

BUC GUIDELINES

A4 Shared Ownership of a Manse (04/2009)

These notes are offered as guidelines by The Baptist Union Corporation Limited to provide information for Baptist churches.

These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

If you want to ask questions about the leaflets and one of the Baptist Trust Companies are your property trustees, you should contact them. They will do their best to help.

If your church property is in the name of private individuals who act as trustees they may also be able to help.

MANSES

Baptist churches have usually provided manses for their ministers. The manse will be the home for the family and the base from which the minister will work. The minister will usually have an office or study at the manse where visitors can be received.

The provision of a manse as part of the terms of the minister's appointment does not make the arrangement liable to income tax as a 'benefit in kind' as is normally the case where an employer provides free housing accommodation for an employee.

Under the standard terms of settlement for a minister the church will usually pay certain outgoings in respect of the manse.

For further information about this and the liability of the minister for national insurance contributions and income tax please refer to the guidance notes for church treasurers and ministers *F5 Taxation Guidance Notes for Churches and Ministers* produced by Philip Cooke the Honorary Taxation Advisor of the Baptist Union of Great Britain. These are available from the Union's Finance Office or from the BUGB website.

http://www.baptist.org.uk/resources/resource_downloads/207.pdf

Where a church does not own a manse at all it is sometimes helpful to both the church and the minister if a joint purchase can be arranged though, as explained in these notes, this is a course which should not be undertaken without great care and forethought.

OPPORTUNITIES FOR SHARED OWNERSHIP – A NEW PURCHASE

The church and the minister will need to select a property and agree how much each party can contribute towards the cost.

The choice of property will be an important issue for both church and minister to consider.

For most buyers the choice of property is a matter of personal taste and budget. For a church buying a manse there may be other important considerations. It may need to accommodate different ministers at different times, and families with different circumstances. Although a particular minister may have personal preferences the church needs to play its part in choosing the property.

If the manse is to be used for meetings then a downstairs bathroom or cloakroom is very desirable, and

a separate lounge or study on the ground floor will also be more convenient than an open plan layout. Access, parking and security may also be important for the church, visitors to the manse, and the minister.

WHAT IS THE IDEAL MANSE?

This is almost impossible to answer.

We recognise that many church members may have given sacrificially to buy a manse. It may not match the description that follows. Many churches can only offer the manse that they have.

If you are choosing a new manse you will need to consider various issues. Much will depend on local circumstances and the budget but a house with four bedrooms, so that one could be used as a separate study, is ideal. It enables different sizes of family to be accommodated with the possibility of using space for visitors and entertaining. Other denominations require two reception rooms and a kitchen downstairs as well as enough bedrooms to accommodate a mixed family, but this is not stated as a requirement by us.

Although the minister may be contributing towards the joint purchase the church does not want to spend its charity assets or incur legal costs to acquire a share in a property that will only suit one family and then will have to be sold.

Location is important. Many ministers prefer to live away from the church site. However, because it is intended that the property shall serve as the church manse it should not be so far away as to cause problems for the minister in maintaining regular contact with the church and community. Local circumstances will vary.

Many ministers lease their share of the property to the church and there may be tax advantages if the arrangements are structured correctly.

The tax advantages arise because a manse is provided to ministers for the better performance of their duties. The expectation is that the manse will bear some geographical relationship to the church and community that is being served. Much will depend on local circumstances. Whilst there is no specific recommendation, it is expected that the property will be located in reasonable proximity to the church/congregation.

It may be possible for a mortgage to be taken over the property, so that both church and minister are able to enhance the value of the property that they 'purchase' beyond the amount of cash they have available individually at the start of the transaction.

For more information about mortgages see page 4 below.

SHARED OWNERSHIP OF AN EXISTING PROPERTY

Alternatively, the church may already own a manse but decide, for various reasons, that it is helpful for the minister to purchase a share in the property. However, great care is needed in taking this decision as the Charity Trustees (also known as Managing Trustees) of the church (usually the minister and deacons) must be able to justify the decision as being in the church's best interests, as a charity.

The minister may want to maintain a financial interest in property for personal reasons. The minister may also want to make this part of the terms of settlement on joining the church, but this may not always be possible. The Charity Trustees need to consider the issue carefully and consider whether the proposed arrangement will benefit the church.

It is important that these decisions are taken cautiously. Whilst there will be occasions where the church feels it is beneficial to release funds from their manse, there are potential future difficulties in disposing of part of the church's property.

Sometimes this can be useful if the church needs money from the manse to invest, for example, in a major refurbishment project for the church building, but again the decision is significant. The implications must be clearly understood.

ACTING IN THE BEST INTERESTS OF THE CHURCH

The Charity Trustees of the church will need to ensure that any arrangements they make are in the best interests of the church.

This is particularly important when allowing a minister to purchase a share in an existing manse. It may have taken many years for the church to purchase a suitable manse. It is not always desirable to dispose of a proportion of the property to a new minister.

When the minister leaves the church, for any reason, the property will be valued and the church will have an opportunity to buy back their share in the house.

However, it is probable (but not certain) that property values will have risen. The church will be buying back the minister's share at a higher price.

Although the church may be prudent in reserving the capital monies arising from the sale and allowing interest to accrue on the funds, this may still not provide enough money to 'buy back' the minister's share in future, without additional finance being required.

OTHER BASIC MATTERS TO CONSIDER AT THE BEGINNING

Everybody must remember that property values can go down as well as up particularly those ministers who are borrowing to fund the purchase of a share in a manse property. They could be adversely affected if property prices fall.

The shared ownership is fundamentally linked to the minister serving the church. If the appointment ends then the shared ownership ends too. If property prices have fallen this could mean that the church buys back the share held on behalf of the minister at less than the original cost.

If, for example, the minister has borrowed £75,000.00 to purchase a share in a manse then, in the event of the minister ceasing to be the minister of the church, the loan will need to be repaid. Although in ideal conditions this would come from the minister's share in the property, a drop in property values could mean that there are insufficient funds available.

If a minister is considering a move to another church financial matters must be reviewed early in the process. If the minister cannot repay any mortgage funds borrowed from the likely share of their sale in the manse additional funds will be needed from personal resources.

If financial matters cannot be resolved because either the church or minister are short of funds then the property will have to be sold and the sale proceeds shared according to the proportions already agreed.

This might mean selling at a time when market conditions are poor, or disposing of a property that was specially chosen for use as a manse – to the disadvantage of the church.

This might mean selling at a price that is not sufficient for the minister to repay money borrowed personally – so the minister will need to add funds to end the arrangement. The minister will be experiencing the problem of negative equity.

COSTS

Churches are charities. The Baptist Union Corporation is a charity. Charities have the benefit of an exemption that means they do not have to pay Stamp Duty Land Tax on purchases of property.

However, where a shared ownership is involved this exemption does not apply so Stamp Duty Land Tax becomes payable at the full rate on the whole of the purchase price.

This is a very significant additional expense.

We strongly recommend that legal advice is obtained about this at an early stage to avoid unexpected expenses later on.

CONSULTATION

Where a church is seeking to dispose of a share in its manse to a minister the Baptist Union Corporation would expect to consult the Regional Minister within the local Baptist Association.

This is because a manse is a very valuable long term asset to the church. It can be very difficult to arrange for the settlement of a new minister where no manse is available.

PROPORTIONS

We would not recommend a church allowing their minister to own more than a 50% share in the property. This is because a manse is a vital church asset. There would need to be very strong reasons if this suggested proportion were to be varied.

MORTGAGE ARRANGEMENTS

Obtaining a mortgage where a joint ownership is involved is not straightforward.

If the minister is making a cash contribution the church may be able to borrow from the Baptist Union Loan Fund. The Fund will normally consider lending to churches up to 70% of the cost of purchase. Please see leaflet B6 *Loans to Churches*. You can download a free copy from our website www.baptist.org.uk, click on Resources, then Admin//Finance//Leadership and then BUC Guidelines.

However, the Baptist Union Loan Fund is not permitted by financial regulators to lend to ministers nor can it lend to the church where the minister needs a mortgage to fund their contribution to the purchase price.

In these circumstances the church and minister will need to seek a commercial loan, but we would strongly recommend that the percentage of borrowed money obtained by either party should be no more than 70% of the relevant stake of the purchase. This would mean that each party would have to raise at least 30% in cash. The potential problems of negative equity would be greater for everybody if either the church or the minister had borrowed a larger percentage of the value of their share at the date of purchase.

Most commercial lenders are not experienced in the complexities of church property, particularly where a joint ownership is involved. Ideally, the legal ownership will be with the Trust Corporation, but the church will pay the monthly mortgage payments and not the Trust Corporation. Obtaining a suitable mortgage package will not be easy.

If there is borrowing on behalf of both the church and the minister, it is almost always necessary for there to be one lender offering funds to both parties.

For further details please refer to the leaflet A2 *Buying a Manse* and contact the Baptist Union Corporation for up to date guidance.

Where there are significant difficulties obtaining finance from a lender who is prepared to accept a complex application the church and the Corporation may need to consider whether the purchase and mortgage could proceed in the name of the minister and spouse. This is very much a 'second choice' because charity law normally requires title to be retained by or on behalf of the church. Where the property is purchased in the name of the minister but the church has contributed funds a second legal charge in favour of the Baptist Union Corporation will be essential. Many lenders are reluctant to accept this arrangement.

These arrangements are complex and legal advice will be needed.

CHARITY COMMISSION CONSENT

Arrangements involving shared ownership require the consent of the Charity Commission. This is because the church's funds are charity funds, but the minister's money is personal money. The Charity Commission need to give consent when monies are mixed in this way.

This will mean giving the Charity Commission full details of the property transaction, including the names of everybody involved and their personal financial arrangements, including mortgage details.

Where mortgage finance is being obtained, the application to the Charity Commission cannot be submitted until a formal mortgage offer has been received. This can be quite late on in the purchase. You should, therefore, expect that the process will take longer than a normal residential transaction.

THE DECLARATION OF TRUST

Charity Commission consent is usually available where a standard Declaration of Trust document is used and where the Baptist Union Corporation is the named owner on the title documents. This document has been pre-prepared by the Baptist Union Corporation's solicitors and should enable applications to the Charity Commission for consent to a shared ownership arrangement to be processed more quickly. The Declaration of Trust is a lengthy document, setting out the different legal responsibilities of the church and minister.

Where either the minister alone, or the church and minister together, are borrowing money to fund the purchase of the property the Declaration of Trust will set out details of the responsibilities of the minister and the church in making the regular monthly mortgage payments, arrangements for maintenance of the property and the payment of outgoings. It will also set out the arrangements that would apply at the end of the sharing arrangements.

Where the property is being purchased in the name of the minister it may be more difficult to obtain Charity Commission consent, not least because the agreed Declaration of Trust will need substantial amendment.

MANAGING THE MORTGAGE PAYMENTS

The arrangements that are made with the Charity Commission are very special - and complicated! Efforts have been made to simplify the process with the Charity Commission.

It will probably be necessary for the church (not the minister) to manage the monthly mortgage payments that are to be made in relation to their manse if the property is purchased by the Baptist Union Corporation on behalf of the church (with acknowledgement of the minister's share in the Declaration of Trust). Where there is a shared ownership arrangement and the minister is responsible for either the whole of the mortgage payment or a proportion of it, the consent of the Charity Commission may be dependent upon the treasurer of the church managing the mortgage payments by deducting the monthly amount due to the lender from the minister's stipend.

In addition, the minister and his/her spouse may be asked to guarantee the mortgage repayments and enter into a separate document consenting to the Baptist Union Corporation and the church mortgaging the property.

INDEPENDENT ADVICE

Although the solicitors for the Baptist Union Corporation, Anthony Collins Solicitors LLP of Birmingham, will need to be involved in the property purchase and the application to the Charity Commission they cannot offer independent advice to the minister (and any spouse or joint purchaser) in relation to the joint ownership arrangement.

As solicitors they are bound by Law Society rules. These indicate that they cannot advise two parties to

the same transaction where there is a potential conflict of interest.

It is very important that the minister (and any other parties) understands the joint ownership arrangements thoroughly. It represents a very long-term commitment with significant financial implications.

In particular, the minister will need to seek independent advice on the Declaration of Trust document, and the documents relating to any mortgage offer, and any mortgage related guarantee and consent.

APPOINTING A SOLICITOR

Shared ownership arrangements involve important legal documents. They must be prepared by solicitors whose costs will be the responsibility of the church and the minister.

In all property matters a solicitor will be needed.

The solicitors who act for the Baptist Union Corporation Limited are:

Anthony Collins Solicitors LLP
134 Edmund Street
Birmingham
B3 2ES

Tel: 0121 200 3242

Fax: 0121 212 7442

DX 13055 Birmingham 1

www.anthonycollins.com

Email: jenny.smith@anthonycollins.com

Please make initial contact with Jenny Smith or Sarah Bond.

Further information about Anthony Collins Solicitors LLP is set out in our leaflet A2 *Buying a Manse*.

You will need to obtain this leaflet to help guide you through the legal processes involved in buying a house.

LEASING THE MINISTER'S SHARE IN THE PROPERTY TO THE CHURCH

In order that a church can make available the entire property as a manse for the better performance of a minister's duties, a minister (and spouse, if the minister's share is jointly held) may wish to consider leasing the equitable share in the property to the church in return for an appropriate rental.

This enables the whole property to be regarded as a manse and will therefore permit the church to make payments such as council tax and water charges without causing the minister to be taxable on a benefit in kind.

Under the arrangement a rent will be paid by the church to the minister. The rent should reflect local market rents but also have regard to the repairing and maintenance liabilities.

These agreements are not prepared by the Baptist Union Corporation's solicitors.

For more information please see our leaflet A8 *Leasing a Property (owned in whole or in part by a Minister) to a Church for use as a Manse*. This leaflet provides the contact details for the Baptist Union's honorary taxation advisor, Mr Philip Cooke, who will be able to provide further explanatory notes.

ENDING A SHARED OWNERSHIP AGREEMENT

When the minister ceases to be the minister of the church the shared ownership arrangement will end.

It will be necessary to follow the procedures set out in the Declaration of Trust deed. This will include obtaining a formal up-to-date valuation of the property so that the minister's share can be released.

The church will need to 'buy back' the minister's share at full market value at the end of the arrangement. As part of this process the minister will need to repay personal borrowing secured against the share in the property.

If the church does not have sufficient money to purchase the share the house may need to be put on the market for sale. This can be very disappointing for a church, especially if it is an unusual property that is perfectly suited to use as a manse.

A church may be able to borrow through the Baptist Union Loan Fund. Please refer to the leaflet B6 *Loans to Churches* previously mentioned.

It could be disappointing if the property has to be sold at a time when the property market is depressed.

Inevitably there will be legal costs associated with the ending of the arrangement but Charity Commission consent should not be needed at this stage provided the paperwork was prepared correctly at the start of the arrangement.

CHECKLIST FOR CHURCHES - SHARED OWNERSHIP

- Charity Trustees (Managing Trustees, Deacons and Elders) (in the absence of the minister and spouse) give full consideration to proposed shared ownership of the manse.
- Consider outline terms.
- Appoint contact person who communicates with the Baptist Union Corporation Solicitors, Surveyors and possibly Estate Agents.
- Tell the Minister that independent legal advice will be required.
- Ensure transaction details are clear - in preparation for an application to the Charity Commission.
- Hold a Special Church Members' Meeting as appropriate making appropriate resolutions to authorise the transaction—the solicitors will help with the preparation of these resolutions.
- Appoint Anthony Collins LLP to act in the purchase and shared ownership.

Association Trust Company	Contact
Baptist Union Corporation Ltd	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
East Midlands Baptist Trust Company Ltd	The Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
Heart of England Baptist Association	Heart of England Baptist Association BMS International Mission Centre 24 Weoley Park Road Selly Oak Birmingham B29 6QX Telephone: 0121 472 4986
London Baptist Property Board	London Baptist Association 235 Shaftesbury Avenue London WC2H 8EP Telephone: 020 7692 5592
North West Baptist Association	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
South West Baptist Trust Corporation	South West Baptist Trust Corporation Wonford Baptist Chapel 36-38 Wonford Street Exeter Devon EX2 5DL Telephone: 01392 433533
Yorkshire Baptist Association	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
West of England Baptist Association	West of England Baptist Association The Old Forge Broom Hill Stapleton Bristol BS16 1DN Telephone: 0117 965 8828

As at Jan 2010

This is one of a series of *Guidelines* that are offered as a resource for Baptist ministers and churches. They have been prepared by the Baptist Union Corporation Limited and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

The staff at the Baptist Union Corporation, at Baptist House (or your regional Trust Company) will be very pleased to answer your queries and help in any way possible. It helps us to respond as efficiently as possible to the many churches in trust with us if you write to us and set out your enquiry as simply as possible.

The Baptist Union Corporation staff also deal with churches that are in trust with the East Midland Baptist Trust Company Limited, the North Western Baptist Association (Incorporated), and Yorkshire Baptist Association.

If your holding trustees are one of the other Baptist Trust Corporations you must contact your own Trust Corporation for further advice. A list of contact details has been included.

If you have private trustees they too should be consulted as appropriate.

Contact Address and Registered Office:

The Baptist Union Corporation Ltd, Baptist House, PO Box 44, 129 Broadway, Didcot, Oxfordshire OX11 8RT England

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