

Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



Protecting Church Officials From Personal Liability

Being a church official carries the reward of personal satisfaction. However, being a church pastor, minister, deacon and trustee comes with risks to personal liability. This risk includes the threat of lawsuits for conduct taken on behalf of the church.

Many churches offer their officials group liability insurance to protect them from civil liabilities. In addition, many churches have indemnification provisions in their policies. These are good tools. Unfortunately, under certain situations, these practices may not be enough.

When church officials are no longer in office, group liability insurance and indemnifications policies may fail to protect them. When church officials leave their post, the liability insurance may not be available. A change of officials can occur voluntarily or with some reluctance.

Whether voluntary or not, officials are not off the hook when they leave a church position. Former officials may still face civil liability for decisions they previously made. The persons who may bring a lawsuit may be disgruntled members, creditors and third-party vendors. The claims for personal civil liability can include accusations of conflicts, breach of fiduciary duties or exercising bad judgment.

It is important to understand this is not an issue about right or wrong. Any church official can be sued in a civil process, regardless of whether a wrongdoing actually took place. The accuser need only show a good faith belief that he/she is entitled to relief from the official. In any event, the official will face legal expenses for a defense against a possible meritless claim.

One possible remedy to this dilemma is to put liability protections directly in the hands of your church officials. As a first line of defense, churches should consider purchasing separate individual liability insurance policies for its officials from your

liability insurance provider. Written in the individual names, these insurance policies cannot be cancelled later by those who succeed the church officials. In these circumstances, the individual policies extend benefits beyond the group policy.

The church may pay the premiums for the individual policies just as it does for the group policy.

The cost for individual liability insurance policies can vary. The insurance premium depends on the coverage amount, the underwriting and the terms of the policies. In some instances, the individual insurance covers the gap left by the group policy. If the group policy is cancelled, the individual policy provides a measure of protection for each church official.

The second way churches may protect their officials is to offer indemnification for legal expenses. Many churches state in their bylaws and policies that they will reimburse officials for the cost of defending themselves in a lawsuit. Like liability insurance, indemnification policies can be revoked after an official leaves office.

Church officials are better protected if the promise to indemnify is put in a written contract. A written contract is binding and compels the church to make good on its commitment. If the church comes under new management, it can be held to its promise to indemnify former officials.

There is a compelling ethical reason for protecting church officials from personal liability. Most church officers are volunteers and may not know that their personal assets are at risk for serving in an official capacity. These measures may be a reasonable step to take to make sure well-intentioned persons are not harmed. ■



**“Any church official
can be sued in a civil
process”**



Oops!

Mistakes Happen. Avoid yours.

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Churches Should Manage Their Agents

Churches rely on a number of individuals to carry out their missions. Some of these persons serve in official clergy positions. Others may be employees and volunteers who perform routine operations. In all cases, churches should be clear to all who have explicit authority to represent their ministries.

Individuals who represent others are known as agents. Church agents may have specific authority to act on behalf of the church. These actions may include signing contracts, counseling individuals, speaking to the public and/or making purchases. Each action may subject the church to financial obligations and legal liabilities.

Agents are important to churches because people are needed to conduct ministry and administrative functions. Church agents represent the church to business partners, community members, the congregation and government officials. To many, the face of the church is often the agent through which contact is made.

Church management should be fully aware of who are church agents. Church agents can be visible, public figures such as the pastor, deacons and trustees. Depending on the authority given, church agents can also be others who serve on committees, auxiliaries and ministries.

Churches should be intentional about who has agency authority. The reason is an agent may have special powers to act as if the church has approved his/her actions. Depending on the circumstances, a church may not be able to renounce the conduct of its agents. This could become particularly troublesome if in fact an agent exceeds the church's instructions.

Agents are an essential part of a church's operation. The risks to having agents can be minimized through a set of practical measures. Start a conversation with your church management to make sure everyone is on the same page.

Whether the church recognizes individuals as such, the church has agents. The key for management is to put safeguards in place to protect the church from unintentional liabilities. Going forward, you can limit the risks to the church by taking a few proactive steps. ■

Tips for Managing Church Agents

Identify Church Agents

Church agents should be identified and their authority reaffirmed periodically. This includes making a list of who conducts church business with third parties. This list will give the church a roster of who has responsibility for certain church functions.

Position Descriptions for Agents

A common mistake made by church agents is acting in a way that exceeds their authority. This can happen when church officials misunderstand their duties and roles. The church should distribute to its agents position descriptions that clearly define the role and limits of officials' authority. This will inform agents as to their boundaries for making decisions.

Correct Mistakes Quickly

The church may need to quickly disavow any activity of an agent that exceeds the authority given by the church. Failure to correct misdeeds promptly could obligate the church to live with the action.

A Written Policy

Churches should have a written policy that spells out the assignment and scope of its agents. The policy should set the groundwork on how agents are managed. A policy document on church agents is an important way a church can demonstrate it exercises reasonable corporate governance over agents. ■

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 2014 All Rights Reserved.