

Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



Some Charitable Solicitations Require NC License

Some churches have auxiliary nonprofit organizations as a part of their community service. These establishments may not be religious organizations per se. They could be foundations, community service groups or commercial ventures. Charitable donations may be solicited from the public to fund these organizations.

North Carolina has laws that regulate activities associated with soliciting donations from the public. One of the requirements of the law is that nonreligious solicitors be licensed to operate in the State. The license is obtained by filing an application with Department of the Secretary of State. The license is renewed annually. In order that churches know whether their organizations are subject to the license requirements, we will review a few conditions in this area of the law.

A charitable organization is a person or group who publicizes as having a 501(c)(3) tax exempt status under the Internal Revenue Service and operates for a charitable purpose. Charitable organizations include a chapter, branch or affiliate soliciting contributions within the State for a charitable organization.

The license application requires some specific information about the charity. The intended solicitor must state the purpose for which the contributions to be solicited will be use. The names and addresses of the officers, directors, trustees and the salaried executive personnel must be included in the license application. A

financial report for the last fiscal year is also required.

There are a few exemptions from the law. Any person who solicits charitable contributions for a religious institution does not have to be licensed in North Carolina. Any person who receives less than \$25,000 in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator or fund-raiser may also be exempt from the license.

In some instances, a charitable organization may decide to outsource its fundraising by contracting with a professional solicitor. Under this law, a solicitor is any person who is paid to solicit contributions for a charitable organization or sponsor. A solicitor may also be a person who plans, conducts, manages and/or consults a charity on the solicitation of contributions. If a charity hires a solicitor, there are additional requirements imposed by the law.

The charity should ensure the solicitor is licensed through the State. A solicitor in North Carolina must also maintain a surety bond approved by the Secretary of State. The bond must be with a surety authorized to do business in the State. The bond should be payable to the State and to any person who may have a cause of action against the solicitor for any violations of this law.

Once in business and legally operating in North Carolina, the charity must follow some rules of conduct. It is a violation for charities to be found doing any of the following:



- Enter into any contract or agreement with or employ a fund-raising consultant or solicitor unless the NC Secretary of State licenses that fund-raising consultant or solicitor.
- Use a name, symbol, emblem, device, service mark or statement so closely related or similar to that used by another charitable organization or sponsor that the use would mislead the public.
- Use or exploit the fact of registration or the filing of any report with any governmental agency to lead any person to believe that the registration in any manner constitutes an endorsement or approval by the State.
- To send to any person a writing which simulates or resembles an invoice unless the intended recipient has contracted for goods, property or services from the charitable organization or solicitor who sends the writing.
- Fail to apply contributions in a manner substantially consistent with the solicitation.

In summary, churches do not have to be licensed to solicit donations from the public. If your church has auxiliaries or related organizations that solicit donations, have your attorney verify whether licensing is required for the non-church activities. ■



Wishing

Won't Make Risks Go Away.

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Letters of Intent Can Become Binding

Your church has started a negotiation with a potential party. The deal could involve a real estate transaction, new ministry or partnership with another organization. In many of these instances, one party may ask the other to sign a Letter of Intent. Churches should be cautious with this agreement.

A letter of intent is a document where the parties agree to work on an endeavor. Because some deals can be time consuming and costly, parties often use letters of intent to frame the discussions. Further, letters of intent show the parties that each are serious.

The fact that a letter of intent has been introduced means the deal has not been finalized. There are likely details that have not been worked out. This is a time when the parties should be cautious.

There are benefits to having a letter of intent. A well-written letter of intent can greatly reduce misunderstandings. The parties know from the outset the general rules for the negotiations. The letter of intent serves the function of laying out the ground rules.

However, a letter of intent can be risky. If the church is not careful, the letter of intent may inadvertently bind the church to a transaction. Letters of intent also can be confusing to the parties as the essential terms may not have been established.

To avoid the risks of entering into a letter of intent, be sure to insist that all terms be non-binding. Neither the church nor its counterparty wants to be held to any agreement until all of the business and legal points have been fully resolved.

In order to make the letter of intent non-binding, it may not be sufficient alone to simply add a clause to it stating that its terms are non-binding. There can be a chance that a court will rule that the letter of intent is binding if there is evidence that the parties intended it to be binding or either party acted in a way that suggests the agreement was a final commitment.

Generally, the letter of intent should explicitly state at least five conditions:

First, the letter of intent should expressly state there is no intent by either party to be bound. This statement should be unambiguous. There should be no preconditions to this intent.

Secondly, the letter of intent should state that there will be no binding agreement until the transaction itself is finalized and observed by a written contract. While in some instances, a hand-shake agreement is enforceable, complex legal agreements should be recorded in writing. A written contract signals the letter of intent ended.

Thirdly, the letter of intent should provide that all of the essential terms of the transaction have not been settled. The letter of intent often implies the beginning of a negotiation. This should be explicitly stated as such so each party acknowledges some details remain unsettled.

Fourthly, the letter of intent should state that neither party has taken or will take any action in reliance on the non-binding letter of intent. This is very important particularly if third parties are involved. A third party could be induced to act on what they believe is the church's apparent binding agreement.

Finally, the letter of intent should express that any agreement between the parties is contingent on certain other conditions happening. This provision shows that more work remains to be done before the church accepts the responsibility of a contract.

A church should be aware that, even if the letter of intent contains clear non-binding language, there is still a chance that a court might specifically find the letter of intent is binding if one of the parties expends considerable time and money in reliance on the appearance of a promise.

If your church is faced with signing a letter of intent, it is important that the church officials insist on language to protect their interests. Further, church officials should have a clear understanding of what the church intends to accomplish. Entering into a letter of intent without a plan can be disastrous. Failure to exercise caution with a letter of intent could lead to significant, unanticipated financial liability. ■

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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