



Policy for Disbursement of Congregational Assets

The Eastern Synod of the Evangelical Lutheran Church in Canada (the “Eastern Synod”) Constitution provides that those congregations that are viable and sustainable have the authority to control their own income, expenses and assets. This assumes, of course, that these congregations satisfy applicable regulations and legal requirements (e.g. CRA¹, trust law², etc.) as well as other congregational and synodical constitutional and policy requirements.

Questions frequently arise about the disbursement of any remaining assets, including land and buildings, when a congregation is no longer viable and approaching (or has reached) the end of its life. At times these assets can be quite significant in size. In response, the Eastern Synod enacts this policy to address those questions and to provide direction to congregations within the Eastern Synod.

Congregations That Have Disbanded

Assuming that Article 5, Section 4 from the model constitution is included in the congregation’s constitution, in the case of a congregation that has disbanded, the congregation has determined that all assets vest with the Eastern Synod:

Model Congregational Constitution (Article 5, Section 4): Should this congregation disband, all property not disposed of, real, personal and mixed, shall vest in the synod of which it is a part, its successor or assigns.

Congregations That Have Been Deemed Defunct

Assuming that Article 5, Section 5 from the model constitution is included in the congregation’s constitution, in the case of a congregation that has been deemed defunct, the congregation has determined that it is about to, or has, disbanded, and it follows that all assets vest with the Eastern Synod:

Model Congregational Constitution (Article 5, Section 5): Should this congregation cease to exist or should its membership so diminish in numbers as to render it impossible or impractical for the congregation to function according to its constitution and bylaws, the synod shall after consultation with any remaining members deem the congregation to be

¹ CRA regulations stipulate that registered charities are restricted to transferring property only to eligible donees or qualified donees (depending on the point of transfer), both of which includes other registered charities.

² In some circumstances, trust law requires that the intentions of the original donor be honoured.

defunct. The synod through the Synod Council shall appoint trustees, including where feasible former members of the congregation, who shall take charge and control of the property of said congregation to hold, manage and convey the same in behalf of this synod.

This Eastern Synod policy, *Policy for Disbursement of Congregational Assets*, applies to those congregations that are nearing the end of their lives but have not yet disbanded or been declared or deemed defunct. As this is a difficult time in the life of such congregations, it is often challenging for the relatively few members still remaining to make decisions that allocate any remaining assets according to sound stewardship principles and in accordance with regulations and legal requirements. In these situations it is important that any decisions concerning remaining assets be given ample consideration so that these congregational legacies are best used to carry out the mission of Christ's Church into the future.

Principles

1. From a theological perspective, the national church, the Eastern Synod and its congregations carry out ministry in partnership as one.
2. The Eastern Synod will provide guidance and exercise its influence to ensure that the decisions that are made regarding the disbursement of congregational assets follow the constitution, bylaws and enactments of the Evangelical Lutheran Church in Canada ("ELCIC"), the Eastern Synod and the congregation, as well as legal and regulatory requirements, intentions of original donors and sound stewardship of these assets for strengthening the mission of Christ's Church.

Congregational Requirement to Provide Notice

This policy requires that a congregation experiencing one or more of the following conditions shall notify the Bishop if it:

- a) Is considering disbanding or formally winding up its operations
- b) Finds itself in diminished numbers (active members and/or finances) such that its continued operations have become impractical or unduly burdensome
- c) Has been unable to:
 - a. Hold regular congregational council or board meetings
 - b. Hold an Annual General Meeting, or elect the required number of council members/directors
 - c. Meet corporate or income tax filing or other legal obligations

- d) Is considering disposing of 25% or more of its assets, including real property
- e) Is considering transferring assets outside of the ordinary course of business, other than by way of transfer to the Eastern Synod

Congregations That Are Planning to Disband

In the case of a congregation that is planning or has formally decided to disband or dissolve, the congregation shall notify the Eastern Synod and the assets of the congregation remaining after the liquidation of property and payment of liabilities (the “Net Assets”) shall be transferred by the congregation to the Eastern Synod in accordance with the applicable law and regulations, thus creating a legacy that enables seeds that were sown in a local setting over many years to be spread, continue to grow and bear fruit in the form of synodical and national ministries.

For legal and regulatory reasons, to ease the transfer of the Net Assets and to reduce expenses to the congregation, it is preferred that the transfer of the Net Assets to the Eastern Synod shall take place prior to the formal disbandment or dissolution of the congregation. However, the transfer of the Net Assets to the Eastern Synod may also take place at the time of, or after, disbandment or dissolution. The Eastern Synod will provide guidance concerning any legal or accounting advice that may be required.

This policy includes options available to a congregation to bestow a portion of this legacy to other ministries of the Eastern Synod/ELCIC or in the local community, as provided below:

Where the Net Assets exceed \$100,000.00, and subject to the applicable tax and other laws and regulations, the Net Assets shall be distributed as follows:

1. Although not obligated to do so, the congregation may transfer up to 10% (to a maximum of \$50,000) of congregational Net Assets remaining at closure to:
 - a. One or more congregations or other ministries of the Eastern Synod or ELCIC; or,
 - b. One or more local registered charities,as determined by a two-thirds majority of the then remaining members of the congregation in a vote taken at a meeting to be called for that purpose (which must be before or a part of the decision to disband, but may be decided at the same meeting), provided that the general intentions of the original donors are respected.
2. Although not obligated to do so, the congregation may transfer up to 40% (to a maximum of \$500,000) of congregational Net Assets remaining at closure to the Evangelical Lutheran Foundation of Eastern Canada (ELFEC), (the “ELFEC Transfer”). ELFEC shall maintain a separate fund for the ELFEC Transfer for a five year period during

which time ELFEC shall invest the principal and make the investment income available for disbursement to:

- a. One or more ministries of the Eastern Synod or ELCIC; or,
- b. One or more local registered charities.

This decision shall be determined by a two-thirds majority of the then remaining members of the congregation in a vote taken at a meeting to be called for that purpose (which must be before or a part of the decision to disband, but may be decided at the same meeting).

The congregation may appoint a local mission committee consisting of at least three and no more than five of the members of the congregation following the decision to disband who shall be elected by the then remaining members of the congregation at a meeting to be called for that purpose (which must be before or a part of the decision to disband, but may be decided at the same meeting) and shall serve for a period of five years. This committee shall be responsible for recommending recipients of grants to congregations, other ministries of the Eastern Synod or ELCIC or local ministries to the Eastern Synod's Mission Committee and respecting the general intentions of the original donors to the (by then disbanded) congregation. The Eastern Synod's Mission Committee shall be responsible for approving these recommendations and requesting ELFEC to make these grants after confirming that they comply with applicable regulatory, legal and policy requirements.

The ELFEC Transfer shall be transferred to the Eastern Synod for general use in accordance with its constitution, bylaws and enactments:

- a. If membership of the local mission committee decreases to less than three of the original members; or,
- b. At the end of the five year period.

Normally the Eastern Synod will allocate these funds to the principal of the Remembering for the Future Fund, the income of which is used to support the Eastern Synod's operating budget that funds its ongoing ministries.

3. All other congregational Net Assets remaining at closure shall be transferred to the Eastern Synod for general use in accordance with its constitution, bylaws and enactments. Normally the Eastern Synod will allocate these funds to the principal of the Remembering for the Future Fund, the income of which is used to support the synod's operating budget that funds its ongoing ministries.

Where the Net Assets do not exceed \$100,000.00, and subject to the applicable tax and laws and regulations, the Net Assets shall be distributed as follows:

1. The congregational Net Assets remaining before or at closure shall be transferred to the Eastern Synod for general use in accordance with its constitution, bylaws and enactments. Normally the Eastern Synod will allocate these funds to the principal of the Remembering for the Future Fund, the income of which is used to support the synod's operating budget that funds its ongoing ministries.

Congregations That Amalgamate, Merge or Consolidate³

For congregations that amalgamate, merge or consolidate with another Lutheran congregation, all assets belong to the amalgamated/merged/consolidated congregation.

Special Situations

1. Special considerations may be applied in the case of congregations that that received a significant amount of funding from the Eastern Synod or national church in previous years (e.g. Canada Mission grants).
2. Special considerations may be required in the case of a specific purpose charitable trust fund or endowment fund is held by the congregation in order to ensure that trust or endowment requirements are satisfied.

Considerations

Congregations are encouraged to consider the following questions when determining which ministries to support (refer to items #1 and #2 in the section "Congregations That Are Planning to Disband" above:

- Has the congregation supported this cause during its existence?
- Would such a grant align with the mission of the congregation?
- What impact would such a grant have on the receiving organization?
- Are there existing Lutheran charities that do similar work? (e.g. CLWR)

³ CRA defines these terms as follows on its website:

- Amalgamation - When charities amalgamate, they bring their memberships, assets, and liabilities into the entity that emerges. The original charities do not cease to exist or dissolve.
- Merger - In a merger, one or more entities wind up their affairs and transfer their assets to another registered charity.
- Consolidation - In a consolidation, all the original bodies dissolve and transfer their assets to a new entity. All the original bodies that wind up undergo a voluntary revocation of their registration.

- Would the relationship with the proposed recipient charity work in a reciprocal way? (i.e. if it was the recipient charity that was closing (and not the congregation), might it consider including the congregation as part of its legacy?)

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