

# Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



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## Importance of *Current* and *Relevant* Bylaws

Without a doubt, the most important document in the Christian church is the Bible. The Bible is instructive, insightful and a foundation for the church's doctrines. The second most important document may be the church's bylaws.

A church is a unique type of organization. On one hand, a church follows principles that are beyond the laws and sometimes the comprehension of man. Our society does not ask churches to justify their beliefs. Church goers are free to practice their religion in whatever manner they wish. On the other hand, a church must operate within the laws established by the jurisdiction in which it operates.

The church's bylaws is an appropriate document for recognizing both authorities. In this edition of *Legal Counsel*, we have provided some thoughts on how to exam your church bylaws. The following set of factors may help ensure your bylaws are up-to-date and relevant.

### *State Law May Require Bylaws*

Depending on how a church is chartered, State law requires bylaws. Bylaws are a set of rules that govern how decisions are made, who has authority for aspects of the church and the duties of key officials. North Carolina state law provides that the bylaws for a nonprofit corporation may contain any provision for regulating and managing the affairs of the corporation. One caveat though... the bylaws may not contain provisions that are inconsistent with law or the church's articles of incorporation. To ensure compliance with State law, churches should continually review their bylaws for changes needed to keep pace with new laws.

### *A Church's Bylaws Is A Living Document*

Over the years, there have likely been a number of reorganizations at many churches. The bylaws should be viewed as a constantly evolving document that must stay relevant with church operations. Numerous churches recognize that they must adapt to the changing needs of their congregations. As a result, some ways of conducting business have evolved. The bylaws should include the addition of new officers, changes in election rules and reassignments of duties for key positions. Guidelines on conflicts of interest, succession planning and congregational rights should be illustrated in the bylaws.

### *Scriptural References May Offer Latitude*

The United States Constitution grants citizens a freedom of religion. The Free Exercise clause of the First Amendment can be a useful tool to help insulate the bylaws from scrutiny by courts. Courts often grant wide deference to churches when the issue is the manner of religious practice. In a dispute where an interpretation of the bylaws is the issue at hand, citing scripture where it has served as the basis for the rule may provide some latitude.

In summary, a church's bylaws should be carefully written to facilitate the necessary activities to accomplish its objectives. The bylaws should provide a framework for management that governs important decisions. Finally, the bylaws should be revisited periodically to ensure the document remains relevant and effective. ■



## Bylaws Subject Matters

Here is a list of topics that may need to be addressed in your bylaws. This list is not exhaustive. Other matters may need to be included to properly address your church's needs. Be sure any changes you consider for your bylaws take into account the amendment rules your current bylaws may require.

- Rules of Order
- Indemnification Provision
- Quorum Requirements
- Amendment Provision
- Officers' Duties
- Officer Designations
- Office Terms
- Elections
- Authority References
- Unilateral Removal of Officers
- Finances & Budget
- Conflicts of Interest
- Officer Elections
- Members Right to Inspection
- Expulsions
- Standing & Ad Hoc Committees
- Proxy Voting
- Purposes and Powers



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# Duties of a Church Board Member

Some churches have adopted a Board of Directors format for management. Where a Board has been elected or appointed, it is important that board members have a thorough understanding of their legal duties.

Church boards have the ultimate responsibility for the management of the church. One of the most important responsibilities of the board may be hiring the pastor. Therefore, as a practical matter, boards usually delegate the day to day management authority to its chief executive officer, the pastor. But there are some responsibilities a board should not delegate. Non-delegable duties include the review of strategic developments, policies, governance decisions and budgets. Ultimately, the board is accountable for how the entire church operates.

Each board member owes a legal duty of good faith, full disclosure, fair dealing, and undivided loyalty to the church. Here is an introductory description of each duty. Board members should commit these duties to memory. Failure to obey these duties could lead to personal civil liabilities.

**Undivided Loyalty.** The duty of loyalty requires a director to place the church's best interest above his/her own. Essentially, a director should not act where he/she has a conflict of interest.

**Full Disclosure.** A church director should make a full disclosure of the existence of a conflict, and of other "material" information concerning the substance of a transaction. The disclosure should be made to fellow directors and/or to the church members from whom approval of the transaction is sought.

**Good Faith.** Church directors must act in the best interest of the church. A director should not confuse his/her interests with those of the church. Good faith means the director acts with a clear conscience. Good faith requires a director to act with the diligence, devotion, care and fairness toward the church which an ordinarily prudent person would exercise under similar circumstances in a like position. This means a director should be prepared to make well-reasoned decisions during all meetings. A director breaches the duty of good faith when he/she acts negligently or carelessly.

**Fair Dealing.** Fair dealing compels a director to two standards: Substantive and Procedural acts. The *Substantive* aspect of fair dealing requires that the terms of a transaction must be fair. This essentially means the terms the church gives or gets should be the terms it would have given or received if it had dealt openly in the marketplace. The *Procedural* Aspect of fair dealing requires that the transaction and its terms must be arrived at through a fair process. Directors must affirmatively renounce anything that is unfair.

## Everybody Needs Help Sometimes



Trouble! It happens when you least expect it. When trouble strikes, you need help from someone who is capable, trustworthy and dependable.

The best defense to trouble is to try and avoid it in the first place. You need a good law firm that will help you stay clear of risk that can upset your balance. Those are the times when you want experience on your side.

Helping church leaders manage legal risk is our business. If you would like to protect yourself against risks, give us a call. You can trust your church business to ours. We will help you keep your footing.

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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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