

# Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



## Some Church Vans Face Safety Risks



It is not uncommon for churches to offer transportation to members of their congregation and the public. Group rides are given to persons who attend church services and other events. For many churches, transportation is provided on 15-passenger vans.

The National Highway Traffic Safety Administration (NHTSA) has issued a consumer advisory urging colleges, church groups, and other users of 15-passenger vans to take specific steps to keep drivers and passengers safe — including buckling up every trip, every time.

NHTSA was established by the Highway Safety Act of 1970 and is dedicated to achieving the highest standards of excellence in motor vehicle and highway safety. The Agency works to help prevent crashes and the resulting costs in both human and monetary damages.

The Agency warns users of 15-passenger vans to never overload these vehicles. NHTSA research shows overloading 15-passenger vans increases rollover risk and makes the vehicles more unstable in handling maneuvers. In fact, 15-passenger vans with 10 or more occupants had a rollover rate in single vehicle crashes that is nearly three times the rate of those that had fewer than five occupants. Further, incorrectly loaded cargo and passengers that affect center of gravity can also lead to a heightened risk of rollovers.

NHTSA research shows there's a greater risk of rollover due to inexperienced drivers and improperly sized and/or inflated tires. This is why the agency urges vehicle users to make certain the vans have appropriately-sized and load rated tires that are properly inflated before every trip. NHTSA recommends that spare tires not be used as replacements for worn tires. In fact, many tire manufacturers recommend that tires older than 10 years not be used at all.

This topic is particularly relevant for churches because it poses a governance issue for church leadership. One of the fiduciary duties of church leaders is the duty of care. Heeding the advice of the NHTSA agency might seem reasonable in a court of law. The importance here is avoiding a court judgment and liability for negligence should an accident occur.

If your church uses 15-passenger vans, review the operating procedures. The church should have a policy on who is authorized to operate the van. Operating a 15-passenger van without an adequate policy and procedures is a governance risk for the church. Moreover, it is a safety risk for the passengers. ■

### Safety Tips for Church 15-Passenger Vans:

- Churches should never overload the vehicle with people or cargo.
- Churches should ensure sure all passengers buckle up for every trip.
- A church vehicle should be regularly maintained.
- Churches should have suspension and steering components inspected according to the manufacturer's recommended schedule and replace or repair these parts as necessary.
- Churches should ensure that vehicles are equipped with properly sized and load-rated tires.
- Churches should also make sure drivers are properly licensed and experienced in operating a 15-passenger van.
- Before every trip, drivers should check the tires for proper inflation, and make sure there are no signs of wear or damage. Correct tire size and inflation pressure information can be found in the owner's manual and on a door pillar.



# When Pigs Fly

It Is Possible To Reduce Your Legal Risks

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CORPORATE GOVERNANCE | COMMERCIAL TRANSACTIONS | CONTRACT LAW

## Sale of Church Property

Many churches, like other corporations, have the right to own property. The right to own property include the right to dispose of property. Some property transactions occur in the normal course of business. This may include the sale of books, tapes or trading a church vehicle. Occasionally, a church may have a need to dispose of a substantial portion of its property. This kind of transaction must be handled differently than sales in the normal course of business.

North Carolina law states that churches have a right to sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property other than in the usual and regular course of its activities. The key language for the purposes of this article is “all or substantially all” of its property. This is often called a fundamental transaction.

A fundamental transaction must be on the terms and conditions determined by the church’s board of directors. Generally, this transaction must be approved 1) by the church board, 2) the members entitled to vote thereon by two-thirds of the votes cast or a majority of the votes entitled to be cast on the proposed transaction, whichever is less; and 3) in writing by any person or persons whose approval is required by a provision of the articles of incorporation or bylaws.

If the church is organized as to not have a statutory membership, the transaction shall be approved by a vote of a majority of the directors. The church shall provide at least five days’ written notice of any directors’ meeting at which such approval will be considered. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, of the property or assets of the corporation and contain or be accompanied by a description of the transaction.

If the church seeks to have the transaction approved by the members at a membership meeting, the church must give notice of the membership meeting to those members. The notice shall state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of

all, or substantially all, of the property or assets of the church and contain or be accompanied by a description of the transaction.

The church board could have a fundamental transaction approved by the members through a written consent or written ballot. If the church seeks approval through a written ballot, the material soliciting the approval shall contain or be accompanied by a description of the transaction.

A church is required to give written notice to the Attorney General 30 days before it sells, leases, exchanges, or otherwise disposes of all, or a majority of, its property if the transaction is not in the usual and regular course of its activities. The Attorney General can give the Church a written waiver of this notice requirement in advance. This notice shall include all the information the Attorney General determines is required for a complete review of the proposed transaction. The Attorney General may require an additional 30-day period to review the proposed transaction by providing written notice to the church prior to the expiration of the initial notice period. During this 30-day period, the transaction may not be finalized.

A church has the right to change its mind after proposing a fundamental transaction. After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned without further action by the members or any other person who approved the transaction. The abandonment of the transaction should be in accordance with any procedures set forth in the resolution proposing the transaction or in a manner determined by the board of directors.

The sale of all or substantially all of a church’s property must be handled differently from the sale of other assets. Church management should be careful to ensure all legal processes are followed. Proper diligence in carrying out the sale of church property is an important governance responsibility. ■



*Legal Counsel for Churches* is a service provided by M Smith Law, PLLC for members of the religious community. This periodical is intended to help churches and their officials become better prepared to address important legal and governance issues. We hope you find *Legal Counsel for Churches* a valuable resource. For each issue, we try to raise relevant issues and offer some practical alternatives. We welcome your comments and input.

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Post Office Box 27461, Raleigh, North Carolina 27611 919.362.0744 (voice) 888-321.9047 (fax) maurice.smith@msmithlaw.us © M Smith Law, PLLC 2016 All Rights Reserved.