

BAPTIST CHURCHES OF NEW SOUTH WALES PROPERTY TRUST

THE OBLIGATIONS OF MEMBERS OF LOCAL CHURCHES IN RELATION TO BAPTIST CHURCH PROPERTY

In 2004 Baptist Churches of New South Wales Property Trust (“**the Property Trust**”) retained Mr Robert Ellicott QC to advise the Property Trust on various legal issues including the obligations of members of local churches in relation to the use of the proceeds of sale of Baptist church property.

Mr. Garry Tyler, the then chairman of Baptist Churches of New South Wales Property Trust and Mr. Geoffrey Moore, the then Honorary Legal Adviser of the Baptist Union of New South Wales, prepared this summary as to the obligations of members of local churches in relation to Baptist church property, taking into account the advice received from Mr. Ellicott. The position is as follows:

1. When members and adherents of a Baptist Church congregation give money to a Baptist Church congregation, which enables that congregation to purchase and develop a property, this property becomes subject to certain trusts.
2. The *Baptist Churches of New South Wales Property Trust Act, 1984* (NSW) (“**the Act**”) sets out these trusts.
3. Property, including proceeds of sale of real estate, held by the Property Trust for a Baptist Church congregation can only be used for one or more of the following objects:
 - (a) *The public worship of God according to the usages of (meaning “practices accepted within”) the Baptist denomination.*
 - (b) *The instruction of children or adults, or both.*
 - (c) *The provision of a residence for a Baptist pastor or a person employed in the work of a Baptist Church or other work connected with that denomination.*
 - (d) *The provision of recreational and community welfare services ancillary to the work of a Baptist Church or other work connected with the Baptist denomination.*
 - (e) *The promotion of such religious or philanthropic purposes as the Executive Committee of the Baptist Union of NSW from time to time determines.*
4. Money raised by a Baptist Church congregation for a particular purpose (e.g. a Building Appeal) must be used for that purpose in the first instance. But the purposes can later change so long as they achieve one of the objects outlined in Item 3 above.
5. Once real estate is held by the Property Trust, it is held “in accordance with the Act”, not in accordance with any previous trusts.
6. Thus, for example, if a property is acquired as a manse, it can later be sold and the proceeds applied for any one or more of the objects listed in paragraph 3 above. Indeed, if a property of a Baptist Church congregation is sold, the proceeds can be used for any purpose, which is in accordance with the Act. The purposes are:
 - a. Those, which are ancillary to the attainment of the objects, listed in paragraph 3 above

- b. The improvement of trust property (eg. repair, enlargement, erection of a church, school or manse)
 - c. The purchase of another property.
7. The Property Trust does not need to be aware of the original (or “first instance”) purpose. The Property Trust does not need to take into account past uses of the property.
8. The Property Trust acts in accordance with the direction of the Baptist Church congregation, provided such directions are “in accordance with the Act.”
9. The direction of a Baptist Church congregation is provided by way of a resolution of a church meeting, which is convened in accordance with the conditions outlined in the Property Trust Act.
10. The Trust Fund must not be “dissipated”.
11. Where the Property Trust deals with the Trust Fund “in accordance with the Act” and with the direction of the congregation, it is not “dissipation”.
12. But “there may be instances where the Property Trust would have to question the direction of a congregation” because the direction provided by the congregation may be unwise, or not prudent.
13. A congregation is obliged to exercise reasonable care, diligence, prudence and good faith, with regard to achieving the objects outlined in Item 3 above. Baptist Church congregations are also expected to act astutely with the objective of preserving the capital of the Trust Fund.
14. Where a Baptist Church congregation proposes to use the proceeds of sale for one of the ministry purposes listed above, but in a manner which might simply use up the funds within a few years without gaining any corresponding asset, the congregation must adopt a strategy which has at least the following elements:
 - It should act prudently and obtain advice from persons with appropriate expertise and experience.
 - Have a viable plan to increase numbers and giving.
 - Ensure that the leadership carefully monitors the performance of the plan to ensure that it remains viable.
 - Limit the use of the proceeds of sale for salaries and stipends to ensure that the strategy to increase numbers is working and to ensure that the fund is not simply being dissipated, with no likelihood of replenishment.
15. In addition, the congregation will need to satisfy the Property Trust that the use of the funds is based on expert advice and is within the purposes of the Act. The Property Trust will ask – “Is there a reasonable basis for the implementation of the strategy?”
16. Members of a Baptist Church congregation should not be involved in any decisions for their own personal benefit. In particular, a paid Pastor should not be involved in any decision involving the Pastor’s remuneration.