

Legal Counsel

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A Church Must Notify of Security Breach

NC Law Requires
Member Notices



It has become common to hear about security or data breaches at large companies. Some breaches arise from ransomware attacks where information is held hostage in lieu of a payment of money. In other cases, the data is leaked to the public risking identify theft of the customers. Every organization is at risk.

Church leaders should consider what risks the ministry faces when it comes to security breaches. To a hacker, a church may be no different than any other type of organization.

North Carolina law creates an affirmative duty on businesses to protect customers' information. The language in the statute defines a business as a corporation, association or other group. The business may or may not be organized to operate for a profit. The law includes churches.

State law applies to any personal information whether stored in computerized form or on paper. Personal information includes a person's first name or first initial and last name in combination with identifying information. The identifying information includes numbers referencing social security, driver's license, checking account, credit cards, and some passwords.

The law requires a church to provide notices to the affected persons of a security

breach. The notices are due following discovery or notification that the breach has occurred. The disclosures must be made without unreasonable delay.

A church may delay providing notices to its members if a law enforcement agency informs the church in writing that a notification may impede a criminal investigation or jeopardize national or homeland security.

The notifications to church members of a security breach should be clear and conspicuous. The notices should describe the incident in general terms, reveal what type of personal information is involved, and what the church is doing to protect the information further. In addition, the notices should include a telephone number members may use to call the church for information. Finally, the notice should warn members to check their credit reports and provide information for free credit reports from the major credit reporting agencies.

Notices to church members may be in written form, by telephone or an electronic message. An electronic notice is for members who have a valid email address and have agreed to receive communications electronically. Telephonic notices are valid if made directly to the affected person. Other forms of communications include a notice on

the web site page of the church and a press release to major statewide media.

If a church is compelled to provide notices of a security breach to its members, it must also notify the Consumer Protection Division of the Attorney General's Office. The notice to the Attorney General should include the nature of the breach, the number of consumers affected by the breach, steps taken by the church, and information regarding the notices provided to the members.

A violation of this North Carolina law may come with heavy penalties and damages for a church. Church leaders may mitigate the risks to the ministry by having a data security process in place. The process should include an updated policy by the governing board, procedures that are regularly audited and data security systems to ward off intruders.

Church leaders may find value in taking inventory of what information it holds on its members. The more personal the information, the more vigilant the church should be about data security protocols. Risks can be reduced by eliminating storage of information not needed for strategic purposes.

A security breach can be a traumatic event for a church. Financial damages and statutory penalties are possible. Trust and transparency are at risk. Churches should work to reduce the risk by preparing for the worst. ■

How to Prepare Effective Minutes



Keeping effective records of all official meetings is an important job for the governing board of a church. Minutes memorialize actions for historical purposes. Minutes help inform future boards of the rationale for past policy choices. A written record can help demonstrate the board's diligence to its fiduciary duties.

The minutes-keeping role is usually delegated to the elected Secretary. In some instances, a staff person is appointed assistant secretary to attend meetings and record the minutes. However, all directors share in the responsibility to have effective minutes. The board should review and approve the minutes.

There is no single correct way to take minutes. The content, length, and format should be the style most useful to the church. The minutes should be written clearly so all audiences will understand the dialog. Minutes can be a list of actions only or more narrative to simulate the conversations.

The board should decide beforehand who will serve as recording secretary. This person will double-check to see if a quorum is present to take official action. The agenda for the meeting should be established at the outset so the members may know the purpose of the meeting and what topics are planned for discussion.

The secretary can get a head start on the minutes by drafting an outline of the agenda in advance. This practice saves time by allowing the secretary to organize notes in the order anticipated by the agenda.

Some organizations allow directors to take extemporaneous notes of the meetings. This can help directors organize their thoughts during the meetings. Churches may

ask directors to leave behind or destroy these notes. The purpose here is so the minutes remain the only official documentation of the meeting.

Some churches record meetings and later transcribe the minutes to a writing. For church boards that make audio recordings of the meetings, the audio files should be erased after the minutes are transcribed. This will help ensure only one official record remains for historical purposes.

The utility of preserving one official set of minutes can be important during litigation. If the church is sued, the other party may request copies of all records surrounding an issue. Undeleted audio recordings and handwritten notes by directors may conflict with the approved minutes. The conflict could present legal obstacles for the church.

The minutes need not be a word-for-word transcript of the conversations. There should be enough information for a reader to reconstruct what was discussed, gather the salient points and understand what decisions were made.

The secretary should be careful to keep the minutes objective. Personal comments and thoughts should not be included in the minutes. If a legal matter is discussed, avoid details that may void the attorney-client privilege.

While memories are fresh, the secretary should prepare a draft set of minutes as soon as possible after the meeting ends. The draft may be shared with a few others to help check for typographic errors or missing information. The minutes should be distributed to the directors before the next meeting with sufficient time to be read.

After the final version of the minutes are approved by the board, the minutes should

be signed by the secretary and stored. The storage for minutes could be a physical document or an electronic file.

Effective minutes is an essential governance function for churches. Careful attention to the minutes will help ensure each meeting is preserved the right way. More importantly, effective minutes can lower risks the church faces. ■

The Following Items May Be Included In The Minutes:

- The date, location and starting time of the meeting
- The type of meeting (regularly scheduled or called meeting)
- In person, video conference or telephonic
- List of the directors, staff, and guests in attendance
- List of absent directors
- Determination of a quorum
- Name of person serving as secretary
- Approval of the previous minutes
- Outline of the matters for discussion
- Actions taken with who made motions and seconds
- Names of those who voted "no" to an action
- The final decision of the board or assembly
- Reference to supporting documents or reports presented during the meeting
- Notation whether the directors went into executive session
- A tracking of any persons that come and go from the meeting



The Moment

You realized you did not know about all the risks you face.

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Church Officers Can Lose Liability Protections

Individuals who serve in an official capacity for an organization risk personal liability for their actions.

Civil liability includes monetary damages in a lawsuit where one party alleges the actions of the officer harmed them. Corporate officers often purchase liability insurance and enact policies that provide for indemnification from civil liability.

As a matter of law, church directors and officers are ordinarily immune individually from civil liability for official church actions. This is a public policy position taken in North Carolina and codified in the State's statutes.

However, the State's immunity statute for church officers is not absolute. This protection comes with stipulations. Here are the conditions where a church director or officer may lose the immunity shield.

Compensation Standard

North Carolina law allows churches to pay their directors and officers. Church officials who are compensated for their services lose the automatic immunity protection. Compensation is defined as payments that go beyond the reimbursement for expenses. Compensation puts church officials in the position as for-profit officers. All other

defenses, such as insurance, may be available in a lawsuit.

Scope of Duties Standard

All church directors and officers have limited authority. So long as an officer is performing as the position allows, the immunity defense may be preserved. Church officials who do not act within the scope of official duties may lose the automatic immunity defense. If a church officer exceeds his/her authority, the protections may not apply.

Bad Faith Standard

Church officials are expected to perform their duties with good faith. Good faith generally requires that church officers act honestly and faithfully execute their responsibilities. Church directors who take advantage of the church by acting with selfish motives do so with bad faith. Bad faith violates an officer's fiduciary duties. Bad faith is a reason the State's immunity protection may be withdrawn.

Negligence Standard

A church director or officer who commits gross negligence or willful or wanton misconduct that results in the damage or

injury to someone risks losing the immunity guard. Gross negligence or wanton misconduct is such reckless disregard for the safety of others that it appears to be a conscious violation. Willful conduct is intentional disregard for others.

Motor Vehicle Standard

A church director or officer who incurs liability from the operation of a motor vehicle is prone to lose the immunity safe harbor. The public policy on operating a motor vehicle is so serious that no one is given an automatic pass on this responsibility.

Unlawful Loan Standard

A church director or officer who votes for the church to make a loan or issue a guarantee is personally liable to the church if the officer violated his/her duty of good faith and care. If the loan is impermissible, the borrower may not use the immunity to avoid liability.

It is important to note here that the State immunity protection is personal to directors and officers. This immunity does not immunize the church against liability for the acts or omissions of the directors or officers. Churches should undergo a thorough discussion about minimizing its risks. ■

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 2021. All Rights Reserved. www.legalcounselforchurches.com

