

UMC Trust Clause

The determination of what happens with Wesley Memorial church property, should Wesley Memorial elect to disaffiliate from the UMC, is complicated by the trust clause in the UMC Book of Discipline. The trust clause states that while the church owns the property, it is held in trust for the beneficial interest of the UMC Annual Conference (for Wesley Memorial, this is the Western NC Annual Conference). A beneficial interest means that the annual conference has the right to control use of the property. Paragraph 2553 (Printed below) was added to the Book of Discipline at the last UMC General Conference (2019) to give churches a limited time to leave the United Methodist Church with the Trust Clause being waived. If Wesley Memorial leaves the UMC after paragraph 2553 expires, then the legal question is whether the trust clause will be upheld in a court case.

States have interpreted the trust clause in church documents differently.

- a) A minority of states adopt the highest ecclesiastical body interpretation of the trust clause. IF deferring to the ecclesiastical language, the United Methodist Church will probably win.
- b) The majority of states use state trust law and state property law to interpret how to rule on a trust clause, and do not defer to the ecclesiastical interpretation.
- c) Using neutral principles of law, the results are mixed as to who keeps property.
- d) Some states have not decided the issue of trust clauses.

Attorney Lloyd Lunsford thinks it is prudent to be proactive and look at church documents and state law in NC. What are the facts of Wesley Memorial's case? What is the trust language in the Articles of Incorporation? Does the property deed have trust language? Do the church endowments have trust language? What can be done to make the language stronger?

The church needs to be able to negotiate the cost of leaving the UMC and negotiations should be done from a position of strength.

North Carolina appears to be a deference law state that would give a disproportionate weight to denominational documents, but a UMC case has not been litigated in NC.

Attorney Lloyd Lunsford has litigated many church disaffiliation cases across the country and could help advise Wesley Memorial.

1. GMC Webinar May 10, 2022 with Lloyd Lunsford

The Book of Discipline

¶ 2553. Disaffiliation of a Local Church Over Issues Related to Human Sexuality

1. Because of the current deep conflict within The United Methodist Church around issues of human sexuality, a local church shall have a limited right, under the provisions of this paragraph, to disaffiliate from the denomination for reasons of conscience regarding a change in the requirements and provisions of the Book of Discipline related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals as resolved and adopted by the 2019 General Conference, or the actions or inactions of its annual conference related to these issues which follow.

2. **Time Limits** - The choice by a local church to disaffiliate with The United Methodist Church under this paragraph shall be made in sufficient time for the process for exiting the denomination to be complete prior to December 31, 2023. The provisions of ¶ 2553 expire on December 31, 2023 and shall not be used after that date.

3. **Decision Making Process** - The church conference shall be conducted in accordance with ¶ 248 and shall be held within one hundred twenty (120) days after the district superintendent calls for the church conference. In addition to the provisions of ¶ 246.8, special attention shall be made to give broad notice to the full professing membership of the local church regarding the time and place of a church conference called for this purpose and to use all means necessary, including electronic communication where possible, to communicate. The decision to disaffiliate from The United Methodist Church must be approved by a two-thirds (2/3) majority vote of the professing members of the local church present at the church conference.

4. **Process Following Decision to Disaffiliate from The United Methodist Church** - If the church conference votes to disaffiliate from The United Methodist Church, the terms and conditions for that disaffiliation shall be established by the board of trustees of the applicable annual conference, with the advice of the cabinet, the annual conference treasurer, the annual conference benefits officer, the director of connectional ministries, and the annual conference chancellor. The terms and conditions, including the effective date of disaffiliation, shall be memorialized in a binding Disaffiliation Agreement between the annual conference and the trustees of the local church, acting on behalf of the members. That agreement must be consistent with the following provisions:

- a) Standard Terms of the Disaffiliation Agreement. - The General Council on Finance and Administration shall develop a standard form for Disaffiliation Agreements under this paragraph to protect The United Methodist Church as set forth in ¶ 807.9. The agreement shall include a recognition of the validity and

applicability of ¶ 2501, notwithstanding the release of property therefrom. Annual conferences may develop additional standard terms that are not inconsistent with the standard form of this paragraph.

- b) **Apportionments** - The local church shall pay any unpaid apportionments for the 12 months prior to disaffiliation, as well as an additional 12 months of apportionments.
- c) **Property** - A disaffiliating local church shall have the right to retain its real and personal, tangible and intangible property. All transfers of property shall be made prior to disaffiliation. All costs for transfer of title or other legal work shall be borne by the disaffiliating local church.
- d) **Pension Liabilities** - The local church shall contribute withdrawal liability in an amount equal to its pro rata share of any aggregate unfunded pension obligations to the annual conference. The General Board of Pension and Health Benefits shall determine the aggregate funding obligations of the annual conference using market factors similar to a commercial annuity provider, from which the annual conference will determine the local church's share.
- e) **Other Liabilities** - The local church shall satisfy all other debts, loans, and liabilities, or assign and transfer them to its new entity, prior to disaffiliation.
- f) **Payment Terms** - Payment shall occur prior to the effective date of departure.
- g) **Disaffiliating Churches Continuing as Plan Sponsors of the General Board of Pension and Health Benefits Plans** - The United Methodist Church believes that a local church disaffiliating under ¶2553 shall continue to share common religious bonds and convictions with The United Methodist Church based on shared Wesleyan theology and tradition and Methodist roots, unless the local church expressly resolves to the contrary. As such, a local church disaffiliating under ¶ 2553 shall continue to be eligible to sponsor voluntary employee benefit plans through the General Board of Pension and Health Benefits under ¶ 1504.2, subject to the applicable terms and conditions of the plans.
- h) **Once the disaffiliating local church has reimbursed** the applicable annual conference for all funds due under the agreement, and provided that there are no other outstanding liabilities or claims against The United Methodist Church as a result of the disaffiliation, in consideration of the provisions of this paragraph, the applicable annual conference shall release any claims that it may have under ¶ 2501 and other paragraphs of The Book of Discipline of The United Methodist Church commonly referred to as the trust clause, or under the agreement.

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