

# Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



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## Churches Face Child Care Laws

A popular activity for many churches is the operation of a child care facility for its members and the community. Depending on a number of factors, a church child care facility may be subject to specific North Carolina laws. It is important for church leaders to know the laws and ensure its child care is in compliance.

To understand the law, churches must know if the facilities they have are considered child care programs. In North Carolina, child care is a program that meets four specific qualifications. The first element applies to a program that includes three or more children less than 13 years old. Secondly, the children must not reside where the care is provided. Thirdly, the children receive care on a regular basis of at least once per week for more than four hours per day. Finally, the guardians or full-time custodians must not be related by birth, marriage or adoption to the children.

There are some exceptions to the child care definition. Recreational programs operated for less than four consecutive months in a year are not child care programs. Drop-in or short-term care provided while parents participate in church activities are not child care programs. Also, bible schools conducted during vacation periods are not child care programs.

If a facility is deemed to be for child care, the operators must follow rules mandated by State law. The rules include mandatory license, criminal background checks for providers, minimum sanitary standards, proper ventilation, food protection and more.

There are special rules that apply to churches that operate child care programs. The law calls these "religious sponsored child care facilities." Church child care programs include facilities or summer day camps operated by a church.

Religious sponsored child care facilities are required to file with the State a notice of intent to operate a child care facility at least 30 days prior to starting. After the child care facility is opened, the church is required to provide written reports and supporting data within 30 days to show that the facility is in compliance with



State law. Compliance includes meeting the minimum standards of the local building inspectors, and fire and health departments.

After the church child care facility files this report, a representative of the Department of Health and Human Services will pay a visit to ensure that compliance is indeed in place. Church child care facilities should keep adequate records of all compliance details for inspection by the local and state officials.

Religious sponsored child care facilities, including summer day camps are exempt from the requirement to obtain a license. However, churches may obtain a license if so chosen. License or not, a church child care facility must obey other State laws.

The law also places requirements on persons who are employed or operate a religious sponsored child care facility. No one who has been convicted of a crime involving child neglect, child abuse, and moral turpitude may work in a church sponsored child care facility. In addition, a church child care worker may not be an individual who habitually or excessively uses alcohol, illegally uses narcotics or is mentally or emotionally impaired.

If a church fails to follow the State law for child care facilities, the State may seek an injunction. This includes failing to submit the required forms and following the procedures of the law.

If your church is considering operating a child care facility, carefully consider the laws that regulate its activities. **LC**



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# Beware of Automatic Renewal Clauses in Church Contracts

Your church likely has multiple outstanding contracts. These agreements cover a wide range of services and products. The contracts may be for everything from equipment maintenance service to landscape care.

Most church officers know that due diligence is advisable before signing a contract. During the negotiation period, attention is paid to the terms of the bargain. It is important to understand that due diligence with contracts does not end with the signature on the dotted line. For some contracts, churches must stay alert for years afterwards.

Most contracts are written for a specific period of time. It would be expected that when the time expires, the agreement comes to an end. Rather than end, some contracts have clauses that automatically extend the agreement for a new period. These provisions are called automatic renewal clauses. With such a term, your church could be obligated to continue an arrangement beyond your initial expectation.

For contracts that have an automatic renewal clause, the church must notify the other party that it intends to end the contract when

the time expires. The option is often expressed as a notice provision. For instance, the contract may read that a church must notify the other party no later than a certain number of days before the end of the contract in order to preempt the automatic renewal.

The notice provision can vary among contracts. The church may be given as little as 30 days to notify the other party of its intent to end the agreement. In some instances, the notice provision states a minimum and maximum number of days for the advance notice.

Churches should be particularly mindful of the method for notification in the contract. The contract may specify that the notice should be sent to a specific person at a predetermined address by a certain method of communication for the notice to be effective. Read the contract carefully to ensure

**Rather than end, some contracts have clauses that automatically extend the agreement for a new period.**

you are complying with all of the requirements. Failure to follow the notice requirements under the contract could cause the church to be held liable for an extended period of time.

The lesson for churches is to stay vigilant with outstanding contracts. If churches fail to pay close attention to the ongoing duties in the contract, the consequence may be costly. The automatic renewal clause provision is just one example of terms for which a church should be watchful. **LC**



## It is Now Safe To Open the Bylaws

The Bylaws are one of the most important documents in the Church. Church Bylaws should be kept up to date and reviewed every so often. However, revising the Church Bylaws can feel like a sinking task.

M Smith Law, PLLC can help churches stay current on their Bylaws. When we review Church Bylaws, we look for relevance to church doctrine, compliance with state law and reflection on current church practices. We help make sure the Bylaws are up to date with the best practices in corporate governance.

Maintaining your Bylaws is an important responsibility for Church leaders. If your Church Bylaws are out of date, let us throw you a lifeline.

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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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