

## **BAPTIST CHURCHES OF NEW SOUTH WALES PROPERTY TRUST**

### **A GUIDE ON SELLING, BUYING AND BORROWING**

#### **DIRECTIONS TO YOUR TRUSTEE**

A Baptist Church is made up of a congregation of members. Your local church itself is unincorporated. In order to deal with real estate (land, houses, church buildings, leases, mortgages, subdivisions, easements, rights of way, etc.), the Church will need to appoint a Trustee and direct its Trustee to sign documents.

#### **WHO IS YOUR TRUSTEE?**

In almost every case in New South Wales, the Trustee is "Baptist Churches of New South Wales Property Trust". This is an incorporated body which was created by an Act of the NSW Parliament. The Act is called "Baptist Churches of New South Wales Property Trust Act 1984". You can obtain a copy of the Act from the NSW Government website.

Even if your existing title deed shows the name of "The Baptist Union of New South Wales", your Trustee will in fact be Baptist Churches of New South Wales Property Trust. The change was made by the Act in 1984.

The Property Trust was created as a service to the Baptist Churches in New South Wales. Its principal function is to carry out the trusts for the benefit of the local church. It can only sign documents if it is directed to do so, by vote of the congregation. It can't sign documents on its own initiative. It acts on the directions of the church only.

#### **HOW DOES THE CHURCH GIVE DIRECTIONS TO THE TRUSTEE?**

This is set out in the Act. A summary of the procedure is set out in the paper Convening a Church Meeting, which is also on the Baptist Association's website. Basically, it involves announcing a meeting of the congregation by doing the following two things:

- (a) Putting a copy of the Notice of Meeting and the proposed resolution on the notice board or door of the Church building for two successive Sundays; and
- (b) either reading out a shortened version of the proposed resolution at each service on those two Sundays, or alternatively, posting the Notice to each member.

The Church Meeting cannot be held on the second Sunday, and must be held on one day of the following week (any day from Monday to Sunday inclusive). You will see that, if it is urgent, and you hold your meeting on the Monday, you can actually convene your meeting for a date 8 days only after you first announce it.

#### **WHAT SHOULD BE IN THE RESOLUTION?**

If you want your Trustee to sign any document, the congregation must authorise it. So it is best to think ahead. Will a building application or development application to the Local Council be necessary? Will you want the Trustee to sign a building contract? Is there

an auction involved? Naturally, it all depends on the type of transaction that you have in mind.

A sample of proposed resolutions could be as follows:

“That Baptist Churches of New South Wales Property Trust as Trustee for \_\_\_\_\_ Baptist Church be authorised to sign documents relating to:

- (a) The sale of property known as \_\_\_\_\_ for not less than \$\_\_\_\_\_ and apply the net proceeds of sale for the purpose of \_\_\_\_\_.
- (b) The purchase of property known as \_\_\_\_\_ for not more than \$\_\_\_\_\_ upon the trusts referred to in Baptist Churches of New South Wales Property Trust Act 1984.
- (c) The appointment of \_\_\_\_\_ or \_\_\_\_\_ or both of them to sign an auction contract for property known as \_\_\_\_\_ for the authorised price indicated above, but on the day of the auction only. (for purchases only).
- (d) To borrow not more than \$\_\_\_\_\_ from \_\_\_\_\_ or from such lender or lenders as the Deacons shall decide on the security of property known as \_\_\_\_\_ and if necessary, all other Church property and apply the borrowed money for the purpose of \_\_\_\_\_.
- (e) Building applications and/or development applications on property known as \_\_\_\_\_.
- (f) A building contract relating to property known as \_\_\_\_\_ for a construction price not exceeding \$\_\_\_\_\_.
- (g) A lease of property known as \_\_\_\_\_ for a period not exceeding \_\_\_\_\_ months at a rental not less/more\* than \$\_\_\_\_\_.
- (h) A management agreement/selling agency agreement\* with estate agent \_\_\_\_\_.
- (i) A plan of subdivision/consolidation\* of property known as \_\_\_\_\_.
- (j) The investment of the net proceeds of sale in the name of the trustee on behalf of the church with \_\_\_\_\_ Bank/Baptist Financial Services Australia Limited (BFS)/Baptist Property Trust Common Fund.\*
- (k) The registration for GST of the trust entity known as “Baptist Churches of NSW Property Trust T/F \_\_\_\_\_ Baptist Church”.

Naturally, the exact terms of the Resolution will depend on the circumstances. Check the terms of the proposed Resolutions to ensure that they cover all the necessary transactions. (\* Delete words as necessary)

It is desirable to obtain legal advice at the very outset of the transaction concerning the terms of your Resolution. The sooner you instruct a solicitor, the better opportunity there is to get things right and thus avoid the need to go back for a second meeting.

In the case of selling or borrowing, it is essential for the Resolution to specify the use of the money. This is because Section 22 (2) (f) and (g) of the Act stipulates that the money can only be applied “for such one or more of the purposes prescribed by subsection (5) as may be directed by the congregation”.

Subsection (5) refers to the purchase of other property, the repair or enlargement of existing buildings, the erection of a church, school or manse, and also purposes which are ancillary to the attainment of the objects in subsection (3). These objects are set out below.

### **HOW SHOULD THE PROCEEDS OF SALE OR MONEY BORROWED BE APPLIED?**

The proceeds of sale or money borrowed are held on the same trusts as the property was held. The objects are set out in the Act (Section 22 subsection (3)) and are briefly as follows:

- (a) the public worship of God according to the usages of the Baptist denomination;
- (b) the instruction of children or adults, or both;
- (c) the provision of a residence for a pastor of the Baptist denomination or for a person employed in the work of a Baptist Church or other work connected with the denomination;
- (d) the provision of recreational and community welfare services ancillary to the work of the Church or denomination;
- (e) the promotion of such religious or philanthropic purposes as the Executive Committee of the Baptist Union from time to time determines.

The Property Trust is under a legal obligation to ensure that any proceeds of sale or money borrowed are paid for one or more of those purposes and objects, as directed by the congregation. Naturally, sale proceeds are often applied in discharging an existing mortgage. You will see that other authorised purposes include the purchase or construction of church, manse or education buildings, their improvement or repair, etc. If there is surplus cash to be invested, then until it is applied for a purpose under the trusts, those funds must be held on deposit in the name of the Property Trust as trustee for the Church. The interest which is earned on those funds will also be used for the benefit of the Church. The Property Trust itself has a Common Fund which can take the surplus proceeds on deposit at call, or they can be put into a Bank Account or Bank deposit or any Trustee investment. Alternatively, you could decide to invest the proceeds with Baptist Financial Services, but only if the congregation authorises it.

Proceeds of sale and also borrowed money can be used at the direction of the congregation, for the benefit of your church, another Baptist church, a District Association, the Baptist Association itself, a committee or agency of the Baptist

Association, or a corporation which complies with Section 22 (8) (d). The direction needs to comply with the prescribed purposes and objects set out in the Act.

The corporation referred to might be a School company or incorporated association, for example. The corporation will comply with Section 22 (8) (d) if all the following elements are present in its constitution:

- its objects must not be inconsistent with the general objects of the Baptist Union,
- every member must be a member of the Church,
- membership ceases when the person ceases to be a member of the Church,
- only a member of the corporation can be a director or officer, provided that no more than one third of directors may be a member of another Baptist Church, or a member of an evangelical church,
- no amendment to the constitution can be made without the consent of the Property Trust.

The money must be used for one or more of the objects listed in the Act in Section 22 (3).

The use of proceeds of sale and borrowed money for the purpose of real estate purchases or for building construction or repair is straightforward, because capital assets are being reinvested in new capital assets. However the use of trust funds for revenue items can present a problem. For example, a church may wish to use borrowed money, or proceeds of sale, for payment of stipends or salaries. Please refer to the summary on the Baptist Association website headed "The Obligations of Members of Local Churches in relation to Baptist Church Property". Counsel's opinion is that, in those circumstances a church will need to satisfy the Property Trust, as trustee, that the fund is not being dissipated and (amongst other things) that there is a reasonable strategy in place to ensure that use for stipends or salaries will be short term.

## **WHAT DOES THE CHURCH DO IF IT IS THINKING OF BUYING?**

The quicker you instruct your solicitor the better. You should ask for a copy of the vendor's draft contract. You can commence negotiations before the congregation has completed the resolutions mentioned above (but of course you will not be able to ask your trustee to sign a contract until those resolutions have been passed). At an early stage, you will need to consider:

- (a) whether to obtain a building or engineering report.
- (b) whether to obtain a pest report.
- (c) whether to obtain a search of the books of the Owner's Corporation (In the case of a strata unit).
- (d) whether your purchase should be conditional upon Council approval of the use to which you want to put the property?

You should ask the agent (or vendor) to send the draft contract to your solicitors. If you need finance, you should make application for finance and obtain approval of your loan before exchanging the contract for the purchase.

As soon as the vendor's contract has been sent to your solicitors, they can advise you on the contents. Possible negotiations will be necessary in order to obtain satisfactory conditions for the purchase.

### **WHAT DOES THE CHURCH DO AFTER THE RESOLUTIONS HAVE BEEN PASSED?**

Complete the statutory declaration available on the Baptist Association's website and return it to Church & Grace.

### **WHAT WILL IT COST?**

There will be a cost for any work that is carried out by a solicitor. You can obtain an estimate. Remember that churches are not exempt from stamp duty on purchases of real estate. The Church is obliged to pay the legal costs incurred by its trustee, as well as its own costs.

Church & Grace acts for Baptist Churches of New South Wales Property Trust. For enquiries, contact:

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**(Mr Jim Creech)**

### **NOTE FOR SMALL CHURCHES**

After amendments were made to the property trust Act in 2013 it is necessary for churches with less than 20 members to obtain approval from Assembly Council when considering the purchase or sale of property. This will ensure that the best decisions for maintaining the Baptist witness in your district may be made. In order to obtain this approval please send a letter to the Assembly Council, Association of Baptist Churches, Level 4, 5 Saunders Close, Macquarie Park 2113, or by email to [assemblycouncil@nswactbaptists.org.au](mailto:assemblycouncil@nswactbaptists.org.au). Often the church will have engaged the advice of people in the Association on growing the membership, so the Assembly Council approval should not delay matters to any significant extent.

### **GOODS & SERVICES TAX (GST)**

While the property trust holds many properties for the various churches of the denomination, each is considered a separate trust for legal purposes. When GST is included in the cost of a property being purchased, it is necessary for the recovery of the GST paid to register, for ABN and GST, a separate entity. This is covered in option k). of the draft Resolutions above. These registrations should be made before the purchase

contract is executed. In order to do this we recommend that you contact the Secretary of the property trust by email on [propertytrust@nswactbaptists.org.au](mailto:propertytrust@nswactbaptists.org.au), giving all the appropriate details. In some cases it will be necessary to open a separate bank account for the receipt of the refund, which can be arranged with BFS. Even though there may be no further transactions for this entity, we recommend that the entity remains registered for several years, with Nil BAS Returns lodged in this time. This will ensure that the Australian Taxation Office does not seek to recover some of the GST refund made. If in doubt about this aspect we invite you to contact the Secretary of the property trust, as above.

Some churches have had a review of their BAS return in which they claimed back GST paid for a property purchase. The review required production of some documents, including;

- Contract of Purchase – front page,
- Settlement Statement,
- Tax Invoice,
- Loan Contract,
- Loan statement,
- Bank statement for trustee entity's account.

It is recommended that these documents be held prior to submission of the BAS return, to save time in the event of a review.

### **DISCLAIMER**

The information above has been carefully prepared, but it is not a substitute for legal advice. It cannot cover the entire field, nor every set of facts. Any liability for any loss of any kind, however sustained, is expressly excluded no matter how it may be caused, even if (without limiting the generality of what is stated above) it might be the result of any act or omission of the Association of Baptist Churches or its advisers, committees, servants or agents, or of Baptist Churches of New South Wales Property Trust or its advisers, members, servants or agents, whether negligent or otherwise. Each church should obtain its own legal advice.