

# Who Owns Church Property?

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Posted on: 04/08/2009



These are interesting times to be an attorney for religious institutions. Every day there are questions that arise concerning contracts, leases, employment matters and land-use decisions. More frequently, however, there have been many questions about the ownership of church property when a congregation either splits in two or breaks away from the originating religious entity. Confusion has reined even further through two recently reported decisions concerning the ownership of church property after a split in the congregation. In one case, the originating church retained the property and in the other, the breakaway congregation retained the church property. How can these decisions be reconciled? And how did a state court come to rule on the issue?

We begin our analysis with the fundamental constitutional premise that courts in this country do not exercise jurisdiction over purely ecclesiastical, religious, or theological disputes. Courts have no ecclesiastic jurisdiction, and do not pass upon questions of faith, religion, or conscience. This ecclesiastical abstention doctrine is rooted in the First and 14th Amendments to the United States Constitution. Consequently, civil courts cannot adjudicate disputes turning on church policy and administration or on religious doctrine and practice.

However, not all disputes between factions of a church involve disagreements over religious doctrine, church policy or matters of faith. The United States Supreme Court observed that "[t]he State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively." Therefore, civil courts may exercise jurisdiction over intra-church property disputes under certain circumstances:

- The First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without "establishing" churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating secular interests in matters of purely ecclesiastical concern. Because of these hazards, the First Amendment enjoins the employment of organs of government for essentially religious purposes, the Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine.

The neutral principles approach, created originally to deal with church property disputes, has been used by courts in other types of cases involving civil rights. State courts have generally exercised jurisdiction over actions arising from intra-church disputes when other civil or property rights are involved. Nonetheless, they have been careful in those cases to decide only the issues dealing with the civil or property right involved using neutral principles of law.

In general, "congregationally" governed, as opposed to being part of a "connectional" or "hierarchical" church or body of churches the inquiry begins and ends with the bylaws, incorporating documents and constitutions of the body. When incorporating as a nonprofit organization, most states require the applicant to state the manner in which the entity is to be organized, operated and dissolved. The same is true when applying for IRS 501(c)(3) status; the service wants to know where the assets of the organization will go upon dissolution. If there are no written documentation that has been adopted by the church providing for governance, dispute resolution, or church polity, the intra-church property disputes are generally decided by a "pure democracy/majority rule" arrangement. And when two opposing factions in a congregational church reach an apparently irresolvable deadlock or impasse in a property dispute, a civil court will assume jurisdiction to assist the resolution when requested by one of the factions. Every state has a different opinion on this issue, and religious entities going through the process truly need to work with competent legal counsel to address the situation.

In the matter of "connectional" or "hierarchal" church bodies, defined "as one organized as a body with other churches having similar faith and doctrine with a common ruling convocation or ecclesiastical head," the retention of Church property is generally based on the adopted articles of faith and the title ownership of land, bank accounts and other property itself. In

most hierarchal religious bodies, the local church generally holds title to property in trust for the higher governing body. The intent behind this trust is to protect the organizing bodies' interests in the event of a schism or dissolution of a local church. Therefore, in the hierarchical approach, if a religious organization is merely a subordinate part of a general church in which there are superior ecclesiastical tribunals with a more or less complete power of control, then the higher authorities within the church are entitled to control the property. Again, each state has different rules and exceptions, and consultations with an attorney familiar with the trust form of property ownership should be consulted when evaluating the ownership issue.

It is not always clear who the owner of property is, and it is very important to make the determination before a local church makes the decision to depart from another, or in cases where the local church splits. Careful attention needs to be made to these basis inquires to avoid a costly legal battle.

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