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# Maryland Lawyer

News and analysis of legal matters in Maryland

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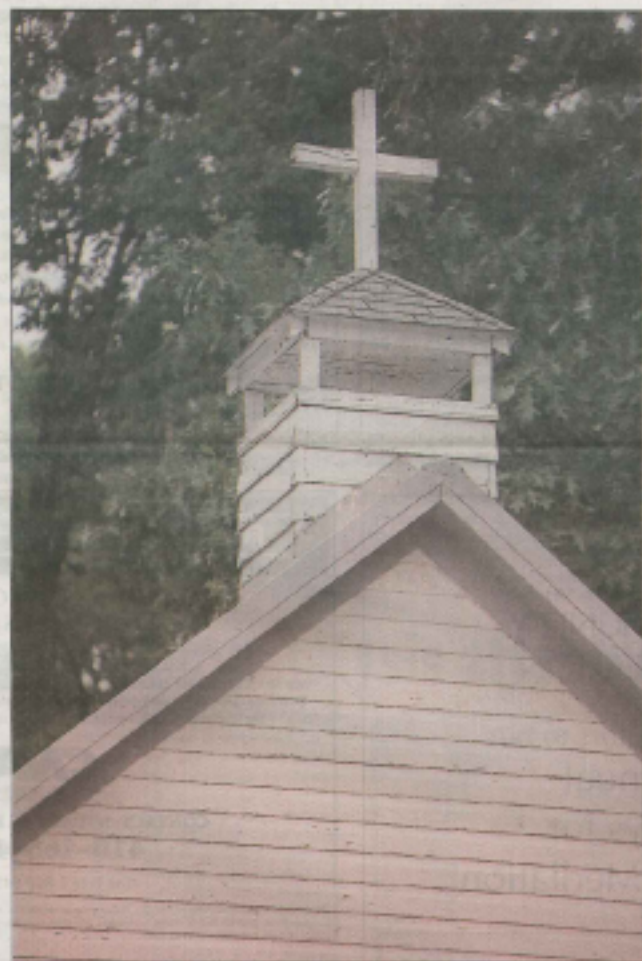
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## A cloud on Sunnyside



Built in 1899, Sunnyside is a "good example of a rural vernacular church," the Maryland Historical Society says.

Breakaway church fights rule that says property belongs to the denomination

By **DANNY JACOBS**  
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**T**he oldest headstones in the Sunnyside cemetery date predate the 150-year-old schoolhouse and the 110-year-old church on the property. The names they bear—Weedon and Jones and Bollins and Scott—are shared by the people who now make up the church's 30-member congregation, the direct descendants of the freed slaves who purchased the property in Mountville on the hills south of Frederick.

"We do not feel any law of the land could remove us from being rightful owners of this property," said Roxanne Weedon Thrasher, the church's business administrator and a member of its board of trustees.

But state law and the bylaws of the United Methodist Church seem to say otherwise. The Baltimore-Washington Conference of the United Methodist Church has filed suit against congregation seeking possession of the church property, worth about \$166,000 as a condition of Sunnyside's leaving the denomination two years ago.

"All we're asking of the court is

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## Liquor board can't ban outdoor song

Court reverses music prohibition at Miller's Island restaurant

By **DANNY JACOBS**  
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**T**he Baltimore County Board of Liquor License Commissioners exceeded its authority when it banned a Miller's Island restaurant from playing outdoor music, the Court of

Appeals held Friday.

The opinion comes less than a month before Dock of the Bay will challenge a zoning decision in the Court of Special Appeals also related to neighbors' complaints of loud music at the restaurant.

In the liquor board matter, neighbors complained to the

board in July 2007 about the outdoor music. The board indefinitely prohibited Dock of the Bay from playing music outside and fined the restaurant \$1,000 at a hearing one month later. Dock of the Bay paid the fine but appealed the music ban, which

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Dock of the Bay won a challenge to a liquor board decision that banned the Miller's Island restaurant from playing outdoor music.

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## Church >> Despite legislative setback, congregation has hope, determination

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ing and keeping its property. The confessions's lawyer agreed.

"Maryland courts have consistently upheld the Book of Discipline in this type of situation," said McManus, a partner of Deinker, Biddle & South LLP in Washington, D.C.

### Governing documents

Even denominations not covered by the state law can rely on their own governing documents in property disputes. In October 2008, for example, the Court of Special Appeals upheld a ruling that required a breakaway church in Prince George's County to turn over almost \$40 million in property to the African Methodist Episcopal Zion Church, its parent denomination.

However, that outcome is far from a sure thing, as Leronia A. Josey knows.

Josey, a solo practitioner, has represented churches for 30 years, including 15 years as general counsel to the Bethel A.M.E. Church in Baltimore.

She was on the losing side of a 1997 Court of Appeals' decision that allowed a Fruitland church to leave the A.M.E. denomination and keep its property. The court found no language in the property deeds or denomination bylaws at the time relevant to the case that ceded the property to the parent church in the event the Fruitland congregation left.

That is why Josey would advise a denomination to seek its own state law requiring member churches to follow current denomination bylaws.

"You can't go back and change the Discipline from a hundred years ago," Josey said. "If you have the statute, you can say [to member churches], 'The burden's on you.'"

### Founders' intent

Erika E. Cole, Sunnyside's lawyer, said the burden on Sunnyside is inconsistent with typical property law and the understanding Sunnyside's founders had in the 19th century, when they signed their names with an "X" to purchase their property.

"If you buy a house and pay for the house, it's your house," she said. "I'm sure they didn't buy this property and do all they did with the intention of handing it over to the United Methodist Church."

The original deed bequeaths the land to the founders' descendants. The chain of title and historical use of the property all point to the congregants' ownership, said Cole, an Owings Mills solo practitioner who specializes in church representation.

"They had comfort in knowing their family is buried there, they have a deed of people with the same name, they are the only people who have maintained the property," she said. "They've never seen anyone from the United Methodist Church on the property. I think they were under the fair impression most people would be in the same circumstance."

Under the state law, though, since the UMC Book of Discipline says member churches hold property in trust for the denomination, the state law says the same thing.

Thrasher, one of the Sunnyside trustees, said the property-rights issue was never publicized.

"If someone told you they now have the right to your property, there would have been a total uproar," she said.

### Drawing the doctrinal line

State laws like Maryland's, governing the corporate and property rights of religious entities, are not common, said Ian Smith, a staff attorney at Americans United for Separation of Church and State in Washington.

Courts can rule on property disputes but not church doctrine or governance issues, Smith said, and it is often "super-complicated" to find the demarcation line.

"Is this a secular property dispute or is this a doctrinal dispute?" he said.

For example, a member church may want to break away due to a change in doctrine, such as an expansion of who may be ordained as a minister.

In Virginia, a "division statute" outlines property rights in the event a church leaves its denomination. A Fairfax County judge used the law in 2008 to grant \$30 million in property to a group of Episcopal churches that broke away from the Diocese of Virginia.

The diocese appealed the decision to the Supreme Court of Virginia last month, arguing the statute is unconstitutional and that the matter of breakaway churches was an internal one for the denomination.

In short, "Courts only want to deal



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with contracts and property," said Josey, the former A.M.E. lawyer. "They don't want to get into anything that smacks of beliefs."

### Legislative validation

Maryland's law, part of the Corporations and Associations Article, does give protection to the bylaws of certain denominations and not others. However, it does not codify any denomination's beliefs, said David W. Kinkopf, counsel to the Archdiocese of Baltimore.

"Civil law and the rules they create allow religious entities to arrange their civil affairs in a way that's reasonable," said Kinkopf, a partner at Gallagher, Evelius & Jones LLP in Baltimore, which has worked with the archdiocese for years. "It allows the public and the religion to know what's in place."

Reno said the language specific to the Episcopal Church "gives legislative validation" to church bylaws.

However, he and McManus each said they were confident the denomination's bylaws would be enough in a court case, even without the state law in place.

"It's a nice thing to have," McManus said of the law.

Even so, McManus's client fought to keep the law in place when Cole and the Sunnyside congregants sought the legislature's help in the last session.

State Sen. Alex X. Mooney, R-Frederick and Washington counties, introduced legislation to repeal language in the state law related to property rights and the UMC. Mooney's district includes Sunnyside.

"I'm a big believer in free speech and freedom of religion," he said. "To me, this is the state getting involved in religious affairs."

The bill passed the Senate but did not get out of a House committee. The House bill included language, deleted in the Senate version, allowing Sunnyside to keep its property.

The Baltimore-Washington UMC Conference, along with other denominations, strongly opposed the provision because it could have opened the door for other member churches to follow suit, Lane said.

"That is essentially decimating these denominations," he said.

Curiously silent on the bill, in the eyes of Sunnyside congregants, were other United Methodist churches in the community. (Lane said pastors at other churches were free to comment



Elder parishioners are counting on being buried with their ancestors, spouses and families in the church's cemetery.

on the legislation if they wanted to.)

That silence still bothers Mitchell, Sunnyside's pastor. He has disaffiliated himself from the denomination as a result of the Sunnyside case.

"I am shocked when I consider the fact that this church has supported all these other United Methodist churches in this area for more than a hundred years, and in this church's time of need, there is no support," he said.

### 'New Life'

Despite the bill's failure, Sunnyside reincorporated itself as Sunnyside New Life Community Church at the end of April.

Though the church needs a new roof and its parking lot needs paving, those repairs and others are on hold until the litigation is complete.

"It has to be on the backburner until we can be freed of this," Thrasher said.

In the meantime, the congregation's fear has been replaced by hope, Mitchell said. The church is named Sunnyside, after all.

There is also a sense of determination. Several congregants paused when asked if there was a contingency plan in place should they be forced find another spiritual home.

"It wouldn't be United Methodist," said David Rollins, vice president of the board of trustees, to laughter.

"There is no option," said Lisa Byrd, the church's administrative assistant, as her congregants turned serious. "It's right here."



Pastor Kenneth Mitchell said he was "shocked" that other United Methodist churches did not speak out in favor of legislative changes.

## Church >> Rules on property ownership date to 1797, parent denomination says

Continued from 1B

to enforce the Book of Discipline," said Michael J. McClann, the UMC conference's lawyer, referring to the denomination's bylaws.

A hearing on the conference's motion for summary judgment is scheduled for June in Frederick County Circuit Court, the latest legal milestone in a battle that has shaken Sunnyside congregants to their cores but at the same time has renewed their faith.

"We understand the law, and we have to abide by the law. However, we don't believe that law was meant for this church," Thrasher said. "Not here, when we can look across the pew and see our family every Sunday."

### Six families, six generations

Six families of freed slaves mortgaged their homes to purchase the Sunnyside property in the years after the Civil War, building a church there in 1885. According to church lore, they called it Sunnyside because the land is on the sunny side of the mountain.

The one-room schoolhouse, hard on Mountain Road, followed in 1888, some of the church's oldest members attended grades one through nine in the building.

Within a decade, the congregation had outgrown its first house of worship. The current building opened in 1899, an event commemorated with a plaque on the back wall. The altar and gothic-style windows are as old as the plaque, as is the building's white, wooden frame and steeple.

The Maryland Historical Trust's listing for Sunnyside describes the church as a "good example of a rural vernacular church," one that was constructed by locals, for locals, with readily available materials.

It's an ethos that continues to this day: congregants built an addition with restrooms on the side of the schoolhouse, which is now the church social hall. Most repair work and maintenance is overseen by Larry Miller, a trustee whose family has been attending the church for six generations.

"We have owned, maintained, built, did everything that needed to be done on the land" since the church was founded, said Thrasher, the church's unofficial historian.

Originally the Sunnyside Methodist Episcopal Church, the congregation



The church (left) is the second built by freed slaves on the Mountain site south of Frederick; the school (right) was built in 1888.

rolled with the changes experienced by its parent denomination over the course of a century. In 1966, it became part of a "four-point charge" whereby it and three other small area churches shared a pastor, rotated Sunday services and supported one another financially and otherwise.

It was folded into the United Methodist Church when that denomination was formed in 1968.

Forty years later, the congregation voted unanimously to leave the UMC. Sunnyside's trustees said several factors led to the 2008 vote.

In 2005, their shared pastor recommended Sunnyside be used for other forms of ministry, such as a senior center or children's center. Congregants opposed the plan.

"To say [Sunnyside] would no longer be available for us to have our baptisms, get married, worship — it was definitely not acceptable," Thrasher said.

Sunnyside then asked for its own minister, and the conference obliged. Pastor Kenneth Mitchell became

Sunnyside's spiritual leader in July 2006.

"At a lot of churches you have a make-up of many people from various cultures. They don't have that connection the people of Sunnyside have with their heritage," he said.

But the church's small size put a financial strain on members. Thrasher said the congregation paid annual conference dues of thousands of dollars the last few years, but saw little in return from the UMC.

"If they would've been around, they would've saw the shrinking congregation, they would've saw all of the upkeep was being done out of the trustees' and members' pockets," she said. "They never paid attention to that portion of it. It was basically, 'This is what you owe us, here is your bill.'"

Shawn Lane, the conference's director of communications, confirmed that Sunnyside members expressed concern about a lack of "corporate support."

"I guess they felt unsecured-for," he said.

The conference tried to work with Sunnyside to bring the church back into the fold in the months that followed while also explaining the consequences of leaving. The conference filed suit in June 2009 once "we realized the only resolution in their minds was to leave and take the property," Lane said.

Lane said he, Bishop John R. Schol, the conference's leader, and other officials met the congregation for a mediation session in January and not again in April.

A settlement of some sort is possible, Lane said, although the prospect of Sunnyside keeping its property is "less likely."

"It is our sincere hope that some resolution will be worked out with Sunnyside," he said.

### The Book of Discipline

The idea of losing the church has been particularly hard on the church elders, women in their 80s and 90s

who learned to read and write in the schoolhouse and buried their loved ones in the cemetery.

"A lot of them look forward to their final resting place out there, with their husbands," Miller said.

Mitchell unknowingly foreshadowed the legal battle that was to come when he became pastor and realized only one person had access to the Book of Discipline, the UMC's bylaws.

"You need to know what's in the book," he recalls saying at the time. "Those are the laws."

He shook his head at the memory last week.

"They had no idea there was a trust clause in there," he said.

The most recent Book of Discipline's chapter on church property does not mince words.

"All properties of United Methodist local churches and other United Methodist agencies and institutions are held, in trust, for the benefit of the entire denomination, and ownership and usage of church property is subject to the Discipline," it begins on page 703 (emphasis in original). "This trust requirement is an essential element of the historic polity of The United Methodist Church or its predecessor denominations or communions and has been a part of the Discipline since 1797."

Most hierarchical churches have similar bylaws on property issues. Under Maryland law, the most recent bylaws are binding on member churches of several denominations, including United Methodist, Roman Catholic, Presbyterian and Episcopal.

"If you avail yourself of the benefits of the church ... you've subjected yourself to our doctrine and discipline," said Russell E. Reno Jr., a lawyer at Venable LLP who served as chancellor, or legal advisor, to the Episcopal Diocese of Maryland for 23 years.

Lane, the conference's spokesman, said he could think of no instances of a member church leav-



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