

# Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



## Dual Control is a Governance Issue

Churches face the same kinds of risks as other businesses. Churches have assets that should be protected. Churches face the dangers of theft, fraud and embezzlements. Churches need proper safeguards to safeguard their properties.

One of the most common activities of a church is the receipt of donations from its membership. Contributions are often the primary form of revenue for a church. Church members are eager to support their ministry. As a result, church members place great confidence in the church leaders to manage this process. However, managing money can also be the most precarious part of a church's operation.

Managing church receipts carries special risks for several reasons. First, some of the receipts are made in cash and can be untraceable. Secondly, often there are several hands involved in counting church offerings. This involvement can be difficult to monitor. Thirdly, some transactions include handling credit card payments and personal checks from church members. These methods of payment can expose the donor to the risk of identity theft. Finally, meticulous records have to be taken to ensure proper tax reportings.

To help manage the risk of handling cash transactions, churches should put a dual control policy and practice in place. A dual control policy for handling cash is important for a number of reasons.

Dual control is the practice of ensuring that no one person has complete control of a cash transaction. A cash transaction includes handling currency or any asset that can be converted to cash. Cash equivalents include postage stamps, credit cards, gifts cards, blank checks and store credits.

To illustrate, the person who writes checks should not be the same person who reconciles the church's checking account. Also, more than one person should be present when offering envelopes are opened, counted and prepared for a deposit to the church's bank account. Dual control provides a check and balance system to ensure verification is made for each step of a transaction.

While dual control protects the church's assets and integrity, having a system of verification protects church workers as well. Without dual control, it would be difficult for a church official to defend oneself from an accusation of wrongdoing. A doubt about the amount of church money on hand could occur from an innocent misunderstanding. If there

is no dual control for verifying transactions, the sole person responsible for custody of cash could be left without a credible defense. Dual control protects well-intentioned church workers from suspicions.

Dual control is all about custody and access. A church worker should not be allowed to receive, count and package church offerings alone in a room. Another official should be present and accountable. The church should consider a log-in record of who counted money on a given Sunday. The record will be useful for identifying who handled a particular transaction.

Custody of blank checks and other cash-related items should be tightly secured. Blank checks should be locked away and inventoried regularly. Counting blank checks could help ensure unused checks have not been taken out of sequence from a checkbook to avoid discovery. Credit cards should be kept in a secure location and monitored for fraudulent transactions.

Dual control does not just happen without training and a commitment from church leadership to put these practices in place. A commitment includes training, regular communications with church workers and the development of updated procedures.

Businesses of all kinds face risks from fraud and theft. Churches are not different in this regard. Developing a dual control policy for your church provides protection for the ministry as well as your workers. ■



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custody and access.

# Strategy

Because Every Move Counts.

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## Negotiating the Pastor's Contract

Many organizations have a written contract with their chief executive officer. The agreement sets forth the terms of employment and establishes a common understanding of the position description. There are many benefits to having a written employment contract.

One of the most important duties of a presiding church board is coming to an agreement with the pastor on employment issues. Employment concerns may include compensation, benefits, retirement, performance expectations and length of the engagement. Employment becomes more complex for church pastors due to unique tax treatments, free religion rights and doctrinal philosophies.

Some churches hire the pastor on a handshake. These churches may feel that the absence of an agreement gives the church more leeway in an at-will employment status. Perhaps. If the pastor performs to expectations and there are no disagreements with the church, no harm may come from this informality. Unfortunately, if a mix-up arises, the absence of a written agreement may handicap both parties in seeking a solution.

Other churches may feel that the details of a pastor's employment agreement could wind up in the wrong hands. If the contract were to be made public, some fear other church employees might protest. An even greater panic is church members might balk at the terms for a pastor contract if widely disclosed.

There is a good reason to put pastors' agreements in writing. The pastor is usually the highest compensated executive at the church. For this reason, there is usually curiosity around what promises were made. A written contract ensures everyone is on the same page with what's expected. Furthermore, church officials occasionally change positions. A pastor that serves

under different governing administrators needs the assurances that the church will honor the deal made. An incoming church official needs a properly executed document to know what terms have been reached with the pastor.

A pastor need not be a new employee to negotiate a contract. A contract can be negotiated at the beginning of a pastor's tenure or put in place for a current pastor. For new pastors, it is best to reach an agreement on the substantive terms of employment as soon as practicable. If your pastor is already serving, the church can still enter into an agreement for the future. To make the contract valid, the church and pastor must have a meeting of the minds on the terms. In other words, both parties must completely agree on the particulars of the agreement.



Another aspect of pastors' employment is being mindful of the tax considerations. The persons who help negotiate a pastor contract should seek counsel on tax code rules. Pastors' compensation may be structured in a way that can be beneficial for the

church and the pastor. In some instances, an accountant and/or tax counsel may be useful members to add to the church team.

While the contract negotiations is taking place, both sides may wish to seek legal counsel. The agreement may include complex terms that can have material consequences for both the pastor and the church. Pastors' agreements may address subjects such as incentive pay, deferred compensation, perquisites, ownership of intellectual properties (sermons, songs, books) and travel allowances. Because reasonable people could have a disagreement on how to decide on these issues, a written contract may clear the air.

Each church should decide for themselves if a written employment contract with their pastor is warranted. The risks of a verbal understanding should be weighed along side the benefits of recording the terms in a written agreement. ■

*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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