

# Legal Counsel for Churches

Corporate Governance for Churches and Their Leaders



## Naming Rights for Church Property

Some churches offer naming rights for their properties. The rights may extend to assets such as church pews, stained-glass windows or even a building itself. Church leaders should consider the issues that can arise with naming rights.

Granting someone the right to name a church asset can have several purposes. Some donors may wish to honor a family member. Businesses could be interested in naming rights for marketing awareness. As for the church, naming rights could be a useful source of fundraising.

Naming agreements may not work out as the church or the donor intended. Disputes can arise years later over the intent of the donor. An organization that buys a right to have their name displayed could have a change of ownership. The best way for donors and the church to make sure a good deed does not go awry is to clearly spell out the conditions in a detailed contract.

A term that should be discussed in a naming transaction is the identification of the property. For instance, the naming agreement could apply to a particular pew in the sanctuary. The parties should consider what happens when that actual physical seat is replaced with a new bench. The donor might expect that the name transfers to the replacement pew. This event should be discussed up front.

The length of time the name will be displayed on the property should be stated in a naming contract. The name could be for a particular purpose. This might be

awkward if the basis for a name is outlived with changing circumstances.

Another important provision of a naming agreement is changing conditions. This is important when it comes to businesses. Companies merge, rebrand themselves, and offer new products. It is possible that a business could become unacceptable to the church in the future. It might be distasteful to the church to have an organization whose culture runs afoul of the church's beliefs have its name inscribed on church property. The agreement should contemplate this possibility and allow for a proper adjustment.

The issue of exclusivity should be decided when granting naming rights. A benefactor may expect to have its name as the sole identification on the property. At the time the donation was made, this may have been the intent. But the church could receive an opportunity for a higher contribution for the same space. The original contributor could have an option for a first right of refusal. The original contract may not be open to renegotiation. The parties should understand how such a contingency will be handled.

Given the nature of a church's work, a morality clause might be considered in a naming agreement. Take for instance if the person for whom property is named subsequently commits a scandalous crime. The church may find it problematic for public relations sake to have its property dedicated to a shameful legacy. In this case, the naming agreement should be clear on the proper way to address this scenario.



Your church may be associated with a sports star or television personality. When it comes to celebrity naming rights, the church should make sure all publicity terms are spelled out. People who make a living with their celebrity status are usually particular about the way a promotion is handled. The terms of the agreement may address matters such as advertisements, endorsements, trademarks, signage and merchandising.

Finally, a naming agreement should explicitly provide for who has rights to enforce the agreement. Some naming arrangement could outlive the original donor. It may happen that a donor becomes incapacitated after the agreement is struck. As years go by, some flexibility in the agreement might be necessary. When this happens, the church should know who has the right to act on behalf of the agreement if changes are sought.

These and other issues should be carefully explored in a naming contract. ■



# Harmless?

All Contracts Look Harmless at First.

**M** SMITH | LAW<sub>PLLC</sub>

CORPORATE GOVERNANCE | COMMERCIAL TRANSACTIONS | CONTRACT LAW

## Church Trustees Have Limited Immunity

Church trustees have important responsibilities. The North Carolina general statutes outline the broad powers of church trustees. Under certain circumstances, trustees may be sued as a result of their actions taken in this role. It is important for churches to understand the statutory limitations that protect trustees from liability.

The statutes state that trustees have the power to receive donations and purchase, take and hold property in trust for the church. The law states that trustees are accountable to the church for the use and management of such property. In this context, property can be personal items and/or real estate.

Generally, a church trustee is immune from individual civil liability for acts performed in the trustee role. This does not mean the trustee cannot be sued. It just means that a plaintiff can only sue a trustee up to the amount of insurance coverage that may exist. Individual civil liability beyond the insurance amount is normally ruled out.

The limited immunity rule for a church trustee is just that... limited. There are situations where a trustee can be liable for personal damages beyond insurance coverage. In these instances, the immunity rule may not protect the trustee from personal liability. Here are some instances mentioned in the statute where the immunity rule does not apply for church trustees.

**Compensation** – When a church trustee is compensated for his services beyond reimbursement for expenses, the limited immunity rule does not apply. In this case, a church trustee can be sued for personal liability beyond insurance coverage. To avoid this exception, churches should carefully monitor payments made to trustees to make sure the payments are not considered compensation. If payments arise to the level of compensation, there are tax implications to consider as well.

**Scope of Official Duty** – A church trustee must act properly to be shielded from personal liability. If the trustee acts outside the scope of his official duties, personal liability could apply. The church should have an updated position description and clear policies that govern the role of a trustee. Properly documented

procedures not only make for an efficient operation, it helps protect the trustees from facing personal liabilities.

**Good Faith** – A church trustee should act in good faith at all time. If it is determined that the trustee acted in a manner that is not in good faith, the trustee can be sued and held personally liable for actions taken in the office.

**Negligence** – If a church trustee commits gross negligence or willful or wanton misconduct that results in damages or injuries, the immunity from individual liability may not apply. Negligence generally means the trustee did not carry out his duty in a reasonable way. If a trustee, as with any church officer, acts badly, it will be difficult to escape personal responsibility.

**Improper Personal Benefit** – There is nothing inherently wrong with a trustee receiving a benefit in his role with the church. There could be taxable compensation implications though. The possible wrongdoing is when the personal benefits are improper. A personal benefit could be improper if the church was not informed, the benefit exceeded authority or a policy was violated in the process. Church trustees who receive an improper personal benefit void immunity for themselves.

**Motor Vehicle Operation** – If a trustee incurs liability from the operation of a motor vehicle, the immunity rule does not apply. This is an important exception. For this reason, the church should ensure that adequate liability insurance is in place for volunteers who operate vehicles for the church.

**Derivative Action** – If a trustee is the target of a lawsuit that is brought on behalf of a class of persons, the immunity protection may not apply. A derivative action is a legal claim that seeks remedies for a group of persons. In the case of a church, the group could be the church members.

Church leaders should seriously consider the legal exposure its trustees face as a result of their official duties. If insurance levels seem inadequate, have a conversation with your agent to reevaluate the policy. If policies and procedures are lacking, take steps to update the documents. Failure to make the necessary corrective steps could lead to unintended personal liability for trustees. ■

*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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