members of a Governance Body must not participate in any decision-making by that Body which could result in direct or indirect benefit to them.
4. Members of a Governance Body must not give, in the performance of their duties for that Body, preferential treatment to relatives or friends or any other organization in which they have an interest.
5. Members of a Governance Body must not benefit from the use of information acquired during the course of their participation in that Body, if that information is not generally available to the wider church.
6. Members of a Governance Body must not accept from a person who has dealings with that Body any reward, advantage or benefit of any kind, either directly or indirectly, that affects decision-making.
7. Members of a Governance Body must not place themselves in a position where they are under obligation to another person who might benefit from special consideration or favour,

or who might seek preferential treatment by that Body.

Exceptions

8. There are exceptions to situations that might otherwise be considered a conflict of interest.
 - A. Monetary conflicts - A monetary conflict arises where the Governance Body is considering a decision that may have a monetary effect, either positive or negative, on a member of the Body or a person close to the member (relative or friend). It is not a conflict of interest if, in the opinion of the Body, the member's monetary interest is substantially the same as the monetary interest of all other members of the Body.
 - B. Non-monetary conflicts - A non-monetary conflict arises in any circumstance where a member of the Governance Body is constrained in any way from acting in the best interests of the church. That could occur where a member of the Body, or person close to the member, stands to gain a benefit in some non-monetary way from a decision that the Body is considering. It is not a conflict of interest if, in the opinion of the Body, the member's conflict is not likely to affect the member's decision.
 - C. Membership in a Governance Body through intentional representation from other organizations - It is not a conflict of interest when a member of the Governance Body who represents another organization on the Body brings the perspective of the other organization to the decision-making of the Body. That is a key purpose of having intentional representation from other organizations. As such, it is not a conflict of interest for such a member to participate when the Body is considering a decision that affects the other organization.
 - D. Waiver of conflicts - In any situation where a member of the Governance Body has an apparent conflict of interest, the Body may waive the conflict of interest and allow the member to participate in the decision-making. The Body must be satisfied that waiving the conflict will not negatively impact the transparency and integrity of the Body's decision-making.

Practice

9. *Knowledge/awareness of conflicts* - Members of a Governance Body must be constantly aware of the need to avoid situations that might result in a conflict of interest or the appearance of a conflict of interest. Orientation and education of members is important.
10. *Identifying conflicts* - As a member of the Governance Body participates in the work of the Body, they must consider whether any particular item of business presents a conflict of interest for them.
11. *Disclosing conflicts* - A member of the Governance Body must inform the Body of a conflict of interest or apparent conflict of interest at the earliest opportunity once the member becomes aware of it.

12. *Refrain from all participation* - The conflict of interest may involve a situation where the member of the Governance Body stands to gain personally, or where the member's relatives or friends stand to receive a benefit (either monetary or non-monetary). In such case, the member withdraws from any participation in the decision-making on any matters to which the conflict of interest relates. That includes leaving the room while the matter is under discussion until after the decision is made.
13. *Responsibility of other members* - If a member of the Governance Body fails to notice, or to declare, a conflict of interest, any other member may raise the matter with the Body. Once the issue has been raised by another member, the member with the potential conflict may acknowledge the conflict and withdraw from participation in the decision-making.
14. *Decision by Governance Body* - If the member of the Governance Body with the potential conflict of interest disagrees that one exists and/or does not withdraw from participation in the decision-making, it is up to the Body to determine the issue before proceeding with the item of business. If the Body decides that a conflict of interest exists, and makes no decision to waive it, the member is excluded from participation in the decision-making.
15. *Documenting* - The minutes of the meeting of the Governance Body must record all disclosures of conflict of interest, all exclusions from participation in decision-making based on conflict of interest, and all decisions by the Body with respect to conflict of interest.



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