

# Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



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## It is Better to Give.

### Does Your Church Have a Planned Giving Policy?

One of the factors that influence the governance of a church is its sources of income. For some churches, tithes and offerings is the primary source for revenue. Other churches rely on programs and fundraising to generate funding. Where gifts are a source of income, a Church should decide for itself what is acceptable and not.

Churches should consider establishing a Planned Giving Program. Planned giving is a practice where a donor makes special provisions

to bestow a gift. The purpose of the planned giving program is to provide gift opportunities to donors who

are interested in supporting the Church. The program enables potential donors to take advantage of available philanthropic techniques while providing financial support to the Church.

A planned gift may come during the donor's lifetime or be provided as a testamentary transfer. The gift itself could come in various forms. A Planned Giving program spells out conditions for which a church will accept certain kinds of gifts.

Some gifts come with strings attached. Conditional gifts may have a gift-back clause that gives the donor a right to reclaim the property. Understanding this term and other stipulations is essential. A church should also weight the benefits versus the cost of managing the property. Conducting this analysis is especially important for non-income producing real estate gifts.

A Planned Giving program offers the Church and donors an organized approach to supporting the ministry. If your Church does not have a Planning Giving structure in place, consider developing a policy and program. ■

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## Planned Giving Policy

Here are some elements that could be considered for a Planned Giving Policy:

- The Church will seek the advice of legal counsel in all matters pertaining to the planned giving program and will not execute any agreement without the advice of an attorney representing the Church.
- The Church should encourage prospective donors to seek the advice of their own accountants, attorneys and other advisors in reviewing the state and federal income tax consequences of their gifts, the terms of trusts, or other agreements, and the advisability of their gifts.
- Neither officers, Church employees nor legal counsel for the Church should be allowed to give legal advice to prospective donors.
- The Policy should specify what types of gifts are acceptable. Unrestricted outright gifts of cash are usually acceptable. Property gifts, business interests, and other assets could lead to prohibited transactions described in the Internal Revenue Code.
- The Policy should outline the ways gifts may be accepted. Gifts may come through a bequest in a will, outright gift, or in trust. Trusts can vary in type, restrictions and conditions. Each of these gifts should be accepted on the advice of counsel and with the approval of the Church governing body.
- The Policy may sanction a Planned Giving Committee to assist in recommending policy regarding planned gifts, identifying and cultivating potential donors, soliciting gifts, and monitoring the administration of the gifts.



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# How to Hire a Church Attorney

Sooner or later, most churches will find themselves with a need to hire an attorney. The situation may arise from a routine transaction or a dispute. No matter how the situation comes about, the risk of mishandling a legal question can be costly. For this reason, choosing the most appropriate legal counsel becomes an important decision.

When circumstances become serious enough for an attorney to be involved, there are usually substantial rights and/or money at stake. For this reason, having the right attorney on the case becomes increasingly important. In this article, we explain some of the factors church leaders should consider when selecting a church lawyer.

Church leaders should understand that no lawyer knows everything about every law. Like many professionals, lawyers often specialize in particular legal practices. Some attorneys concentrate on criminal defense. Some have a practice of family law. Other law firms only accept clients for business matters.

When shopping for legal services, church leaders should look for an attorney who practices in that area of the law. While this is a practical point for a church client, this point reinforces a legal duty all lawyers owe to a client. The North Carolina Bar requires lawyers to provide competent representation to clients. If a lawyer is unfamiliar with an area of law, he/she should give notice to the client so that the client may make an informed decision concerning hiring the lawyer.

After church leaders select an attorney, it should be clear to all how the engagement is to be managed. One of the first points to discuss is the fee arrangement. Some attorneys bill clients by the hour. The hourly rate varies depending on the going rate in an area, the lawyer's skills and the nature of the transaction. In some instances, the fee is a turnkey price for the entire work assignment.

A church lawyer should clearly understand the client's objectives. While it might seem intuitive that a client only wants a problem-free business deal or to win a debate, a good result may be more complicated than that. An attorney should work to understand any ancillary issues that may be addressed. These secondary issues for a church may include healing relationships among the congregation, protecting its reputation in the community and following biblical values.

Finally, church leaders should question a prospective lawyer on how communications will be handled. The most often cited complaint clients have of lawyers involves a lack of communication. Clients occasionally state that their lawyers do not keep them informed on the progress of their cases. Church leaders are well advised to establish an expectation of what communication they desire. An understanding should be reached on the frequency of updates and manner of communication (email, US Postal, telephone, or in-person).

Hiring a lawyer is a task most churches will eventually undergo. Approaching the hiring process in an informed manner will help the relationship proceed smoothly. ■



## This is No Way to Manage Your Policies.

Sometimes, policies are borrowed from other organizations and reshaped to resemble your church. Church policies should be written to fit the particular needs of your congregation. This way you are sure to address the risks, opportunities and procedural realities of your ministry.

Cookie cutters are good for baking. Not so much for forming new church policies. Give us a call if you would like assistance with custom policies that suit your taste.

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CORPORATE GOVERNANCE | COMMERCIAL TRANSACTIONS | CONTRACT LAW

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*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. If you have questions, feel welcome to contact us.

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