



Legal Counsel for Churches

Corporate Governance for Churches & Their Leaders

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Churches May Be Liable for Bad Marriages

Some churches have multiple ministers in their organizations who handle several duties for the ministry. One such task may be the performance of marriages for its church members and members of the community. Church leaders should understand the requirements in North Carolina to marry a couple.

North Carolina does not recognize common law marriages. A common-law marriage is where a couple, intending to be recognized as married, carries on in such a way for a required period. Courts in common-law jurisdictions sanctions these marriages as legitimate. Because North Carolina does not legally recognize such marriages, legal unions must be done in accordance with the State's statutory requirements.

North Carolina statutes for marriages states a valid and sufficient marriage is created in the presence of an ordained minister of any religious denomination, a minister authorized by a church, or a magistrate; and with the consequent declaration by the minister or magistrate that the persons are married.

According to North Carolina law, ministers in your church must be either "ordained" or "authorized" by your church to perform marriages. If a minister, with the backings of your church, performs an illegitimate marriage, the marriage may be nullified. Further, your church could be held liable for fraud. Here's an example.

A North Carolina woman brought a legal action against a Church for fraud. Her case was based upon the allegation that the Church advertised its ministers could perform valid marriages in North Carolina.

Initially, the Church tried to have the case thrown out. The Court denied the Church's motion to dismiss the case and entered a judgment on a jury verdict finding the Church liable for fraud. In the end, the Church prevailed on appeal because the court eventually ruled the claim was barred by North Carolina's statute of limitations.

This case is important because the Court did not say the Church could not be held liable for fraudulently representing that its ministers could perform valid marriages in North Carolina. The Court's decision was based on the claim being too old to litigate. This leaves the idea that churches may be held liable for fraud if their ministers perform unauthorized marriages.

According to North Carolina law, ordained ministers are qualified to perform marriage ceremonies. There seems to be less controversy here. It is easier for a church to prove the ordination of a minister. A ceremony and certificate is often presented as part of the ordination process.

There could be some ambiguity concerning the qualifications of a minister authorized by the church. Ministers who lack ordination, but are authorized to perform marriages require clear proof of such.



Church leaders should consider formalizing the authorization process for ministers allowed to conduct marriage ceremonies. The authorization should follow the church's bylaws on such grants. The authority should be memorialized with a recorded document and public announcement.

Church leaders should maintain a list of its ministers and the authority granted to each regarding marriage ceremonies. In doing so, the church should be careful to only advertise those ministers as having proper credentials to perform marriages for the public. Further, church ministers should be trained on North Carolina requirements for performing marriages. Such provisions include licenses, consent, age and ceremony. ■



The Moment

You realized signing that contract was a big mistake.

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7 Tips for Church Governance



I often advise church organizations on how to improve their corporate governance. Corporate governance is the process organizations employ to ensure efficient policy and strategic making. The reason I recommend churches undertake proper governance is to help ensure they are good stewards of their resources.

A common misnomer is that governance is complicated and hard to install. This is not so at all. In fact, an effective system of governance makes church operations run smoother. This is because all leadership will have a common set of rules by which the church is to function. When questions about procedures and policy arise, the governance structure informs management on the appropriate course of action.

There is no one set of corporate governance policies that is right for every church. The autonomy, culture and belief systems of individual churches necessitate custom governance structures. However, there are some basic tips that all churches should consider to make their governance prudent and workable.

1 | *Hold Regular Board Meetings*

If your church is organized under the structure of an elected/appointed body, ensure this group meets regularly. Whether

this group is called a board of directors, elders, trustees or deacons, the legal fiduciary duties are the same. The church board is held to the same standard as any Fortune 500 corporation board. Regular meetings with sensible discussions about the organization are expected activities under the law.

2 | *Annual Independent Audit*

The church should conduct an annual independent audit of its books. This is to ensure proper accounting and searches for ways to make process improvements. If the church does not hire an independent accounting firm, consider forming an internal audit committee. The internal committee should be separate from management and skilled in the auditing function.

3 | *Ethics Training*

Church leadership should undergo ethics training annually. A good ethics practice protects the church and its leadership from unintentional missteps. An annual review of the ethics training is important because the law is constantly evolving on this issue.

4 | *Periodic Policy Reviews*

Church policies should be evaluated every so often. The frequency of the reviews should be close enough to make sure the policies are current, suitable and reflects current activities.

5 | *Conflicts Statements*

Church leadership should be reminded each year of its rules on conflicts of interests. A conflict is not a bad word. At some point, most persons in leadership find themselves with a personal conflict of interest in a church matter. The key is how diligent the leader and the church act to isolate the conflict before a critical decision is made.

6 | *Strategic Planning*

Organizations engage in strategic planning to ensure their direction is planned and properly executed. A church have the same responsibility to shepherd its course. Church leadership should set aside time no less than annually to discuss its direction and plans for the future.

7 | *Annual Budgets*

A budget is a forecast for how the church plans to manage its income and expenses. This becomes a governance issue because leadership is ultimately responsible for church assets and operations. An annual budget helps focus the decision-makers on how the church plans to deploy resources. ■

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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