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Merging Flocks

Legal issues to consider when integrating and consolidating religious congregations

Often, religious congregations have seasons in which they are active and growing, as well as seasons where the congregation's population declines. A growing congregation may be located in a developing community with young families, while a congregation with declining membership may own valuable assets (such as land or buildings), but may have insufficient ongoing revenues (from dues or weekly collections) to remain viable. Under these circumstances or others, congregations may discuss consolidating or integrating. Before considering a consolidation or integration, there are a number of areas that congregations and their legal counsel will need to review.

Initially, the congregations must decide whether they will consolidate pursuant to the general provision applicable to religious societies and congregations (N.J.S.A. 16:1-20), or under the specific merger or consolidation law applicable to particular denominations (e.g., N.J.S.A. 16:2-13 for Baptist churches; N.J.S.A. 16:3-8 for the Church of Christ, Scientist; N.J.S.A. 16:5-25 and 16:5-27 for the Evangelical

Lutheran Church; N.J.S.A. 16:10A-10 for the United Methodist Church; N.J.S.A. 16:12-15 for the Protestant Episcopal Church; and N.J.S.A. 16:13-10 for Reformed Churches). Alternatively, so long as approval is obtained from any applicable hierarchical organization, and the procedures for approval of corporate actions and transfers of property in each congregation's governing documents and the applicable statute are followed, the congregations may enter into an agreement of integration, with one congregation donating its assets to the other, and then subsequently dissolving after it winds up its affairs.

The consolidation procedure is provided under the provisions of N.J.S.A. 16:1-20, applicable to religious congregations, as well as statutes applicable to consolidations involving specific denominations. Generally, these procedures require approval by a vote of the members of each congregation. They also generally require the filing of a certificate under the seal of each religious corporation setting forth that the congregations have consolidated or united and the name of the new congregation. The certificate must be transmitted for filing with the clerk of the county where they are located.

Some congregations are reluctant to

enter into a consolidation out of a concern that the consolidation will result in an assumption of liabilities of the other congregation, as set forth in N.J.S.A. 16:1-21. As an alternative approach, some congregations have entered into integration agreements. Under an integration agreement, one congregation donates its property to the other and dissolves. Before a donation of property may be considered, the congregation proposing the donation must verify that it (rather than a hierarchical organization) owns the property to be donated and that any required hierarchical organization approval is obtained. The parties should discuss when they will initiate joint governance, operating budgets, religious services, etc., and can also discuss donations of property, reassignment of personnel and other issues. Both congregations will need to review their governing documents, the statutes applicable to that denomination (if any) and any other requirements of their hierarchical organization (if any) which might have an impact on whether they can integrate.

The parties should share financial statements so that they can get a picture of the financial health of each congregation. A list of current assets and liabilities, as well as any future or contingent liabilities, should also be shared. Each congregation should disclose pending litigation, as well as claims that may be possible of assertion. A confidentiality agreement should be signed by both parties early in the discussion process. If the parties will be undertaking construction of a new building, other questions will arise. How much

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funding will each congregation contribute towards planning and construction? Who will take the lead in initiating planning and construction, and who will be responsible for maintaining financial records and accounting for contributed funds? The parties also need to discuss what will happen if the project fails to go forward for any reason, and whether funds will be returned to either of the parties in that instance.

The congregations may want to create a scholarship fund, a music education fund, or other specialized fund. To the extent there are dues, as is typically the case in Jewish congregations, the dues structures of the two congregations needs to be compared, and an evaluation should be conducted of whether any waivers will be provided if dues structures are unequal. An evaluation of other fees customarily charged by the parties (for example, the minister's fee for participation at a wedding, or the cantor's fee to prepare a Bar or Bat Mitzvah candidate) should be discussed.

The governing documents should be reviewed to ensure that the transaction is properly authorized under the procedures set forth in each congregation's governing documents. Particular attention should be paid to voting requirements for approval of the consolidation or integration, for donations of property, and dissolution (if applicable). The parties should also evaluate the board composition of the consolidated or integrated congregation and the number of board members to be appointed. While there may be a temptation to simply bring together the two boards, a board that is unduly large may prove unwieldy and may make it difficult for the board to engage in decision making.

The parties should also consider how officers will be appointed, how vacancies will be handled, and whether any decisions will be subject to supermajority voting. Committee structures

should also be resolved. The parties should consider whether or not the certificate of incorporation and bylaws of the consolidated or integrated congregation will need to be modified to effectuate the integration or consolidation. There should also be an incorporation of any provisions mandated by their particular religious denomination, including, but not limited to, the actions that must be approved by a hierarchical body and rules relating to the maintenance and disposition of property.

Each congregation should consider purchasing "tail" insurance to cover liabilities arising prior to the effective date of consolidation or integration. The parties should verify that they each have directors' and officers' liability insurance coverage in place, and should determine whether each congregation will indemnify the other for pre-existing liabilities. Finally, consideration should be given to the purchase of a defalcation insurance policy to cover acts of dishonesty.

Appointing spiritual leaders and integrating personnel is sometimes one of the more contentious aspects of consolidating or integrating religious congregations. An evaluation should be conducted as to whether the religious leaders or any other personnel have written contracts and what the terms and conditions of those contracts are, financial or otherwise. Termination provisions should be carefully reviewed. An analysis of the employee benefit plans of each congregation should be conducted as well. There should also be a discussion of whether any support staff will be terminated or have their hours of work adjusted as a result of the integration or consolidation.

Rituals are another area that can become contentious, as many times a congregation will have a significant attachment to the particular rituals they

have embraced. For example, in a Methodist congregation, the music ministry and participation of the choir at Sunday services may be very important. In a Jewish congregation, High Holy Day honors can take on considerable importance. The integration of each congregation's respective rituals needs to be handled with diplomacy and tact. In addition, the integration of auxiliary groups, such as the Rosary Altar Society or the Sisterhood, should also be discussed. Finally, integration of the religious schools operated by both parties needs to be evaluated. The parties should check to make sure that auxiliary organizations/religious schools are not separately incorporated. If they are, the relevant corporate documents will need to be reviewed.

An evaluation should be considered as to whether either congregation has any restricted gifts or other restricted assets. A list of each party's restricted assets should be provided. If there are any restricted assets, the congregation may have to file a complaint with the Superior Court of New Jersey under the "cy pres" doctrine, seeking court permission to transfer the restricted assets. The parties will also need to evaluate whether there are cemetery plots that will need to be transferred.

In the case of an integration (rather than a consolidation), the congregation that is not surviving will need to initiate a dissolution of its status as a religious corporation in the State of New Jersey. The governing documents should be reviewed to determine whether or not any additional approvals need to be obtained. Hierarchical approval requirements should also be complied with, if any.

Evaluation of each of these areas at the outset will help to ensure that the consolidation or integration of the two congregations will result in a "marriage made in Heaven." ■