



## TITLE: MPBC TRUSTEE MINISTRY AND FIDUCIARY DUTY

**Statement.** The stated mission of MPBC is "We Build Here." An open and inclusive management style would produce better results than an autocratic approach. With the open and inclusive approach you would get buy-in and ownership of church members and leadership. If members do not have a sense of ownership, they may feel disenfranchised thereby creating an antagonist atmosphere.

Recent actions and decisions by Pastor Donalson have created tension and could possibly lead to serious Conflict of and Fiduciary Issues that will challenge the Church 501 (3) C status.

### **Background. Trustee and Fiduciary Duty.**

As trustees, each individual must be willing and able to work together as a team. 1st Corinthians 12 notes that each person is important, yet must also work together to operate effectively.

1<sup>st</sup> Peter 4:10 also comments about fitting the roles of church members with their abilities: "As each has received a gift, use it to serve one another, as good stewards of God's varied grace."

Trustees function as Christian stewards of property God that has entrusted to the congregation. This includes supervising and maintaining both the physical property of the congregation and gifts made to the congregation so that the ministries of the congregation can be effective and all legal requirements related to the property are satisfied.

A fiduciary duty is defined as an obligation owed by a person in a leadership or management role within an organization to the organization itself and its members. A director or officer who breaches their fiduciary duties can face personal liability to the organization and others for damages caused by the breach. State and federal laws provide limited immunity to uncompensated officers and directors of churches and other charities. This means that they cannot be personally liable for their ordinary negligence. However, such laws contain some exceptions. For example, officers and directors may be personally liable for their gross negligence or their willful or wanton misconduct.

In Fairfax County, an order of appointment for church trustees or trustees for other places of worship or fraternal organizations must be confirmed by the Circuit Court. The Church must file a petition in Circuit Court when selling, improving, gifting, exchanging or settling boundaries between adjoining church property or property of benevolent associations (e.g., fraternal organizations or other places of worship) by agreement (See Attachments A and B).

### **Discussion.**

1. Over the last 48 months, the pastor has used authoritative leadership to make major decisions about the numerous programs in the church. Examples of some of them are outlined below:

**Item#1. MPBCCA Closure for 2020.** He made decisions without any effort to involve the church leadership and the congregation in his effort to achieve his goals reference MPBCCA. His



decision without church participation in the closure of the MPBCCA was a violation of the Constitution and Bylaws.

**Item#2. Academy At a Full Amount of \$260K Without a Top Down or Bottom-Up Program Plan.** The church has seen no timelines, objectives, or information that centers on the participation of many of the church members in the MPBC and its MPBCCA development process.

**Item#3. Improper Signing of Contracts/ Improper Obligation of Church Funds-Radio 1.**

**Item#4. Improper Use of Church Card for Personal Use.**

**Item#5. Illegal Use of HR Tool-Covenant Letter.**

**Item#6. Trustee Ministry Proposed Dissolvemnt.**

**Item#7. Payroll.**

The latest incident occurred during the MPBC Annual Church "Hybrid" Meeting, Thursday, December 08, 2022 7:00 PM. Reverend Donalson stated that the he was going to establish a new group of Trustees because the current group would not sign the Covenant letter as he required (Item #5). He announced to the congregation that he personally select and form this new group before the end of the calendar year 2022. This action is in violation of the MPBC Constitution and Bylaws.

2. **The August 2006 MPBC Constitution and Bylaws outlines the following:**

MPBC Constitution. Article III - Beliefs Section I.

VI. The Church. This church is an autonomous body, operating through democratic processes under the Lordship of Jesus Christ. Each member is responsible and accountable to Christ as Lord.

The MPBC Bylaws outlines the following:

**Article I – Pastor, Section 1.1 Defined.**

B. Has oversight and supervision of all the interests of the church and all departments of its work, both spiritual and temporal.

C. Has absolute charge of the pulpit, ministries, and services. Responsible for approving any services or functions held in the church, or in the name of the church. He shall perform weddings, officiate at funerals, and other functions when requested to do so.

E. Administers church affairs by securing the cooperation of the members and gains his objective by reason and persuasion, rather than attempting to force compliance by authoritative dictation.

**Article III- Director of Administration, Section 3.2 Trustees**



E. Tenure shall be for a period of three (3) consecutive years. At the end of each term, he/she may be appointed by the pastor to serve an additional three years.

F. The trustees shall be subject to removal upon recommendation of the ***pastor and trustees*** after ***thirty (30) days' notice has been given in writing*** and upon ***two-thirds (2/3) vote of the members present and voting*** at a regular or called business meeting.

The purpose of the church's Bylaws is to establish an amendable document that addresses the present structure and internal governance of the church while providing elasticity for future growth. The Pastor's authoritarian leadership is in violation of the churches Constitution, Bylaws and finally 501 (c) 3 church's compliance to IRS code and must change.

**Conclusion.** The pastor IAW the MPBC constitution and Bylaws cannot dissolve the Trustee ministry. The Bylaws Section 3.2, E and F is very specific about the entire process. Any changes in the ministry must be executed IAW the Bylaws.

The State of Virginia's Stock Corporation Act provides that "A Director shall discharge his duties as a Director, including his duties as a member of a committee, in accordance with his good faith business judgment of the best interests of the Corporation." §13.1-690. A. The Duty of Care, thus, is the affirmative duty of a Director to make informed decisions for the Corporation, after using reasonable diligence in gathering and considering material information.

***This essentially means that "a director of a private corporation cannot directly or indirectly, in any transaction in which he is under a duty to guard the interests of the corporation, acquire any personal advantage, or make any profit for himself, and if he does so, he may be compelled to account therefor to the corporation" (Rowland v. Kable, 174 Va. 343, 6 S.E.2d 633, 642 (1940)).***

There are several Case Law Examples that highlight the Virginia Act:

- Failure to Disclose. Failure to disclose information that might affect one's decision-making process where a fiduciary relationship exists will frequently constitute a breach of fiduciary duty. Firebaugh v. Hanback, 247 Va. 519, 443 S.E.2d 134 (1994).
- Usurping Opportunities. In the real property context, this often happens when a director breaches his fiduciary duty to the corporation by knowingly purchasing some real property for himself instead of presenting it to the corporation first (Trayer v. Bristol Parking, Inc., 198 Va. 595, 95 S.E.2d 224 (1956).
- Deriving Personal Benefit.
- Knowledge of Fraudulent Certification of Corporate Documents.
- Misuse of Confidential Information.
- Unfair Advantage in Dealing with the Principal.

This violation of the Churches Constitution and Bylaws will result in a violation of the church 501 c (3) status with the IRS. The first step in improving your understanding of the relationship between conflict of interest and your church is to recognize a conflict of interest situation. In short, a conflict of interest situation occurs when an individual with a vested interest in the affairs of the church (e.g., board



member, compensated individual, etc.), participates in a decision process that may personally benefit himself or another individual with a vested interest in the affairs of the church.

The Internal Revenue Service (IRS) refers to individuals with a vested interest in a tax-exempt organization as disqualified persons (see Treasury Regulation 53.4958-3). This includes the following:

Officers;

Directors;

Bishops;

Trustees;

Board members;

Pastor; and

Relatives of officers, directors, bishops, trustees, board members, or the pastor. Pastor Donalson selection of Trustees just highlights the examples mentioned above where “one individual cannot have all control and “can” benefit himself... set his own salary, hire his associates or people, that will support his decisions.

The Church Leadership, Trustees and Pastor, as outlined in the Bylaws, Article 1 Pastor, Section 1.1 E. and Article 3 Section 3.2 E and F must work together in harmony to resolve this moment of crisis. We must develop a transition plan that outlines steps going forward. The plan must be briefed to and approved by the church congregation.