

## BACKGROUND

The Religious Societies' Land Act establishes a mechanism by which a religious society or congregation may hold not in excess of 320 acres of land (1) or dispose of land. One of the purposes of the Act is to ensure that dealings with land held by a religious society are done in accordance with the wishes of the congregation or religious society and thus avoid any improper dealings with the land. Part 1 of the Act makes provision for the appointment of trustees to hold or convey land. In this situation, the religious society or congregation does not have to be incorporated. Part 2 of the Act makes provision for the incorporation of a congregation of a church or religious denomination and registration with the Registrar appointed pursuant to the Business Corporations Act. A religious society may also be incorporated pursuant to a private Act of the legislature.

## REGISTRATION PROCEDURE

### A. RELIGIOUS SOCIETY OR CONGREGATION HOLDING LAND BY TRUSTEES

1. A religious society or congregation may appoint trustees to take a conveyance or transfer of land for, among other things, the site of a church building or burial ground.(2)
2. The trustees and their successors, in perpetual succession by the name expressed in the deed or resolution, are deemed for the purposes of the Act to be a corporation and may take, hold and possess the land.(3) For example, in "William Smith and John Brown, Trustees for the Edmonton Reform Church", it is the "Trustees for the Edmonton Reform Church" which is deemed to be the corporate entity and this information should therefore be shown on the title (i.e., section 47 of the Land Titles Act concerning trusts does not apply). If a transfer is accompanied by a resolution specifying the manner of appointing successor trustees, it is attached to the transfer.
3. **Time Limit for Registration** - The transfer or deed of conveyance to trustees is void unless it is registered within 12 months of its execution.(4)
4. **Appointment of Succeeding Trustees** - The names of the trustees may be changed upon submission of a document which complies with the procedure for appointing new trustees as specified in the transfer or deed of conveyance or pursuant to the provisions of section 10. A new certificate of title is issued to the appropriate trustees.

Section 10 provides that if a grant, transfer or agreement for sale of the land does not specify the manner in which the successors to the designated trustees are to be appointed, the religious society or congregation may pass a resolution specifying the manner in which the trustees are to be appointed. If a resolution specifying the manner in which successor trustees are to be appointed is not already registered, it must accompany the document appointing new trustees. The resolution must indicate that section 10 has been complied with (i.e., a preamble stating that at a meeting of the religious society or congregation called according to its constitution or according to church practice, the resolution was passed by a majority of the persons present at the meeting entitled to vote. (5) The resolution must be signed by the chairperson and secretary of the meeting at which it was adopted. Their signatures do not need to be witnessed.(6)

If a resolution relates to a Presbyterian congregation, it must either have endorsed on it the consent under seal of the Board of Management of the Church and Manse Building Fund or be accompanied by evidence establishing that section 11 of the Religious Societies' Land Act is not applicable.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Transmission of Land

The code used for registration at Land Titles is: TMLA

5. **Mortgage or Lease of Land by Trustees** - Although trustees are required to have authorization to mortgage or lease land in the form of a resolution of the religious society or congregation, a mortgage, or lease executed by the trustees can be accepted for registration without a copy of the resolution.(7)

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Mortgage

The code used for registration at Land Titles is: MORT

6. **Sale of Land** - The trustees may sell land held by a religious society or congregation after fulfilling certain prerequisite duties. Subject to the exception in item B.3, the sanction of a justice of the Court of Queen's Bench must be obtained for the execution of the transfer. For Land Titles purposes, either a fiat endorsed on the transfer or a certified copy of the court order attached to the transfer is required for the transfer to be registrable.(8) All the usual requirements for a transfer except dower must be complied with.

The SPIN2 document type to be used when creating a Document Registration Request (DRR) form is: Transfer of Land

The code used for registration at Land Titles is: TFLA

7. **The United Church of Canada Act** - When the title to any real property stands in the name of any individual or individuals, deceased or not, and a certificate of:
- a) the secretary or clerk of the presbytery within the bounds of which such property is situated, and
  - b) of the minister having charge of the congregation, to the effect that such property belongs to, or is held in trust for or to the use of such congregation is presented for registration, the existing certificate of title is cancelled and a new certificate of title for the property is issued in the names of the trustees of the congregation as identified in the certificate.

Thereafter, all deeds, transfers, mortgages, leases or other assurances of any lands executed and purporting to be signed by the trustees of the congregation, or a majority of them, are deemed sufficiently executed if the following requirements are satisfied:

- a) The minister in charge of the congregation certifies that the persons executing the instrument were, at the date thereof, trustees for the congregation. In the absence of a minister to act, the certificate may be granted by the presiding officer, secretary or clerk of the presbytery within the bounds of which the lands are situated. The signature of the minister, presiding officer, secretary or clerk must be duly witnessed and verified by an affidavit of attestation.(9)
- b) The secretary or clerk of the presbytery or conference certifies that consent of the presbytery or conference has been given to the transaction.(10)

## B. **INCORPORATED CONGREGATIONS**

1. A congregation of a church or religious denomination may incorporate for the purpose of holding and dealing with real and personal property.(11) The Religious Societies' Land Act outlines the manner in which the incorporation should take place.
2. The provisions in respect of the acquisition or disposition of real property by a corporation apply with the exception that an instrument dealing with the property of an incorporated congregation must:
  - a) be executed under corporate seal and attested to by the signatures of not less than 2 officers of it (an affidavit verifying signing authority, FORM 31.1, **is not an acceptable substitute for the corporate seal**), and
  - b) have endorsed on it or attached to it an affidavit (**SCHEDULE A**) by some other officer of the congregation which states that the execution of the instrument was authorized by the congregation at a meeting duly called for the purpose and that the officer is capable of swearing positively to this fact.(12)
3. If a congregation that previously acquired land which is vested in trustees becomes incorporated, the trustees, or in the case of the death or removal of any of the trustees, a majority of them, may execute a transfer of the church property to the incorporated congregation. Court sanction of the transfer is not required.(13)

## C. **RELIGIOUS SOCIETIES INCORPORATED BY PRIVATE ACTS**

1. Many religious societies are governed by private Acts of the Legislature or the federal Parliament, which make provision for the execution of instruments. If a specific Act is known to be applicable, it must be reviewed to ensure that the proper procedures have been complied with. If there is no indication that a specific Act is applicable, a document is examined on the basis of the provisions in the Religious Societies' Land Act.

## **STATUTE AND CASE REFERENCES**

Statute references are to the Religious Societies' Land Act, R.S.A. 2000, c. R-15, unless otherwise indicated.

1. s. 3(4)
2. s. 3(1)
3. s. 3(3)
4. s. 4
5. s. 10(1)
6. s. 159(k), Land Titles Act, R.S.A. 2000, c. L-4
7. s. 5 and 6
8. s. 8
9. s. 20, United Church of Canada Act, S.C. 1924, c. 41; see procedures on Attestation of Instruments [AFF-1](#) and [AFF-2](#)
10. s. 6, Schedule A, United Church of Canada Act
11. s. 12
12. s. 19; see procedure on Corporations Acquisition and Disposition of Interests [COR-1](#)
13. s.20