

Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



Churches Should Define Governing Boards



When it comes to governance, North Carolina law requires churches to decide on the type of corporate structure that will be followed. If the church operates with a board, the church should choose its type.

For starters, the State law assumes that each church will have a board of directors. The board could be known by a variety of titles. In some instances, the deacons act as the governing body. Some churches are led by their trustees or a ministerial body. In any case, if governance decisions are decided by a group, there are a few points of law a church should know.

Let's explore three kinds of directors here. An *elected director* is one who receives the post from the church membership. A church-elected director position may be filled from a vote held during a meeting or balloting process. An *appointed director* is a church official who is seated by a specific church official. This could be the church pastor or another authority. A *designated director* is one whose post comes from a specific mentioning in the articles of incorporation (articles) or bylaws. For instance, this may include an ex officio position.

When a church has a governing board, all corporate powers are to be exercised by the direction of this group. There can be exceptions. The exceptions should be noted in the church's articles or bylaws.

The articles or bylaws may prescribe qualifications for directors. A church

director need not be a resident of North Carolina or a church member unless the articles or bylaws say so.

A church board of directors must consist of one or more natural persons. The number of directors must be specified in the articles or bylaws. The articles or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors.

If the church has members entitled to vote for directors, all the directors (except the initial directors) shall be elected at the first annual meeting of such members, and at each annual meeting thereafter. The articles or bylaws can provide for some other time or method of election, or provide that some of the directors are appointed by some other person or are designated. If the articles authorize dividing the members into classes, the articles may also authorize the election of all or a specified number of directors by the members of one or more authorized classes.

If the church does not have members entitled to vote for directors, all directors shall be elected, appointed, or designated as provided in the articles or bylaws. If no method of designation or appointment is set forth in the articles or bylaws, the directors shall be elected by the board of directors.

Church directors may serve for a specific period term. The articles or bylaws may specify the terms of directors. In the absence of a contrary provision in the articles or bylaws, the term of each director shall be one

year. Church directors may serve successive terms. In some cases, a church director's term could have expired, but the director remains. A director continues to serve until the director's successor is elected, designated, or appointed and qualifies, or unless there is a decrease in the number of directors.

There may come a time when a church will want to remove a director. The rules for removal depends on whether the director was elected, appointed or designated. If the directors are elected, the members may remove one or more directors with or without cause unless the articles provide that directors may be removed only for cause. Appointed directors may be removed with or without cause by the person appointing the director. The removal of a designated director requires an amendment to the articles and/or bylaws.

An occasion may surface where a church has a vacancy on its board. The manner in which a vacancy may be filled depends on the type of director seat.

Finally, North Carolina churches are not required to have a board of directors. A church may dispense with or limit the authority of a board of directors by describing in its articles or bylaws who will perform some or all of the duties of a board of directors. In either style of governance, a church should make its rules clear to the membership and all those who have authority.

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Strategic Planning For Churches

Strategic planning is often thought to be an exercise reserved exclusively for corporations and for-profit businesses. Businesses engage in planning to select the right markets, products and prices for their customers. While strategic planning is essential to a business' success, it is just as important for churches and ministries.

Strategic planning is a corporate governance matter for boards and management of church organizations. In this article, we explore why strategic planning is important to church leadership. Further, we offer steps to consider for your church and ministry.

The reason why we say strategic planning is a governance issue for churches is the result of the fiduciary duty each church leader has. The law places a fiduciary duty of care on the governance leaders of organizations. This duty compels an organization's leaders to act in a manner that would be reasonable for other such leaders. If it seems reasonable that other organizations' leaders should plan for the future, then it becomes reasonable that a church's leaders would do likewise. This is because the law places the same fiduciary duties on church officers as corporate leaders.

Strategic planning can take on several forms and formats. Some organizations hold

annual planning retreats for their boards and management teams to discuss the future. During these meetings, the leadership contemplates how to ensure their organization's achievements. In some instances, organizations have these discussions at every board meeting. Time is set aside to ponder the best paths for moving forward. Regardless of the frequency, strategic planning is a fiduciary duty of a board and management.

Each board and management team are unique. As a result, the approach to strategic planning differs from one church to another. Strategic planning can be a discussion that takes place just among church leadership or with the assistance of consultants and facilitators. The important point is to ensure there is sufficient opportunity for frank and relevant discussions.

Here are some strategic church issues:

- *Church leaders should discuss the economic trends in your geographic market.* Is housing expanding? Are businesses growing? Is employment stable? Do these factors influence the lives of your church members?
- *Churches should examine the demographic makeup of the community.* Is the ethnic population changing? Are there gaps in the



needs of special groups? What is the trend for the average age of local residents?

- *Church leadership should monitor the membership growth trends.* Is church membership growing, declining or stagnant? Where are new members coming from? What are the reasons cited why some members leave?
- *Church management should regularly examine facilities and finances.* Are church facilities adequate? Are major repairs, improvements or upgrades needed? Are church operating and capital reserves sufficient?
- *The church board should review outreach and marketing efforts.* Are church community outreach efforts effective? What reputation does the church have in the community? Does the church have a favorable brand quality for the market it pursues? Are church materials effective? Should social and digital media be used?

Strategic planning is a responsibility of church leadership. Make sure you are fulfilling your fiduciary duties.

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 2017 All Rights Reserved.