

# THE CHURCH OF SCOTLAND GENERAL TRUSTEES

## Vesting of Properties in General Trustees

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### 1. Introductory

The Church of Scotland General Trustees are the Church of Scotland's property corporation. They were set up by the Church of Scotland (General Trustees) Order Confirmation Act 1921 as holding trustees but their powers and responsibilities were greatly increased by the Church of Scotland (Property and Endowments) Act 1925 and subsequent legislation and they now act as administrative as well as holding trustees.

The General Assembly broadened the remit of the Trustees in 1979 when they were entrusted with the administration of the Central Fabric Fund which was set up in that year to give financial assistance to Congregations with fabric problems but without the resources to cope with them. In the same year, the Assembly delegated to the Trustees the powers reserved to the Assembly in the Property and Endowments Acts relative to the disposal of properties and the application of proceeds of sale and also the Assembly's power over former United Free and other properties which were, in terms of their titles, under Assembly control. In 1983 the Assembly substituted the General Trustees for the Board of Practice and Procedure as the body to which diligence regarding maintenance of properties should be reported. In 1989 the General Assembly made Regulations requiring that the consent of the General Trustees must be obtained for the carrying out of "alterations" as defined in the Regulations at ecclesiastical buildings regardless of whether or not the building in question was vested in the General Trustees.

The majority of the properties held for Congregations of the Church of Scotland are vested in the General Trustees (i.e. the titles stand in their name) and they encourage the transfer into their name of properties which are held in the names of local trustees. With this in view they are prepared to meet the legal expenses of the Solicitor of the Church in connection with such transfers. The object of this paper is to set out some of the implications of such a transfer.

### 2. Aspects of Administration

#### (a) Permanency

The General Trustees were set up by Act of Parliament and have a continuing legal existence independent of changes in the identity of the individuals forming the corporation. The vesting of a property in them has obvious advantages over vesting in named trustees which involves changes of trusteeship from time to time and there are also some advantages over vesting in trustees *ex officio*.

#### (b) Insurance

The General Trustees insist that all buildings vested in them are insured against loss or damage by fire with the Church of Scotland Insurance Company. This Company is wholly owned by the General Trustees and operates a Scheme designed to meet the needs of Church of Scotland Congregations. The Scheme is very competitive and profits from the Company go to Church of Scotland Funds.

#### (c)/

(c) Sales

If a property vested in the General Trustees is to be sold, the sale is carried through by the General Trustees acting in close consultation with the Financial Board of the Congregation. The proceeds of sale are, unless there is some speciality, credited to the benefit of the Congregation concerned in the Consolidated Fabric Fund and, therefore, available for fabric purposes in connection with the properties of the Congregation concerned. It should be noted that in the case of locally vested properties, the title to which places the same under Assembly control, the Financial Board of the Congregation has the responsibility for carrying through a sale but in the normal case the proceeds fall to be transmitted to the General Trustees to be credited, in the same way, to the Consolidated Fabric Fund for the benefit of the Congregation concerned. The titles to the majority of locally vested properties contain an Assembly control clause.

(d) Availability of Financial Help

Grants from the Central Fabric Fund are normally given only in respect of properties which are vested in the General Trustees or, if locally vested, are under Assembly control. Loans from the Fund are available regardless of vesting.

The Assembly have also laid down that capital held by the General Trustees in the Consolidated Fabric Fund can be released only in respect of expenditure on properties which are either vested in the General Trustees or under Assembly control. The same stricture does not apply to revenue.

(e) Advice and Responsibility

The vesting of a property in the General Trustees does not alter the general obligation of the Financial Board of the Congregation to maintain the property, to carry out the ordinary day to day administration of it in connection with the work of the Congregation and, indeed, to meet all the obligations of ownership and occupation relative to it. The General Trustees' Secretary's Department is, however, available to give advice with regard to any aspect of the administration of the property whether involving third parties or otherwise. Such services are free of charge although a Congregation requires to meet any outlays incurred.

3. General

The transfer of a locally vested property to the General Trustees does involve the relinquishing of a certain degree of local control although in the case of locally vested properties which are, in terms of the title, subject to directions from the Assembly, this local control is less than may sometimes be thought. The preceding section sets out some advantages which result from the vesting of properties in the Church's property corporation.

Any queries on points of detail should be referred to either the Secretary of the General Trustees or the Solicitor of the Church at 121 George Street, Edinburgh, EH2 4YR (0131 225 5722).