




# 2022 Treasurer's Orientation

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OGC Presentation

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# *BASICS OF REAL PROPERTY TRANSACTIONS*

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# 4 BASIC STEPS OF A COMMERCIAL REAL PROPERTY TRANSACTIONS



1- NONBINDING LETTER  
OF INTENT BETWEEN  
PARTIES



2- PURCHASE  
AGREEMENT BETWEEN  
THE PARTIES



3- TRANSFER OF TITLE  
BY CLOSING AND  
RECORDING DEED



4- POST-CLOSING  
MATTERS

# Basics of real property

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Properly executed contracts are enforceable if:

- 1) parties are identified, 2) property is identified, 3) price & 4) terms of payment disclosed
- Buyer entitled to Specific Performance – Seller entitled to Damages. (liquidated damages – Seller keeps the deposit)

Fundamental principal of real property law – You can only receive (buyer) or convey (seller) what you own. In other words, close enough is not good enough!

Property interest must be recorded to gain the full benefit and protection of the law.

Intended use of the property must match the zoning provisions of the area.

# Checklist For Real Property Transaction Before Signing the Contract

Retain an experienced real estate lawyer familiar with the local jurisdiction where the property is located

Address all material provisions, contingencies, and/or options in the agreement (study period, inspections, title search, and financing)

If the other party is a Corp., LLC or has multiple owners, ensure that the signer of documents has authority to sign the docs

Understand the vested interest of various parties in the transaction (brokers/seller/attorney/title company)

# Checklist FOR a real property purchase transaction RIGHT AFTER SIGNING THE contract

## START WORKING IMMEDIATELY ON THE DUE DILIGENCE MATTERS

- CONTINGENCIES GENERALLY HAVE A SHORT TIMELINE
- NEED TO ENSURE THAT YOU ARE WELL INFORMED ABOUT THE CONDITION, VALUE, HISTORY, TITLE, TAXES, ZONING, AND LIENS, AND/OR 3<sup>RD</sup> PARTY INTEREST IN THE PROPERTY,
- NEED TO CONFIRM THE PAYOFFS OF ANY TAXES OR DEBT ATTACHED TO THE PROPERTY.

# THE ROLE OF A TITLE COMPANY – Usually acts as the escrow agent as well

Abstract - Brief history of instruments appearing in county record that affect title to property

Taxes & Lien Payoffs – Should work on identifying the payoffs or getting releases of property taxes, liens, judgments, mortgages, that are on title, prorating certain debts and obligations

Title Insurance - Issued by a title insurance company after it reviews recorded instruments. Contract by which a title insurance company agrees, subject to terms of the policy, to indemnify the insured against loss sustain-

ed as a result of defects in title other than specific title exceptions listed on policy.

Owner's Policy: If a Purchaser wishes to obtain a title insurance policy to protect his or her ownership in land, he applies to title insurance company and agrees to pay a fee.

Lender's Policy: Only protects lender for amount of mortgage loan and risks that affect security interest or lender.

# The Role of the title company – in preparing the title policy

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Initially provides the buyer and the lender with a Commitment or a Binder to issue an insurance policy

Commitment informs the policyholder of the following:

- Standard Coverage - Generally insures against defects in public records, plus things such as forged documents, documents of incompetent grantors, incorrect marital statements.
- Extended Coverage - Everything covered in the standard policy, plus additional risks which could be discovered
- Exceptions – What the policy does not cover (some can be waived by title ins. companies if presented with appropriate documentation or by paying higher premium for an Endorsement such as Zoning, Environmental, Comprehensive)
- Exclusions - What the policy cannot cover (a lost based on government regulation or taking, an unpaid property tax lien, etc.)



# Closing or settlement on the property



Closing or Settlement is the formal process of transferring the ownership of the property in exchange for payment of the agreed upon price



Buyer – Ensure that all contingencies are addressed



Buyer – Should review the fees that are being charged and funds needed to close at least 24 hours prior to closing



Buyer - If buyer is financing the purchase, make sure the terms of the loan that you expected are reflected in the loan documents.

# Closing or settlement on the property

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Seller - That the purchase price is correct



Seller – That the fees, charges, and costs that are allocated to the Seller are correct



Seller – That the authorized agent is aware of the date of closing and will sign the deed or has signed the deed and it is being held in escrow



Seller – That all contingencies are resolved



# *Tax Law Basics*

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# Group Tax Exemption

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- The General Conference maintains a Federal group tax exemption granted in 1950 that covers US based entities of the denomination.
- Group tax exemptions are provided for under Internal Revenue Service Procedure Ruling 80-27.
- The parent organization (General Conference) has administrative responsibility for processing and overseeing and confirming exempt status of subordinate organizations under the ruling.
  - Administrative responsibility is delegated to the North American Division

# Verifying Your Tax-Exempt Status

Where do you go to verify tax exempt status of an organization?

If under the Church 's group tax exemption:

The General Conference, Office of General Counsel

- Call my assistant Maria, at 301-680-6326
- A letter specific to the organization will be sent
- This includes local churches and schools

If not under the group exemption:

IRS web site - [www.irs.ustreas.gov](http://www.irs.ustreas.gov)

- IRS Publication 78 – print edition no longer published
- Now online as Exempt Organization Select Check

# Administration of Group Exemption

- Annual report is made to the IRS of changes to list and/ entities in the list
- SDA Yearbook viewed as official list for group exemption
- Office of General Counsel is the record keeper
- Inquiries and requests for confirmation of exempt status are to be directed to the parent organization (i.e. the GC) – DO NOT CONTACT THE IRS FOR CONFIRMATION
- Potential Future Plans – Confirmation to be found on e-Adventist

# Benefits of Denominational Status

- Inclusion under the Group Exemption
- Listing in the SDA Yearbook
- Right to use the denominational owned trademarks
- Option to participate in church employee benefits plans
- Coverage by insurance provided through Adventist Risk Management
- Within audit responsibility of GCAS

# Organizational Document Requirements - NAD WP C 47

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- Purpose - affiliation with the Seventh-day Adventist Church clearly identified
- Corporate Members—must be members of the SDA Church and at least a majority from entities listed in the SDA Yearbook
- Board of Directors—Appointed by the corporate membership and a majority must be members of the SDA Church
- Dissolution—Net assets must be transferred to a denominational organization upon dissolution



# Separate Exemption

Can a denominational organization apply directly to the IRS for a separate exemption letter?

- Yes – But it must still meet NAD WP C 47 requirements and OGC must be notified so that it can be specifically excluded from group exemption list
- IRS Form 1023 “Application For Recognition of Exempt Status” must be filed with, processed and approved by the IRS
- IRS does not allow recognition under both methods

# Unrelated Business Taxable Income (UBTI)

For most organizations, an activity is an unrelated business if it meets three requirements:

- It is a trade or business,
- It is regularly carried on, and
- It is not substantially related to furthering the exempt purpose of the organization.

There are, however, a few modifications, exclusions, and exceptions to the general definition of unrelated business income.

## For Example

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- Income from renting out rental property (ie. Church, school, etc.) falls into and out of the UBIT bucket
- Provide specific information to OGC to confirm when faced with a similar situation



# Tax Benefits for Ministers

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Tax “benefits” of qualifying as a minister regarding the services they perform in the exercise of ministry are:

- Eligible for a housing allowance and parsonage exclusion
- Self-employed status for Social Security (if not exempt)
- Wages exempt from withholding (Can do so on a voluntary basis. Otherwise, quarterly estimates)
- May opt out of Social Security if certain conditions are met (Not recommended)

# Who Qualifies as a Minister?

- Must be ordained, licensed or commissioned by the Church.
- Perform services in the exercise of ministry:
  1. Perform Church sacerdotal functions (baptism, communion, weddings, funerals)
  2. Conduct religious worship
  3. Administrative/management functions for the Church (local or for denomination)
  4. Be recognized as a religious leader by the Church
  5. Teaching and administrative duties at theological seminaries (may also include other Church controlled institutions.)



# Charitable Contributions

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## Will qualify when:

- A gift of cash or property to or for the use of a qualified organization made unconditionally without personal benefit to the donor.

## Will not qualify for:

- Rent-free use of property
- Volunteer time and services
- Payment (at FMV) for goods or services
- Tuition and so-called “Temple Plans”
- Gifts to or earmarked for a specific individual, such as the pastor or individual students
- Donations given direct to a foreign entity

# Charitable Contribution Receipts

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- Restrictive endorsement stamp recommended for checks for non-deductible payments to church or school and separately receipted from donations
- Payments for which partial return value is received by donor – Quid Pro Quo Donations
  - Items of token value bearing logo or name of organization may be disregarded. (generally aggregate cost less than \$11.30 for 2021 for donations of at least \$56.50.) Other gifts (premiums) for donations, fair market value can't be more than the lesser of 2% or \$113.
  - Recipient Organization is responsible for informing donor of FMV of premium in excess of the above received by the donor for donations over \$75.

# Charitable Contributions Cont.

- Non-cash contributions
  - Valuation is responsibility of donor
    - FMV is generally deductible within specified limitations
    - Special rules for vehicles and boats
  - Property worth \$500 or more
    - Taxpayer (donor) must file Form 8283 with tax return
  - Property worth \$5,000 or more
    - Acknowledgment of receipt portion of Form 8283 must be signed by organization receiving donation
    - Qualified appraiser must attest value of property
  - If charity/church disposes of property within three years, it must file Form 8282 within 125 days of disposal of property.



# Charitable Contributions Cont.

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- Restricted Gifts

- Must be used for intended purpose
- Obtain clear documentation of the terms of the gift
- May effect deductibility

- Tax Cuts and Jobs Act – Increased percentage of income limitation for cash contributions raised to 60%.

# Tax reporting for non-employee compensation

- When should 1099s be used? **For outside/independent contractors**
- Misclassification of employees as independent contractors \* **IRS and states have announced new enforcement efforts**
- Can an individual receive both a W-2 and a 1099-NEC from the same organization? **Not recommended.**
- For a literature evangelist working on a cash basis (not an employee), generally should receive a 1099-MISC – (Special Rules for Direct Sellers)
- Payments to nonresident aliens for work in the US—tax reporting and withholding.
  - 30% Withholding rate (unless Treaty rate – Form 8233) Report on 1042 and 1042-S

The End

