

# Who Owns The Church?

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## *How the Civil Court Decides, Who Owns the Property*

In researching this heart wrenching issue which has caused many to feel betrayed and abused, by both the church and the civil judicial system, we must understand what the rules are. Even when, in many cases, members are led to believe when they have labored, sweated, sacrificed, and perhaps mortgaged their homes, none of that matters once you join any National Church that does not specifically place property ownership with the local membership. My intent is to help us in that regard.

In the case of *Maryland and Virginia Eldership of the Churches of God v. Church of God at Sharpsburg*, in his concurring opinion, Justice Brennan proposes an analytical formula within which all church property disputes should reside. His formula consists of three steps, either one or more of which may be adopted by the states for resolution of church property disputes.

1. **Watson v. Jones**. States may follow this rule of deferring to, and enforcing the property decisions made by either a majority of the members of a congregational polity, or The highest judicatory of an hierarchical religious body that has ruled on the dispute. The foregoing are limited by situations in which express terms of documents of title establish contrary conditions, in which case the express terms control. However, use of this approach is not appropriate where resolution of doctrinal or religious policy issues is requisite to ascertaining the appropriate judicatory body.

2. **Neutral Principles of Law**. The use of generally applicable neutral principles of state law may be used to resolve church property disputes. This “formal title” approach requires secular courts to ascertain ownership by reference to deeds, reverter clauses, general corporate law, and other general principles of state law. But, the use of this approach is inappropriate when it requires the civil courts to resolve doctrinal issues.

3. **State Statutes**. This third dispute resolution framework envisions the enactment of special state statutes addressing church property disputes and establishing a resolution mechanism. However, any such mechanism must avoid interference with doctrinal matters or the ecclesiastical polity.

In comparing the methodologies, commentators have noted that the hierarchical approach favors general churches because, once civil courts have determined that the general church is hierarchical, they remove themselves from the controversy and allow the higher adjudicatory authorities within the denomination, which invariably support the position of the general church, to decide the dispute.<sup>1</sup>

<sup>1</sup>All information was found in the article Church Property Disputes: A Constitutional Perspective, in the Canon Law Institute

***WHAT DOES THE TERM “HIERARCHICAL CHURCH” MEAN?***

**The local church is subordinate; rights to the property are to be determined by the superior tribunal within the hierarchical church.**

If the court determines that the general church is hierarchical, it leaves settlement of the dispute to the higher authorities within the church. When, “the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there [is a] superior ecclesiastical [tribunal] with a general and ultimate power of control more or less complete, in some supreme judicatory over the whole membership of that general organization.” “[I]n cases of this character [civil courts] are bound to look at the fact that the local congregation is itself but a member of a much larger and more important religious organization, and is under its government and control, and is bound by its orders and judgments.”<sup>1</sup>

***WHAT DOES THE TERM “CONGREGATIONAL CHURCH” MEAN?***

**The local church is not subordinate; rights to the property are to be decided under the legal principles that govern voluntary associations.**

If the court determines that the general church is not hierarchical, it applies the legal principles that govern voluntary associations.<sup>1</sup>

As it applies to COGIC, this means one of these entities must decide for whom the trust is established, the local church or the National Church

- a) The General Assembly
- b) The Judiciary Board
- c) The General Council of Pastors and Elders

Unless we specifically state in the Charter all property rights are for the local congregation, we will continue to experience divisive conflict.