

# Memorial Drive Presbyterian Church



## Timeline

- 1983: Merger of PCUS and United Presbyterian Church to form PC(USA).
- 1983: Book of Order includes “Trust Clause” for the first time.
- 1983–2014: Total membership drops from 3,131,228 to 1,760,200.
- 2011: Gracious Reconciliation and Dismissal Process.
- 2012: General Assembly sends “Process Instructions.”

# Timeline

- February 22, 2015: MDPC votes 75% to 25% to enter discernment under 2011 GRDP.
- June 2015: GRDP revised.
- August 2015: Alf begins his ministry at MDPC.
- January–February 2016: Discussions with Presbytery.
- March 2016: Presbytery rejects MDPC's Proposal.

## 2011 Gracious Reconciliation and Dismissal Procedure (“GRDP”)

- Does not require an acknowledgement of the Trust Clause.
- Includes valuation formulas related to financial settlements for exit fee.
- MDPC grandfathered under 2011.

## Process Instructions – Game Changer

- GA published a decision which sought to clarify “how the fiduciary responsibilities of a presbytery under the Trust Clause of the Book of Order are to be discharged when dealing with church property.”
- There shall be a financial evaluation, including:
  - Assessed value of the property, including land.
  - Whether the congregation claimed the exemption offered in the reunion of the PCUS and UPCUSA denomination in 1983.
  - Existing liens on the property.

## 2015 GRDP Revision

- Presbytery adopted a revised GRDP to incorporate Process Instructions.
- Dramatic shift to protect PC(USA) interest in church property.
- Requires churches to sign a document agreeing to the Trust Clause.
- Eliminates the formula related to property valuation.

## Trust Clause G-4.0203

“All property held by or for a particular church, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a particular church or of a more inclusive governing body or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).”



# Discernment Update



**MDPC**  
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*Oh give thanks to the Lord, for He is good; for His steadfast love endures forever. Let the redeemed of the Lord say so. —Psalm 107:1-2a*



February 16, 2016

Dear MDPC Members and Friends,

We are privileged to serve and know this God, and also to witness to God's steadfast love with our time, talents, and treasure. God's faithfulness and your commitment to Christ were revealed in a wonderful way as MDPC finished 2015. It was my first Christmas here and my first chance to see the "December Miracle," where one-third of our budget comes in during the last month of the year – or, really, the last few days of the last month.

Our budget for 2015 was \$10.5 million dollars, and after our year-end calculations, we finished 2015 with \$317,000 over our anticipated income! I was humbled by how you responded to the Spirit's leading in such a sacrificial and generous way, particularly in a time of real uncertainty. You have a new senior pastor. The stock market is volatile. Oil and gas are at 20-year lows. And we will be entering into a period of **denominational discernment** in 2016. Thank you for your steadfastness and faithful discipleship to Christ through MDPC.

Speaking of discernment, some have asked me why we have not started our process yet. It is already February.

We have been having conversations with Presbytery of New Covenant staff about what shape our process can take. MDPC voted on February 22, 2015 to enter into discernment under the 2011 Gracious Reconciliation and Dismissal Policy of the Presbytery. Recently, the 2011 policy has been revised and requires churches to give up rights to their property. Although we have been grandfathered in under the 2011 policy, there are no guarantees that the 2011 policy would not be challenged. And if we agreed to follow the 2015 policy, it would require us to sign an instrument acknowledging that our property is not our own, but rather that it is held in trust for the benefit of Presbytery of New Covenant, even though we purchased and paid for each parcel, constructed all improvements on our own, and maintain the entire campus without any outside assistance. Additionally, Texas law clearly provides that each local church owns its property – unless it signs an instrument creating a trust, which is what the 2015 policy requires!

All this is to say that we cannot start a process until we are assured of the rules and outcomes from Presbytery of New Covenant. We expect a response the last week of February, at which time we hope to outline a fair and balanced discernment process. Our goal is to honor each other as brothers and sisters in Christ, prevent worship and small groups from becoming politicized, have mid-week meetings where different viewpoints can be shared, and (above all) to hear God's will and not simply espouse our own agendas. We seek to move forward faithfully with what is best for MDPC as a whole and for the furtherance of the Gospel through this special Body of Christ.

I appreciate your partnership and prayers at this crucial time. May God bless us as we seek to be conformed more and more into the image of Christ, and to be useful servants of His grace and truth.

In Christ's service together,

*Rev. Dr. Alf Halvorson*

Rev. Dr. Alf Halvorson, Senior Pastor

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# Trustees – Stewards of Church Property

- MDPC is incorporated under the laws of the State of Texas.
- Trustees serve as officers of the MDPC corporation – stewards of the property.
- Express obligation of the Trustees to protect the title of the property.

## MDPC Settlement Proposal – February 2016

- Will not acknowledge the Trust Clause.
- Financial contribution to Presbytery - \$750k.
- MDPC led Discernment Process.
- Do not want a drawn out process.

# MDPC Conditions and GC's Response

<u>MDPC</u> CONDITION	GENERAL COUNCIL RESPONSE
<p>No Trust – <u>MDPC</u> will not agree to a process that requires the creation of a trust in favor of the <u>PCUSA</u></p>	<p>Process Instructions for <u>MDPC</u> are based on the Trust Clause – “. . .the <u>GAPJC</u> decision considers how the fiduciary responsibilities of a presbytery under the Trust Clause of the Book of Order are to be discharged when dealing with church property.”</p>
	<p>Process Instructions imply that <u>MDPC</u>'s failure to claim exemption leaves open the question of whether trust was created in favor of the <u>PCUSA</u></p>
	<p>Five of the six bullet points in the Process Instructions are based on the concept that <u>NCP</u> has a trust interest in the property.</p>
	<p>Process Instructions suggest voluntary payment that “bears some relationship to the value of the property involved.”</p>
	<p>Presbytery must vote to approve dismissal of a congregation “with property” – reasserts <u>NCP</u> claim of a trust interest in the <u>MDPC</u> campus</p>

# MDPC Conditions and GC's Response

No Valuation Process – MDPC will not agree to a process that subjects MDPC property to the valuation procedure outlined in the Process Instructions	Expressly rejected
No Constitutional Challenge - Will not agree to a process or outcome that is subject to constitutional challenge	Promise not to challenge only if MDPC follows 2011 GRDP and “Process Instructions for MDPC”
No Delay - Discernment Process Completion by June 15, 2016	Implicitly rejected – “. . . complete the procedure as soon as the Discernment Team deems appropriate.” Implication that Discernment Team would include Presbytery officials



# What is a Declaratory Judgment

- A request to the Court to resolve an open legal question.
- Declaration: That MDPC alone holds full and absolute legal and equitable title to its property.
- It is NOT a request for money.
- It does NOT ask the Court to determine what Discernment Process we follow.

## MDPC Position

- **Texas Property Code** – A trust is created only if [MDPC] manifests an intention to create a trust.
- An express trust does not arise unless the owner of property has shown an *unequivocal intention* to create a trust.
- **Texas Supreme Court (2013)** – A search for a trust will consider evidence such as deeds to the properties, terms of the local church charter, articles of incorporation, by-laws, and other relevant governing documents.

## MDPC Position

- There is no evidence that MDPC ever intended to create a trust.
- There is no written and signed trust instrument.
- MDPC's corporate board and membership never approved the creation of a trust.
- Any trust in favor of Presbytery or PCUSA that might have existed has been revoked.



## Relevant Cases

- FPC – Houston (2014): Won on Summary Judgment (*Pending Appeal*).
- Windwood Presbyterian Church (2015): Won on Summary Judgment.
- FPC – San Antonio (2016): Settled after Summary Judgment Filed.