PRESBYTERY OF GENESEE VALLEY
COMMITTEE ON MINISTRY

Guidelines and Procedures for Reconciliation or Dismissal
of Its Member Congregations

Introduction
The 218th General Assembly (2008) of the Presbyterian Church (USA) urged that presbyteries and synods
develop and make available to lower governing bodies and local congregations a process that exercises
the responsibility and power of “dismissing or dissolving” churches in consultation with their members”
(Book of Order, G-3.0301a) It urges congregations considering whether or not to leave the denomination,
presbyteries and synods to implement a process that makes use of the following principles:

Consistency: The local authority delegated to presbyteries is guided and shaped by our
shared faith, service, and witness to Jesus Christ.

Pastoral Responsibility: The requirement in G-3.0301a to consult with the members of
a church seeking dismissal highlights the presbytery’s pastoral responsibility, which
must not be submerged beneath other responsibilities.

Accountability: For a governing body, accountability rightly dictates fiduciary and
connectional concerns, raising general issues of property (G-4.02) and specific
issues of schism within a congregation (G-4.0207). But, full accountability also
requires preeminent concern with “caring for the flock.”

Gracious Witness: Scripture and the Holy Spirit require a gracious witness from us rather
than a harsh legalism.

Openness and Transparency: Early, open communication and transparency about principles and
process of dismissal serve truth, order, and goodness, and work against seeking civil
litigation as a solution.

The Presbytery believes that trying to exercise this responsibility and power through litigation is
detrimental to the cause of Christ. It affects the local church, other parts of the Body of Christ, ecumenical
relationships, and our witness to Christ in the world around us.

Therefore, as requested, after study and meeting, we, the appointed Ministry Team of the Presbytery of
Genesee Valley, recommend that the following process with its particular guidelines and procedures be
followed by the Presbytery of Genesee Valley. This process would apply when any particular member
congregation believes it is no longer able to remain faithful to its calling as a Church of Jesus Christ
within the PC(USA) denomination and is considering and or is actively seeking dismissal from the
PC(USA).

Belief and Affirmation
The Presbytery of Genesee Valley desires to be in faithful communion with all the pastors, sessions and
congregations committed to its care. We recognize however our unity in Christ is being tested, and our
ability to work together in mission is being tried. We covenant that even in times of disagreements and
conflict we will seek to uphold one another, build up one another, respect one another and love one
another to the end that Christ Jesus is honored and His mission is fulfilled. In all such contexts the
Presbytery is committed to seeking reconciliation. We will celebrate and rejoice when such is achieved.
If however, such efforts do not succeed and a congregation chooses to seek dismissal from the
Presbyterian Church (USA), the Presbytery is committed to providing a faithful and equitable process
through which a member congregation with or without its property may be dismissed graciously as a
reformed witness in its community.
Our Book of Order clearly states a principle of our Presbyterian beliefs:

“The power that Jesus Christ has vested in his Church…is one for building up the body of Christ, not for destroying it…so that the Great Ends of the Church may be achieved, that all children of God may be presented faultless in the day of Christ.” (D-1.0102)

We believe and we affirm that the Church is characterized by pure preaching of the gospel in accordance with the apostolic witness of Scripture, right administration of the sacraments, and gentle church discipline, bound and loosed. We believe that our unity, purpose, and mission are in Jesus Christ and nowhere else.

We believe and we affirm that the Great Ends of the Church found in F-1.0304 of our Book of Order summarize the mission of our presbytery and its member congregations.

Profession… Borrowing (adapting) language from the Book of Order …

We profess that the Church is the body of Christ, both in its corporate life and in the lives of its individual members.

We profess that the Church of Jesus Christ is the provisional demonstration of what God intends for all of humanity.

We profess that the Church is called to be a witness to the world of the new reality that God has made available to people in Jesus Christ.

We profess that the new reality revealed in Jesus Christ is the new humanity, a new creation, a new beginning for human life in the world:

We profess that Sin is forgiven. Reconciliation is accomplished. The dividing walls of hostility are torn down.

We profess that the Church is called to give shape and substance to this truth.

We profess that the Church is further called to undertake this mission even at the risk of losing its life, trusting in God alone as the author and giver of life, sharing the gospel, and doing those deeds in the world that point beyond themselves to the new reality in Christ.

Lamentation…

From its beginning the Church has experienced controversy and division. Men and women of good will and sincere faith disagreed. Paul and Barnabas had to separate for a season in order to continue their respective ministries (Acts 15:39). The church of Jesus Christ divided into three great traditions: Protestant, Catholic and Orthodox. The Protestant tradition again divided into Anglican, Lutheran, Reformed (Presbyterian), Anabaptist communions and certain others.

We lament that the Church, as we know it, experiences and struggles with divisiveness, animosity and mistrust.

In the midst of the despair of division, and with the hope of reconciliation…
We believe and we affirm that the particular churches of our Presbytery have the authority to make their own decisions concerning how they are called to accomplish the Great Ends of the Church. This includes but is not limited to decisions about their programs and ministries, the use of their finances and property, their style of worship and education and their denominational affiliation. Except for the provisions of the Book of Order that commend oversight, we affirm that these guidelines and procedures are not to interfere with such authority and decision-making.

We acknowledge that the distribution of property or assets is a particular concern when a congregation is considering or is actively seeking dismissal from the PC(USA). We affirm that decisions affecting ownership of property are subordinate to, and should support our spiritual unity in Christ, and that whenever particular churches pursue the Great Ends of the Church they are in fact using their property to the glory of God and for the benefit of this Presbytery, of the PC(USA) and of the Church Universal.

Mindful of its obligations under Chapter G-4 of the Book of Order, the Presbytery resolves and agrees that, as the party empowered to administer the trust provisions set forth in G-4.0203, we will seek to resolve issues relating to the disposition of property by all means possible before taking any action in civil courts to enforce such trust provisions as to any property, real or personal, held by a particular church. In any discussions or negotiations relating to the disposition of property subject to such trust provisions, consideration shall be given to whether or not there is any outstanding indebtedness by the particular church to the Presbytery; whether the Presbytery is a surety or guarantor with respect to any outstanding loan or obligation incurred by that church; and the history of “investment” by the Presbytery in the development and growth of the church.

As a Presbytery, we recognize that Chapters 3.0301a, 4.0204 and 4.0205 of the Book of Order provide that congregations may be dismissed from the denomination and that the presbytery may transfer or sell the property to the congregation upon its dismissal. We affirm to each Congregation their right to seek dismissal and we ask all of our congregations to act with love, forbearance, dignity and discretion in pursuing this right. Specifically, in light of the Presbytery’s above mentioned affirmations, we ask our congregations to defer any action in secular courts.

In the Spirit of the Apostle Paul, we seek first to arbitrate disagreements as brothers and sisters in Christ before seeking civil remedies afforded by law in the State of New York.

We affirm that it is our policy not to take any action to remove a pastor or session as a result of a decision to withdraw or seek dismissal in order to gain more control of the outcome of the situation. Such action would only be taken if there is clear and unequivocal evidence that the pastor(s) and or session are acting in manners or making decisions that are clearly contrary to the will of the congregation or accepted procedures and protocols of our Book of Order. If any action is found to be contrary to or in violation of our PC(USA) Constitution by any person or committee, we hereby covenant and agree to seek discipline of that person or persons according to the disciplinary rules and process of the PC(USA).

At all times and in all circumstances it is incumbent upon the Presbytery and its congregations to treat each other respectfully and pastorally and thus represent and give witness to the Love of Christ that we profess.

Procedure

It is the will of this Presbytery to create a gracious context and procedure in which the will of God is sought for the life, ministry, and calling of the particular congregation. The Presbytery commits itself and invites all of its congregations to pursue a broad understanding of God’s mission with graciousness befitting those who claim Jesus as Lord. And acting together we seek to further the peace, unity and purity of the Church, minimizing confrontation while we seek to discern and follow the will of Christ.
In all matters relating to this subject, the following questions will be deemed paramount:

- Is God leading this particular congregation toward restoration of fellowship with the Presbyterian Church (USA) or to seek dismissal from the denomination? And
- If God is leading this congregation toward restoration of fellowship with the Presbyterian Church (USA), how can that be accomplished in a way that honors Jesus Christ and strengthens both the Congregation and the Presbytery?
- If God is leading this congregation to seek dismissal from the Presbyterian Church (USA), how can that be accomplished in a way that honors Jesus Christ and strengthens both the Congregation and the Presbytery?

The Presbytery asks any session seeking or considering dismissal from the denomination to covenant with the Presbytery to enter into a defined process of mutual discernment. To seek such discernment adequately will require significant time and energy. We believe that a matter of this magnitude deserves such attention and prayer. We believe the Presbytery and the Congregation will benefit from this time of discernment regardless of the specific outcome.

This process is based on the willingness of all parties to join together in discernment of God’s will and to work towards a mutually agreeable implementation of what they determine God’s will to be. This process will require a high level of trust, communication, openness, and love. It will be this atmosphere of mutual respect, deep conversation and prayer that forms the basis of a two-phase procedure between the Presbytery and the Congregation for their discernment work. The two phases are a time of listening and a time of resolution. The entire process should take no less than four months and no more than one year.

This process will begin upon the full formation and training of the Discernment Team. At the conclusion of the process, the Discernment Team will report to the Presbytery and the Congregation on reconciliation, or will make a recommendation to the Presbytery to honor the request for dismissal or dissolution. Such recommendation will need to be ratified by vote of the Congregation and the Presbytery.

In light of these beliefs and affirmations The Presbytery of Genesee Valley will use the following procedure regarding particular congregations who for reasons of conscience and faith are considering or are actively seeking dismissal from the PC(USA).

**Initiation of the Procedure**

When the leadership of the Presbytery becomes aware (either through contact with the pastor(s), the session, or members of the congregation) that a congregation or its leadership is seriously questioning their continued relationship with the Presbytery or the PC(USA), the Committee on Ministry will initiate the discernment process.

**Formation of the Discernment Team:**

The Committee on Ministry, in consultation with the Presbytery Council and the Moderator of the Presbytery, will appoint a team of 5-7 members to be known as the “Discernment Team”. Team size and membership will vary according to the situation and will depend on the number of people or groups with which the Team will be meeting. The Committee on Ministry will supervise the work of the Discernment Team.

**Functions of the Discernment Team:**

The Discernment Team will work with all parties in the situation through a two-phase discernment process of listening and resolution. They will participate in open discussions on the issues and exploring possible options.
with the intent of promoting peace and harmony.

first meet with the Pastor(s) and the Session, and then with members of the
Congregation, as appropriate, offering respect and sensitivity in the
discernment process and encouraging openness to the guidance of the
Holy Spirit.

offer pastoral care, both to those members who believe themselves called to
seek dismissal and those who believe themselves called to remain.

keep all parties (Pastor(s), Session, and Team members) informed in writing,
(i.e., electronic or hard copy) of the issues and concerns raised in the
discussions.

be present with voice during any interactions of the Congregation (including,
but not limited to, congregational meetings, town hall meetings, and
gatherings of any nature) when the agenda of such interactions includes
topics specifically related to reconciliation or moving toward dismissal
from the PC(USA).

keep an accurate record of all its proceedings and its progress with the
Congregation and report such periodically to the Committee on Ministry,
who has oversight of its work on behalf of the Presbytery.

As mentioned, the discernment process will consist of two phases: listening and resolution.

A brief description of each phase follows.

Listening Phase:
Once the Discernment Team has been formed, it will engage the Pastor(s), Session and Congregation in a
time of prayer and discernment aimed at listening to the concerns of the leaders and congregation,
understanding the conflict, expressing the Presbytery’s concerns and identifying possible steps toward
reconciliation. Our desire is to develop a process for mutual discernment of God’s leading that involves
the pastor(s), session, the congregation and the Presbytery in this phase. An important goal of this phase
is to ensure that all voices are heard, including the smallest of minorities. During this phase the
Discernment Team will encourage a special congregational meeting be called in order to keep the
Congregation informed on the issues and to provide open and honest discussion on the issues. While the
quorum for congregational meetings is set by rule of the congregation (G-1.0501), it is expected that at
least fifty percent of the active members will participate in any special congregational meeting called for
the purposes covered by this policy. Further, it is expected that any vote taken be done by secret ballot. A
majority vote of the members of the congregation that are present shall be needed for approval of the
request for dismissal or dissolution and terms thereof. The Discernment Team will ensure a safe forum,
free from pressure and intimidation, for all to express their thoughts and feelings. It is hoped that during
this Listening Phase reconciliation and restoration to fellowship will be accomplished. When that is the
case the following are suggestions for celebrating that reconciliation:

- Conducting a public service of worship and recommitment to shared fellowship and ministry, with
  participation from Presbytery and the Congregation.
- Sharing of story and testimony from members of the Discernment Team and Congregation at the
  congregational and presbytery level (and beyond, if appropriate).
- Blessing and commissioning of any minority that leaves the local congregation (to the extent
  possible), in the hope of maintaining bonds of peace.

Resolution Phase:
Following a time of listening, there may be a situation where a Session and Congregation (or some group
of members thereof) do accurately understand the policies and stances of the Presbytery and PC(USA)
and simply disagree with them and decide that they cannot in good conscience remain in the
denomination. At that time the discussion will move to a Resolution Phase.
This phase will clarify the needs/choices of the members of the Congregation and the ramifications/consequences of such choices and will help the congregation identify and resolve all issues requiring attention in order to move forward in the chosen direction. The Discernment Team will request that a second congregational meeting be called in order to keep the congregation informed on the progress of the discussions, and provide information to the congregation in order to assist it to make prayerful and informed decisions relative to its future ministry.

The process of gracious separation will be guided by the additional following principles based upon our Presbyterian polity:

- The unity we have in Christ and the relational nature of our polity require dialogue between and among governing bodies, congregations, pastors, and members, and the nature of dialogue requires faithful participation by all concerned. This faithful dialogue must be based on trust and love (G-1.0102)
- The mission of the Kingdom of God and not the maintenance of any particular institution is our highest calling.
- The particular institution of the PC(USA) embodies important principles and structures which have furthered and continue to further the Kingdom of God and should not be cast aside lightly.
- The local congregation is the primary mission unit of the Presbytery, and issues of property and assets are always secondary to people and mission.
- All decisions regarding property and finance will not be abdicated to the local congregation.
- Property is maintained and administered locally by the congregation on behalf of the denomination.
- Accountability and connection shall be maintained by shared, representative leadership and oversight.
- Regarding issues of conscience, all parties must be willing to confront difficult realities, confront perceived breaches of mistrust, and consider the ongoing health and viability of the other.
- Property and asset issues will be approached in such a way as not to constrain local congregations in their ability to do mission and ministry.
- Property and asset issues will be approached in such a way as not to constrain the Presbytery’s ability to do mission and ministry in any given locality under its jurisdiction.
- Dismissal is the process to another Reformed body and dissolution is the only process to independence, for example, to be a “community church”.

After such time has been allowed for all of the aforementioned questions and issues are dealt with, a third congregational meeting shall be called in order to officially request the Presbytery to approve all the changes previously proposed. After the congregational meeting, and the congregation’s approval of passing the request to Presbytery, the Discernment Team and representatives of the Congregation seeking dismissal shall present to the Presbytery through the Committee on Ministry a formal request for dismissal or dissolution and the motions needed to accomplish a gracious separation.

The dismissal or dissolution of a congregation will be a significant event. It behooves the parties involved through our mutual calling of respect and compassion for one another in Christ that each party consider the appropriate support and services rendered to each other in previous years of their relationship when making the request.

This request shall:

- Specify how the separation will affect all the assets, liabilities, debt liquidations, pension issues, preservation of church records, corporate and other interests of all the parties involved, and the steps taken (or to be taken) to properly handle them, and
Specify the pastoral care offered to any pastor(s) and/or any staff who choose not to be dismissed from the Presbytery and the PC(USA), and

Specify that financially, to care for any pastor(s) and any staff who choose not to be dismissed from the Presbytery and the PC(USA), the Congregation being dismissed has committed itself to continue the salary, benefits, and allowances of such person(s) for a period of at least six (6) months following the date of dismissal by the Presbytery, unless a given contract would expire under its terms within that six month window of time. and

State the civil processes and/or ecclesiastical processes and procedures required for the church to join another Reformed body or to become a non-affiliated Reformed witness in its geographical community.

Please refer to Appendix A for some legal and civil considerations that will need to be addressed as a result of dismissing or dissolving a congregation. The document has been compiled by the attorney for the Presbytery of Genesee Valley as an aid. The document should not be considered as all inclusive, but should be the starting point for necessary legal steps to be taken by those involved in such actions. Specific situations may involve unique requirements for legal actions.

In the event that any congregation is approved for dismissal or dissolved under the terms of this policy, the Presbytery and the Congregation shall take all steps possible in order to provide for the pastoral care and congregational life of those members who do not wish to depart the Presbyterian Church (USA). Their protection and nurture shall be a matter of paramount concern to both the departing congregation and the Presbytery.

In the event that any congregation's request for dismissal or dissolution is approved under the terms of this policy, the Presbytery shall, in conjunction with the Congregation, hold a final worship service to celebrate our common life in Jesus Christ and to pray for the effectiveness and well-being of both the Congregation and the Presbytery.
APPENDIX A

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

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 – 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:

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.)

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:

“A religious corporation shall not sell, mortgage or lease for a term exceeding five years any of its real property without the consent in writing of the particular Presbytery with which said church is connected.” (Emphasis supplied)

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)

Section 17-b of the RCL relates to the disposition of property of an “extinct” or dissolved Presbyterian church and states in relevant part:

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

There are numerous other Articles of the RCL which specifically relate to incorporation of churches of other denominations – for example, Protestant Episcopal (Article 3); Roman Catholic (Article 9); Reformed Dutch, Reformed Presbyterian and Lutheran Churches (Article 6); Baptist (Article 7); and Churches of the Holy Ukrainian Autocephalic Orthodox Church in Exile (Article 8-B). And there are two Articles which apply to “other” churches – “Independent” churches (Article 8 - Churches of the United Church of Christ, Congregational Christian and Independent Churches) and Other Denominations (Article 9).

Interestingly, there are no provisions in the RCL which refer to or which would in any way provide for “dismissal” of a church by the Presbytery to another denomination, nor are there any provisions relating to the “amendment” of a certificate of incorporation so as to change the Article of the RCL under which a church operates as a corporate entity. It thus would appear that a Presbyterian church could not unilaterally simply amend its Certificate of Incorporation, and thereby become an “independent” or “community” church, or even, by such an amendment, “connect” themselves with another denomination. A few years ago, the Oakfield Church attempted to amend its Certificate of Incorporation, and thus claim that the Presbytery no longer had any jurisdiction over it, and the Court found that such an amendment was not proper and declared the amendment to be null and void.

Suggested Process

There would appear to be two different approaches which could be taken in order to accomplish a “re-incorporation” of the church, depending upon the nature of the agreed separation:

A. Incorporation of new religious corporation. The heart of this process would be the incorporation of a new religious corporation under the applicable Article of the Religious Corporations Law and, contemporaneously, dissolution of the old “Presbyterian” corporation. Typically, this would be the relevant process when a Church is not being “dismissed” to another denomination but is either becoming an independent or “community” church, or is proposing to associate with a denomination to which “dismissal” is not authorized under the Book of Order.

1. The incorporation process itself is fairly simple and does not require any Court approval or other judicial action. The specific process and requirements, contents of certificate of incorporation, etc., are spelled out in either Article 8 (“Independent” churches) or Article 10 (“Other Denominations”) of the RCL, or in the specific Article applicable to the denomination with which the church proposes to associate. The certificate of incorporation is filed with the Clerk of the County in which the Church is located. Costs are minimal.

9 Section 172 in Article 8 states that: “This 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.”
10 Article 10 of the RCL specifically provides that it “is not applicable to … a Presbyterian church in connection with the General Assembly of the Presbyterian Church in the United States of America.”
11 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.
2. The old “Presbyterian” Church is then dissolved pursuant to Section 17-b of the RCL (see above). This does require a Petition to Supreme Court, and the costs are more significant – attorney time for preparation of Petition and Order, filing fees, etc.

Note that incorporation of the new Church and dissolution of the old one does not effect any transfer of title to real property. See the next section for a description of that process. 3

B. Court Approval of Change to Certificate of Incorporation (Dismissal). Where the agreed separation involves the “dismissal” of a church to another denomination, as authorized by the Book of Order, Court approval of the change is recommended. This would probably involve a “joint” Petition by both the Presbytery and the Church, and the resulting Order could specifically authorize the filing of an amended or restated Certificate of Incorporation, under the applicable Article of the RCL. (For example, Article 6 of the RCL, if dismissal is to the Reformed Presbyterian Church.) Because the system of government for each denomination can vary considerably – particularly with regard to the title of the governing body (the Session, in PCUSA churches, but the “deacons” in other denominations) and trustees (which may or not be a separately elected body) – it is recommended that an attorney be consulted to ensure that all necessary changes are identified and then addressed in the Court Order and proposed amended or re-stated Certificate, and that any “transition” issues are addressed. 4

Real Property Transfer Issues

Statutory Background.

As discussed above, Section 12 of the RCL, and specifically Paragraph 5-a, provides that any mortgage, lease (for more than 5 years) or sale of real property by a Presbyterian church requires Presbytery consent, as a pre-condition to Court approval. This requirement has been interpreted broadly to include any transfer or conveyance of an interest in real property, including such things as easements. Section 17-b of the RCL, also discussed above, provides that any real property of an “extinct” or dissolved Presbyterian church “vests” in the Presbytery, upon “satisfactory proof” of the facts leading to dissolution, and a Court order.

A change in the “corporate structure” of a church which is separating, as outlined above, does not effect a change in property title. Given the statutory provisions set out above, Court approval is required in order for such any change in title to take place. However, in the case of a separation in which there is a “dismissal” and court approval of the corporate change, it should be possible to consolidate, in one

17 This process – the incorporation of a new religious corporation and dissolution of the old one – 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.

19 This process – joint Petition by the Presbytery and the Church, and a resulting Order providing for the corporate change – 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).
The following is the suggested process for accomplishing a change in title of real property in accordance with an agreed separation:

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

1. The Presbytery will need to apply to the Court for (i) dissolution of the old Presbyterian church (which vests the property in Presbytery); and then (ii) conveyance of the real property to the new church corporation for the agreed consideration (if any). This can be accomplished in one Petition and Order.

2. The Order is recorded in the County Clerk’s Office, in the Book of Deeds, so that there is a permanent record as to the Court approval.

3. A Deed conveying the real property will be executed by the Presbytery (typically by the Chair of Trustees) and delivered to the new church, and recorded in the County Clerk’s Office.

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

Other Related Issues.

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

A. Outstanding obligations of the church to the Presbytery (such as loans from the Revolving Loan Fund). Given the trust clause in the Book of Order, and the New York State statutory provisions discussed above, loans have generally been made from the Revolving Loan Fund without any requirement for a mortgage. If the Presbytery no longer has any interest of any kind in the property, consideration will need to be given either to payoff of the outstanding loan, or the execution and recording of a mortgage to the Presbytery as security for the loan.
B. **Guarantees by Presbytery of loans to the church.** Loans from the General Assembly loan program (PILP) or the Synod loan program, generally require a Presbytery guarantee, and occasionally commercial loans may involve such a guarantee. The terms of the GA and Synod loan programs may require that any outstanding balance be paid off, if the church is no longer connected to the PC(USA), but if not, a release of the Presbytery guarantee should be obtained.

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

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

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

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October, 2011

Approved by Committee on Ministry 10/31/11
Approved by the Presbytery of Genesee Valley 11/29/11