

# FREQUENTLY ASKED QUESTIONS

## **WHAT IS THE BAPTIST PROPERTY TRUST?**

The Baptist Property Trust is a corporation, established under an Act of the NSW parliament. The Baptist Union of New South Wales is also a corporation, established under its own Act. They are two separate organizations. The members of the Property Trust must be members of a Baptist Church, and they are nominated and elected under the By-Laws of the Baptist Association at the Annual Assembly. The Property Trust reports to the Assembly.

Any Baptist church member can be nominated for election. Seven members are required at any one time. They are all volunteers, just as in most other Baptist Union committees. They give their time as part of their Christian commitment, and to help the churches.

## **WHY APPOINT THE PROPERTY TRUST AS TRUSTEE?**

When you appoint the Property Trust, the trusts are clear - they have stood the test of time since before the 1920's. The major banks are used to dealing with churches through the Property Trust. Churches have access to Baptist Association loan funds through the Property Trust, as well as access to loan funds administered by the Property Trust itself. Individual trustees would have no access to loan funds administered by the Baptist Association or by the Property Trust. If you were to attempt to appoint individuals to act as trustees, you would inevitably run into problems. Individuals will die eventually, or they may move from the district, or they might become hard to deal with. Replacement can be expensive or impossible. The appointment of individual trustees would require preparation of a Trust Deed and generally lending authorities will be wary of dealing with them. The Property Trust on the other hand is permanent, not expensive, has expertise and is trustworthy.

## **CAN OUR CHURCH DO WHATEVER WE LIKE WITH OUR OWN PROPERTY?**

For the most part, yes, but there are limits. The basic rule to remember is that Baptist Church property is purchased for Baptist church purposes. We are all stewards of these assets, for the advancement of the Kingdom of God through the Baptist church. None of the property is "ours" in any ownership sense. That's what "trust property" is all about.

## **WHAT THINGS CAN'T WE DO?**

Obviously nothing illegal. That means complying with the general law of the land, like everyone else, including Local Government regulations and the like. Likewise, no church should breach the trusts upon which the property is held.

## **SO WHAT ARE THE TRUSTS?**

They are set out in the Act which is called “Baptist Churches of New South Wales Property Trust Act 1984”. The trusts were intentionally made quite wide and flexible, but they are not limitless. The objects set out in Section 22 (3) are:

- (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 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 from time to time determines.

## **WHAT ARE SOME EXAMPLES OF THINGS WE CANNOT DO?**

The proceeds of sale of church real estate cannot be used to help interdenominational missions or charities, no matter how worthy they might be. There’s nothing to stop you raising your own money for them, but you cannot use funds which are protected by the trusts outlined above.

You cannot benefit individuals as such – no church member or friend can make a profit out of the trust property. This means you must not attempt to make a gift of church property to (for example) the minister or any other individual, nor sell to him at an undervalue. This might seem obvious, but it has been attempted more than once. The Property Trust as trustee will be obliged to refuse the attempt. Sadly, we have seen private trustees who failed in their duty to resist the pressure.

## **WHAT DOCUMENTS MUST BE SIGNED BY THE TRUSTEE?**

Almost all legal documents relating to real estate will require the signature of the Property Trust. This includes contracts for sale, contracts for purchase, real estate agency agreements, options, building contracts, development applications, building applications, subdivision applications, consolidation plans, mortgages, leases, licence agreements and numerous other documents.

## **WHY?**

The authorities require the “legal owner” to sign. The local church is not the “legal owner” – it cannot be, because it is unincorporated. That is why the local church needs to have a trustee. The trustee is looked upon by the authorities as the “legal owner”. Please note however that the trustee (any trustee, no matter who) is not the “beneficial owner” –

the trustee has no proprietary interest in the property at all. Lawyers call a trustee the “legal owner” which is not the same as the “equitable owner” or “beneficial owner”.

## **HOW DO WE GET THE TRUSTEE TO SIGN?**

By passing a resolution or resolutions in accordance with the procedure set out in Baptist Churches of New South Wales Property Act 1984 Section 42.

## **WHAT ARE THE MECHANICS?**

A helpful guide is published on this website. You should study it. Basically it requires you to give 2 Sundays’ notice of a church meeting to pass the resolution. The terms of the resolution are important – it must direct the Property Trust what to do. Obtain legal advice early. If you intend to instruct the solicitors for the Property Trust then by all means you may do so. If you intend to instruct another solicitor, we recommend that you suggest to your solicitor to check the proposed wording with the Property Trust’s solicitors.

Once the resolution has been duly passed, you should complete a Statutory Declaration to that effect (see the form which is published on this website). The completed Statutory Declaration will need to come into the hands of our solicitors. If you instruct another solicitor, instruct them to send the Statutory Declaration to our solicitors.

For just about any real estate transaction, you should obtain legal advice – the earlier the better. You can make plenty of mistakes without legal advice.

Each document which requires signing should be sent to our solicitors who have been asked by the Property Trust to check all documents so as to ensure they are in order for the Property Trust to sign them. If you instruct our solicitors, they will guide you on this. If you instruct another solicitor on the transaction, you should instruct the solicitor to forward whatever documents require signature, to our solicitors together with your solicitor’s certification that they are satisfactory to you, the client. (Whichever solicitor is instructed by the local church has the responsibility to protect you, the client and the local church. The solicitor instructed by the Property Trust has the responsibility to protect the Property Trust).

## **WHERE SHOULD WE SEND THE DOCUMENTS?**

If you instruct your own solicitor, send everything there. Your solicitor should know how to handle things from then on.

If you instruct our solicitors the details are below and you should contact the secretary of the Property Trust for advice on which firm to use.

## **WHY NOT SEND DOCUMENTS DIRECT TO THE PROPERTY TRUST?**

Because the Property Trust will only have to send them to its solicitors for legal approval (see above) and you will have wasted time. If you have general enquiries or other correspondence, by all means get in touch with the Property Trust direct, but documents requiring signature are a different matter.

The details for the Property Trust are as follows:

The Secretary  
Baptist Churches of New South Wales Property Trust  
Level 4, 5 Saunders Close,  
Macquarie Park NSW 2113

If you need to contact the Property Trust secretary urgently, you may ring him at home on (02) 9630 2561. If you need to get correspondence to him before Thursday, you may send it to his home address 17 Balfour St, Northmead, NSW 2152. Alternatively you may email the Property Trust at [propertytrust@nswactbaptists.org.au](mailto:propertytrust@nswactbaptists.org.au) and a reply will be generally sent within a few days.

### **HOW QUICKLY CAN DOCUMENTS BE SIGNED?**

A lot depends on you. Generally, you should allow say 2 weeks from the time the document is generated. This will allow you to get legal advice on it from the solicitor appointed by you, for your solicitor (if he hurries) to get it to the solicitors who act for the Property Trust, for them to get the document to the Property Trust, for the Property Trust to sign it, and for the document to be returned to its and your solicitor. Australia Post is likely to take a few days to do its work, and the inevitable weekend will take out 2 days. All in all, 2 weeks is a very reasonable and efficient turnaround.

Remember you will need to have passed your resolutions, and sent in the Statutory Declaration to that effect, before any document can be signed. You need to think ahead.

The Act requires the Common Seal of the Property Trust to be affixed in the presence of 2 members of the Property Trust and countersigned by the Secretary or other authorised person. In recent years many documents have been executed under Power of Attorney, which only needs one Property Trust member to attend. The members of the Property Trust are all volunteers, busy in their own churches and only a couple of them are currently working in the city, so obtaining signatures in a hurry is never easy. You can help by trying to ensure that the document reaches the Property Trust in plenty of time.

Try to avoid emergencies – however if an emergency occurs, the Property Trust and its solicitors will go out of their way to try to help. It's like a medical emergency – you call the ambulance and alert the doctors and the specialists so that they can drop everything else and rush to hospital. In the Property Trust context and the urgent signing of documents, don't be surprised if there are extra costs for couriers and urgent legal attention.

## **WHAT ABOUT INSURANCE?**

This is your responsibility. Adequate insurance is essential, and should cover all risks including public liability. Baptist Insurance can help you – contact the Baptist Association if necessary – but in any case be sure to investigate the options. The Property Trust is not an insurance broker and has no specific expertise in insurance. Please note that it is not the responsibility of the Property Trust as trustee to take out insurance or to check that insurances are renewed. Apart from anything else, the Property Trust has no funds with which to pay premiums. The responsibility is yours and it is most important that you keep all insurances current.

## **REGISTERING A PROPERTY TRANSACTION ENTITY FOR G S T**

The purchase and/or sale of property by a church will be transacted through a legal entity registered with the ATO for the purpose. When Caringbah Baptist Church bought its new church property in 2000 the following trust was registered “BAPTIST CHURCHES OF NEW SOUTH WALES PROPERTY TRUST ATF CARINGBAH BAPTIST CHURCH”. This trust was registered with the ATO as a “charitable fund” and was granted the following tax concessions: (1) GST Concession and (2) Income Tax Exemption.

Our solicitors will act for the Property Trust, so whoever the church selects to act on its behalf should sort out the correct registration of the entity with the ATO. Some churches have experienced difficulty with this step as many ATO staff have not encountered this type of arrangement before and need to be shown an existing example to feel comfortable about registering the entity with the appropriate name and tax concessions. It is strongly recommended that you email the Property Trust’s secretary, to request them to register the entity, as certain private details are required which are not available to most people.

The Baptist Churches of New South Wales Property Trust is an entity in own right, and there are actually 300 hundred or so separate trusts held on behalf of various autonomous Baptist churches. Each needs to be registered for GST when a transaction is to be processed.

## **ARE WE EXEMPT FROM STAMP DUTY?**

The purchaser of real estate is liable (in almost every case) and there is no general exemption from stamp duty in favour of churches where the property is to be used for church worship, religious activities or a manse. Stamp duty is a big impost. It is payable to the NSW State Government.

The exceptions relate to properties which are purchased for schools or pre-schools, are substantially for community welfare purposes, or for the benefit of the disadvantaged. The Office of State Revenue requires a specific application for exemption to be lodged and proved.

The Chief Commissioner can also approve an exemption from stamp duty for an institution whose resources are used wholly or predominantly for the relief of poverty in Australia or the promotion of education in Australia, but this would rarely be applicable to churches.

Between 1 June 2004 and 2 August 2005 the NSW Government added a new and additional layer of stamp duty which was payable by vendors. Happily, this Vendor Stamp Duty was repealed as from 2 August 2005.

## **GOODS & SERVICES TAX**

There is no general exemption granted to religious organisations. The legislation is complex, and since GST can amount to 10% of the price, there is no alternative BUT to obtain specific GST advice from a qualified expert – solicitor, accountant etc. The Property Trust is not qualified to give advice. However, we can give you some brief pointers:

1. Second-hand residential accommodation (such as a manse) does not attract GST.
2. Church worship buildings will normally attract GST. It is payable by the seller to the ATO.
3. But the contract can require the buyer to reimburse the GST to the seller.
4. However if the seller is not registered for GST and not required under the legislation to register for GST, then no GST will be payable.
5. Beware the definition of who is the “seller”. The seller is not your local church. The seller is not the Property Trust in its own right. The seller will be “Property Trust as trustee for your local church”. This is a special “entity” under the legislation. If you don’t register this “entity” for GST then no GST issue will arise on this sale. If you do register this “entity” for GST then GST issues arise on this sale and also any other real estate transaction carried out for your church.
6. If you are the buyer, you might find that the seller requires you under the contract to reimburse the seller for GST. If your “entity” is not registered for GST, you will be unable to claim from the ATO any input tax credit. If your “entity” is registered for GST, you will be able to claim the input tax credit, and this will make the transaction revenue neutral, although there could be a timing or cash flow problem.
7. You will need to register your “entity” before signing the contract. The congregation will need to authorise the Property Trust to do this.
8. The amount of GST will usually be much reduced if the seller is able to apply the “margin scheme”. This is because the GST is levied only on the increase in value of the property between 1.7.2000 and the date of sale. But the buyer cannot get an input tax credit. Note: the option to apply the margin scheme must be exercised at the time of the sale, not later.

So you can see how complicated this all is. The above remarks are brief comments only. They are not legal advice. You must get your own advice on each transaction.

### **DISCLAIMER**

The Property Trust information in this document has been carefully prepared. However it is not intended to be legal advice of itself. It cannot cover the entire field, nor every set of facts. Any liability for any loss of any kind and 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 author, or of the Baptist Association 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.

### **PROPERTY TRUST'S SOLICITORS**

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