

Guideline Leaflet PC09: Selling Church Land or Premises

When a church decides to sell church land or premises other than a manse or residential property there are some charity law requirements to consider. This leaflet explains the practical steps to be taken including guidance on finding a suitable surveyor to advise on the price, and legal issues.

This Guideline Leaflet is regularly reviewed and updated. To ensure that you are using the most up to date version, please download the leaflet from the BUGB website at www.baptist.org.uk/resources

The date on which the leaflet was last updated can be found on the download page.

PC09: Selling Church Land or Premises

These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.

The legal services undertaken by the Legal & Operations Team of the Baptist Union of Great Britain are carried out and/or supervised by a Solicitor who is authorised and regulated by the Solicitors Regulation Authority. Regulatory Information is available here:

[L17 Legal and Operations Team – Regulatory Information](#)

These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

If you want to ask questions about the leaflets and one of the Baptist Trust Companies are your property trustees, you should contact them. They will do their best to help.

If your church property is in the name of private individuals who act as trustees they may also be able to help.

DECIDING TO SELL

There are different reasons for a church wanting to sell the whole or a part of their land or buildings. Perhaps they are intending to relocate on another site, or they may have some property which is surplus to their present needs and they hope to release some capital. It may be that a neighbour wants to make an adjustment to boundaries which would involve the disposal of just a small part of the church site. Whatever the reason, it will first be discussed by the diaconate.

If the reason for selling is because a new site is being purchased then you should also read Guidelines PC08 *Buying Land or Premises for a Church*.

If the disposal in any way affects a burial ground or a part of the site where there have been burials you should also read Guidelines PC07 *Burial Grounds*.

The diaconate (usually the minister, deacons and elders, Leadership Team or the group recognised as the Charity Trustees) should appoint one of their number, or perhaps some other suitably experienced church member who has the confidence of the church, to act as the contact person for the whole process.

The proposals must be discussed by a Church Members' Meeting. In most churches the Trust Deeds and/or the Constitution require property matters to be considered by a Special Church Members' Meeting. This usually means that notice of the meeting, and an indication of the purpose of the meeting, must be given at the services on two previous Sundays.

To be successful a resolution at a Special Church Members' Meeting must usually have the support of at least two-thirds of the members personally present, entitled to vote, and voting at the meeting. It is important to check what the local church Constitution (or other governing document) requires in your church.

Where it is intended to sell the whole or a substantial part of the church premises because of relocation or major redevelopment there will doubtless need to be a series of Church Members' Meetings to consider the proposals and their implications. The meeting at which the final decision to proceed with the disposal is made, however, must be a Special Church Members' Meeting.

So far as possible it will be best if the members resolve in principle to proceed with the sale and leave it to the diaconate (Charity Trustees) to agree the detailed terms and go ahead with the sale. The deacons will need to take into account the advice of a qualified surveyor (see next section) but if too much detail has to be referred back to subsequent members' meetings the process will be delayed and frustration caused to potential buyers as well as the church.

A copy of the resolution of the Special Church Members' Meeting should be sent to the Baptist Union Corporation with a note of the name, address and day-time telephone number of the contact person.

The Baptist Union Corporation will consult the Regional Minister for the area. This is because any property is obviously a very valuable asset to the church. The Regional Minister may wish to discuss the circumstances with the diaconate before being able to confirm that the sale should proceed.

CONSULTING A SURVEYOR

An essential point to bear in mind is that the law regards a Baptist church as a charity. This means that in disposing of any property – however small or insignificant – the Baptist Union Corporation (or other Baptist Trust Company) as Holding Trustees, and the diaconate as Charity Trustees, must act in accordance with the provisions of the Charities Act 2011. The Act requires Charity Trustees to obtain and consider a report on the proposed disposal from a qualified surveyor.

The contact person should write to the Baptist Union Corporation with the name and address of a suitably qualified surveyor practising in the locality of the church. This must be a person who is a fellow or professional Associate of the Royal Institution of Chartered Surveyors.

The Baptist Union Corporation will help (as necessary) arrange for the surveyor to issue a report which complies with the appropriate regulations (The Charities (Qualified Surveyor's Reports) Regulations 1992).

The report will be issued to the Baptist Union Corporation with a copy to the church. As well as describing the property, any legal restrictions which apply to it and (if there are buildings) the state of repair, the report will advise how the disposal should be conducted; a sale by private treaty or by public auction may be recommended. The surveyor may, in some cases, consider that repairs or alterations should be carried out or planning consent sought for alternative use before the property is offered for sale. The report will give the surveyor's opinion of the value of the property in its present state and, if appropriate, when repairs or alterations have been done or planning consent for alternative use obtained. Finally the surveyor will indicate whether a disposal at this time is in the best interest of the church and how the property should be marketed.

The Charities Act provides that the Charity Trustees must consider the advice contained in the surveyor's report and that the terms for the proposed sale are the best that can reasonably be obtained for the church.

MARKETING THE PROPERTY

If the property is to be marketed Estate Agents may now be appointed by the contact person on behalf of the church to act in accordance with the advice given by the surveyor. The local church's diaconate (Charity Trustees) will be asked to sign an Agreement with the Estate Agents covering several issues – including their commission. Read the Agreement carefully and make sure that commission will only be payable by the church if a buyer is found who actually completes the purchase. Check any provisions in the Agreement which give to the Agents a sole agency for the sale.

Unless the property is being sold by Auction an offer which is not less than the value indicated by the surveyor may be accepted on behalf of the church 'subject to contract'. If a lower offer is received the diaconate (Charity Trustees) and the Baptist Union Corporation must consult the surveyor and the sale can normally only proceed if the surveyor is able to confirm in writing that the lower offer is the best price obtainable.

Where the church are dealing with a property developer who, for example, wants to acquire the church site for redevelopment purposes and relocate the church on other property or within the new development it is wise to instruct the surveyor to negotiate terms with the developer on behalf of the Baptist Union Corporation and the church. These negotiations are usually very complicated and protracted and professional advice from surveyors and solicitors is essential. The surveyor will eventually have to certify to the diaconate (Charity Trustees) and the Baptist Union Corporation that the proposed terms are the best that can reasonably be obtained. It is sometimes possible to persuade the developer to be responsible for the payment of all professional fees incurred on behalf of the Baptist Union Corporation and the local church even if the disposal does not proceed to completion.

If the property is being sold by Auction the diaconate (Charity Trustees) and Baptist Union Corporation will need to agree with the auctioneer, on the advice of the surveyor, the reserve price below which the property may not be sold.

When buildings are being sold be clear about what is included in the sale – particularly the fixtures and fittings and any contents of the property. Items which are not to be included in the sale should be removed before the property is marketed or specifically excluded on any Fixtures and Fittings List provided by the church's Solicitor to the buyer.

If part of the church site is being sold consideration must be given to imposing restrictive covenants to make sure that the future use of the land will not interfere with the continued use of the rest of the site for church purposes. Also give thought to the need to grant and reserve easements (formal legal rights) for access and drainage etc and decide who will be responsible for erecting and then maintaining any fencing to separate the land being sold from retained part of the site. Special care is needed if there is a Burial Ground that is included in the sale.

APPOINTING A SOLICITOR

In all property matters a solicitor will be needed. (Please note that the legal team at the Baptist Union of Great Britain cannot act on behalf of a church in relation to a property transaction. Any work that we carry out in connection with such a matter will be on behalf of the property trustee, the Baptist Union Corporation Ltd, rather than for the church).

The firm of solicitors who act for the Baptist Union Corporation Limited are:

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham
B3 2ES

Tel: 0121 200 3242

Fax: 0121 212 7442

DX 13055 Birmingham 1

www.anthonycollins.com

E-mail: dominic.curran@anthonycollins.com

Please make initial contact with Dominic Curran.

All their staff are committed to working with us and for you in a way that reflects our shared Christian values and Baptist ethos. This firm of solicitors has experience in dealing with churches and the special trust arrangements that are required for church property. The Baptist Union Corporation will use these solicitors to act for it in the transaction.

The legal costs associated with your property transaction will be payable by the church, not the Baptist Union Corporation Limited. If you decide to ask Anthony Collins Solicitors LLP to do the legal work on behalf of the church this may help avoid any misunderstandings or delays. They are familiar with our requirements.

At the start of a transaction or piece of work they will where possible give a formal estimate of the forecast costs and expenses. They will ask your church to formally confirm details of the work you are asking them to undertake and that you understand the arrangements for the payment of the legal costs. These estimates and instruction letters will be quite formal. This is because they need to comply with the requirements for all solicitors set by The Solicitors Regulation Authority.

If the work becomes more complicated than was originally anticipated then they will tell you as this may affect the forecast costs. You should not be presented with a larger bill than you are expecting.

Sometimes a church will know a local solicitor they wish to instruct to act for them in a property transaction. Please remember that there are additional requirements in acting for a Baptist church that is governed by the various Charities Acts and where a trust corporation holds legal title. You should ensure that the solicitor you have chosen has experience in dealing with conveyancing transactions of this type.

We will provide as much helpful information as possible to a local solicitor but Anthony Collins Solicitors LLP will still act for the Baptist Union Corporation Limited. The Baptist Union Corporation Limited will need Anthony Collins Solicitors LLP to approve documents that are to be signed by the Baptist Union Corporation Limited. Any costs associated with Anthony Collins Solicitors LLP involvement in a transaction are payable by the church.

The solicitors will guide you through the legal procedures involved in the sale of the property. When the preliminary work has been done they will report to the contact person and ask the contact person to confirm to the Baptist Union Corporation that the Contract can be signed on behalf of the church. Before contracts are exchanged – the point at which the church and the buyer are legally committed to proceed – a date for completion of the sale will be fixed. This is the date the church must vacate the property.

Please leave the keys with the Estate Agents. Do not release the keys directly to the buyers.

Remember to arrange for final bills to be paid for rates and other services.

Do not cancel the Insurance until after the sale has been completed.

PROPERTY TRUSTS

It is important to consider the trusts on which the property is held – before the sale is completed.

There can be benefits in a church declaring the Baptist Trusts for Churches 2003 **before** the sale is completed to ensure up to date arrangements and flexibility in using funds. For more information see:

- T01 *Baptist Trusts – Beginnings and Patterns*
- T02 *Modern Model Trusts*
- T03 *Appointing Property Trustees – Baptist Trust Corporations*
- T07 *Baptist Trusts for Churches 2003*

THE PROCEEDS OF SALE

Following completion of the sale the solicitors will pay to the Baptist Union Corporation, as Holding Trustees, the net proceeds of sale. This will be the sum left over after all deductions have been made – including the repayment of any mortgage, the estate agent's commission, the surveyor's fees and the solicitors' costs together with any other disbursements.

In the case of a relocation or where another property or site is being purchased the net proceeds of sale will usually be used towards the purchase of the new property.

The balance remaining with the Baptist Union Corporation is a capital trust fund and will be held on deposit pending its use, or long term investment.

It can only be used in accordance with the trusts upon which the property was held at the time the sale was completed. If, for example, these were the Model Trusts for Chapels and Halls (the Fairbairn Trusts or their predecessor the Fuller Trusts) the capital may only be used for the erection, alteration, improvement, enlargement, addition or pulling down and rebuilding of the existing premises or the purchase of other property which will be held on the same trusts. It may be possible to update older trusts by declaring the Baptist Trusts for Churches 2003 before the sale is completed – see section on

'Property Trusts' above.

In broad terms the proceeds of sale can only be used for improvements or alterations (but not repairs or maintenance) of the church. Funds cannot usually be spent on improving a manse.

A request for the expenditure of capital should be sent to the Baptist Union Corporation who may need to consult the Regional Minister Team Leader for the local Association.

If the capital is not likely to be used for some time the Baptist Union Corporation Finance Office should be consulted so that the proceeds of sale may be invested in the name of the Baptist Union Corporation in the most advantageous way.

Interest earned on the capital is available to the church for any of its normal purposes.

THE CORPORATION'S EXPENSES

Although all outgoings incurred by the Baptist Union Corporation on behalf of a church are the responsibility of the church we normally make no charge for the many services and advice we provide for the Baptist Churches in trust with us. We are pleased to be able to help. However, when we are involved in a property transaction we invite the church to make a voluntary contribution towards our expenses.

This means that we are free from being a charge on Home Mission and aim to contribute to the Home Mission budget each year. We normally request churches to make the following contribution towards our expenses:

- When property is sold or purchased on behalf of a church a contribution up to 0.5% of the capital cost.
- When there is a simultaneous sale and purchase a contribution of up to 0.375% of the combined capital cost.

CHECKLIST FOR CHURCHES
SELLING CHURCH LAND OR PREMISES

- Diaconate (Charity Trustees) give initial consideration to proposals to sell.
- Appoint contact person who communicates with the Baptist Union Corporation.
- Consider requirements for Special Church Members' Meeting.
- Hold Special Church Members' Meeting and send to the Baptist Union Corporation copy of resolution relating to the sale.
- Confirm to the Baptist Union Corporation that Anthony Collins LLP are to act for the church or give details of other solicitors and confirm that church will be responsible for any additional costs incurred by the Baptist Union Corporation.
- If agreed confirm to the Baptist Union Corporation that church will make contribution towards expenses of the Baptist Union Corporation.
- Choose a suitable surveyor and send name and address of qualified surveyor to the Baptist Union Corporation.
- Deal with the marketing of the property, having regard to the advice of the surveyor.
- When report received from solicitors confirm to the Baptist Union Corporation that the contract may be signed. Cancel insurance of property after completion of sale.

Association Trust Company	Contact
Baptist Union Corporation Ltd East Midland Baptist Trust Company Ltd	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
Heart of England Baptist Association	Heart of England Baptist Association BMS Birmingham 24 Weoley Park Road Selly Oak Birmingham B29 6QX Telephone: 0121 472 4986
London Baptist Property Board	London Baptist Association Unit C2 15 Dock Street London E1 8JN Telephone: 020 7692 5592
Yorkshire Baptist Association	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
West of England Baptist Trust Company Ltd	West of England Baptist Trust Company Ltd Little Stoke Baptist Church Kingsway Little Stoke Bristol BS34 6JW Telephone: 0117 965 8828

This is one of a series of *Guidelines* that are offered as a resource for Baptist ministers and churches. They have been prepared by the Legal and Operations Team and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

The staff in the Legal and Operations Team at Baptist House (or your regional Trust Company) will be very pleased to answer your queries and help in any way possible. It helps us to respond as efficiently as possible to the many churches in trust with us if you write to us and set out your enquiry as simply as possible.

The Legal and Operations Team also support churches that are in trust with the East Midland Baptist Trust Company Limited.

If your holding trustees are one of the other Baptist Trust Corporations you must contact your own Trust Corporation for further advice. A list of contact details is provided above. If you have private trustees they too should be consulted as appropriate.

Contact Address and Registered Office:

Support Services Team, Baptist Union of Great Britain, Baptist House, PO Box 44,
 129 Broadway, Didcot OX11 8RT
 Tel: 01235 517700 Fax: 01235 517715 Email: legal.ops@baptist.org.uk
 Website: www.baptist.org.uk Registered CIO with Charity Number: 1181392

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