

Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



Immigration Laws Apply to Churches



It has been widely publicized in the press that some churches provide a safe harbor to undocumented immigrants from deportation from the United States. With the growing concern about Federal immigration policies, some churches are wondering what should be their position on the matter. Your church could possibly find itself confronted with such a request.

This article examines the legal and governance issues of providing sanctuary for undocumented immigrants from expulsion from the United States. The purpose here is to encourage your church to develop a policy position on how it should address this situation should the occasion arises.

The question some clients have raised is what should they do in the event a member of their congregation asks for shelter from immigration officials. Before taking a position, a church should understand their obligations under the law. There is no legal authority afforded religious institutions to harbor undocumented immigrants or protect them from the government.

One may surmise that some churches seek to take advantage of public sentiment to pursue a policy objective. These churches see this act of civil disobedience as a moral matter. Where morality is concerned, the law makes no exceptions. The legal issue for your church is whether it should comply with the immigration rules subject to all citizens.

The Immigration and Nationality Act (INA) states that any person who conceals, harbors, or shields from detection an illegal alien violates the law. The religious community is not exempt from the INA. A church is explicitly forbidden from harboring illegal immigrants and may face serious prosecution and punishment for disobedience of the law. So, one might ask, how is it that some churches seem to be able to get away with sheltering illegal immigrants? For these organizations, the decision to act contrary to the law may be a calculated risk.

Courts have ruled that church officials and volunteers are not immune to criminal prosecution. The INA specifies punishments for persons who violates this law. Punishment ranges from fines to imprisonment. The variation in the punishment depends on whether in the act of harboring an undocumented immigrant, someone was injured, placed in jeopardy of injury or resulted in someone's death. Prosecutions under the INA can apply to church officials and its members guilty of the conduct.

There are other consequences to consider. Civil liability could result for any church where church officials are found to be culpable of unlawful acts or violating their fiduciary duties. These consequences can also be applied to church officials themselves.

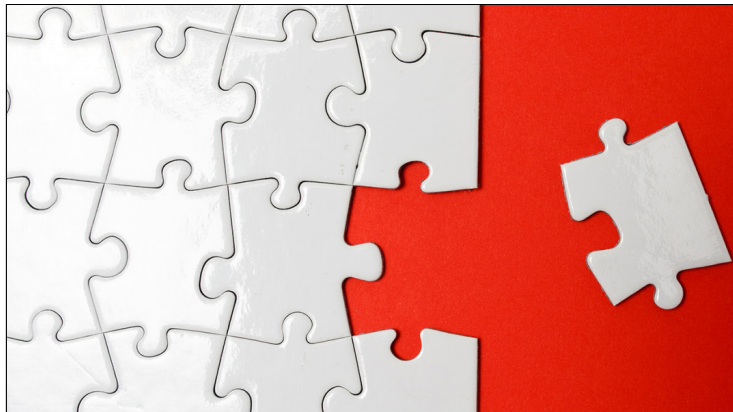
The directors and officers of a church have a fiduciary duty of care to the corporation. The duty of care stands for the principle that directors and officers of a corporation in making all decisions in their capacities as

corporate fiduciaries, must act in the same manner as a reasonably prudent person in their position would.

One may conclude that a reasonable person in the position as a church official would obey the laws of the United States. Therefore, obedience to the duty of care carries with it the expectation of lawful conduct. If a church official acts in a manner that is contrary to the law, he/she is at risk of being held as violating his/her duty of care.

The consequences for the violation of one's duty of care can carry a personal consequence. In North Carolina, officers of nonprofits organizations have statutory immunity from personal liability for their actions. In addition, courts often rely on a doctrine called the Business Judgment Rule. This doctrine means that courts will not normally interfere with the decisions of corporate officers. These protections for church officers may not apply when the officer is found to have violated a fiduciary duty. The result is civil liability may attach to the personal property of a church officer should a legal action prevail.

It is important that church officers understand the personal risks for decisions that disregard federal laws. The harboring of undocumented immigrants in the face of a statutory prohibition can lead to personal liability when fiduciary duties are violated.



Puzzled?

Get Help With the Missing Pieces.

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Remedies For Returned Checks

Churches receive donations from their members, visitors and the public. For donations made with checks, churches face the risk the checks may be dishonored by the financial institutions on which the checks are drawn. When this happens, churches may have remedies available to them if they follow the law in North Carolina.

In North Carolina, if a person, firm or corporation gives a check to a church he/she is obligated for the funds represented by the check. In instances where the payment is refused by a financial institution because of insufficient funds, the person who presented the check is liable to the church. The liability includes the amount of the check and any services charges the church incurs from its bank's charges.

The church has a right to seek collection of checks and fees if it follows the statutory process specified in North Carolina law. First, the church must make a written demand for payment. An initial written demand for the amount of the check, the service charges, and processing fees must be mailed by certified mail to the defendant at the defendant's last known address. A subsequent demand letter may be sent to the defendant. The church is also entitled to demand three times its damages in the letter.

The subsequent demand letter should be mailed by certified mail to the defendant at the defendant's last known address and shall be in the form set out in the law. If the church chooses to send a demand letter, then the church may not file an action to collect the amount of the check, the service charges, the processing fees, or treble damages until 30 days following the written demand.

North Carolina law is fairly specific about what the demand letter should say. Here is a sample of some of the explicit statements that must be included in a demand letter. Depending on the situation, other language may be required.

Sample Statutory Demand Letter for Returned Checks

Dear _____,

① This letter is written pursuant to G.S. 6-21.3 to inform you that on [DATE], you made and delivered to the Church a check payable to this Church containing your name and address in the sum of \$ _____, drawn upon _____ (bank or institution), account # _____.

② The check has been dishonored by your bank for the following reasons: _____.

③ As acceptor of the check, the Church gives you notice to rectify any bank error or other error in connection with the transaction, and to pay the face value of the check, plus the fees as authorized under G.S. 25-3-506 and G.S. 6-21.3(a) as follows:

④ Face value of the check	\$ _____
Processing Fee	\$ _____
Bank Service Fees	\$ _____

⑤ If the total amount due listed above is not paid within 30 days of the mailing of this letter, thereafter we may file a civil action to seek civil damages of three times the amount of the check (with a minimum damage of one hundred dollars (\$100.00) and a maximum damage of five hundred dollars (\$500.00) for allegedly giving a worthless check in violation of law (G.S. 6-21.3), in addition to the amount of the check and the fees specified above.

⑥ Appropriate relief will then be sought before a court of proper jurisdiction for full payment of the check plus all costs, treble damages, and witness fees.

⑦ If you do not believe you are liable for these amounts, you will have a right to present your defense in court. To pay the check or obtain information, contact the Church. Cash or a bank official check will be the only acceptable means of redeeming the dishonored check.

⑧ If you do not believe that you owe the amount claimed in this letter or if you believe you have received this letter in error, please notify the undersigned at the Church as soon as possible.

DISCLAIMER: THIS INFORMATION IS AN ILLUSTRATION OF SOME OF THE ELEMENTS FOR A STATUTORY LETTER. CONSULT YOUR CHURCH ATTORNEY TO ENSURE YOUR LETTERS ARE IN FULL COMPLIANCE WITH THE NORTH CAROLINA LAW.

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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