

# Legal Counsel

for Churches

October | 2022

Corporate Governance for Churches & Their Leaders

M SMITH | LAW PLLC



## What Makes an Effective Board Chair?



Good corporate governance begins at the top. For most organizations, the top is defined as the Board of Directors. Atop the board is the presiding officer.

The presiding officer for the board is often called the chairman, chairperson, or chair. Some churches use different titles such as president, pastor, elder, or deacon. The governing board may also go by different names as well.

Consistent with effective board leadership is the presence of a competent chair. The chair has unique responsibilities. Mature boards prescribe the chair's role in a written position description. This document explains the qualification to be the chair of the governing body.

The credentials to be the chair of a board often includes a specific set of skills. The chair must be a person who commands respect. This person has high integrity and a reputation for veracity. A qualified chair makes the board better in all respects.

Over time, we have observed the workmanship of many board chairs. In the instances where the chair was highly effective, several characteristics are commonly found. When the lead director struggled, important traits were missing.

As the legal counsel for churches, we help our clients maintain good governance.

We advise chairs on their fiduciary duties. We help boards understand how to create good policy, mitigate risks, and establish effective strategic directions.

An effective board chair is dedicated to the church's cause. This lead official has a keen understanding of the history and culture of the church. The chair's personal values align with the church's core tenets.

A successful chair is thoughtful and possesses a sense of situational awareness. The board's leader appreciates the skills each director brings to the group and works to maximize each contribution. The chair accepts the importance of inclusive leadership.

A board chair that makes the most of his/her position is a capable spokesperson for the ministry. As a church representative, the chair identifies the key stakeholders. This leader effectually leverages relationships to position the church in the most positive light.

An accomplished chair can debate issues that arise with a spirit of cooperation. The chair must be able to preside over contentious issues and seek consensus. In the end, the board leader facilitates an atmosphere that promotes a respectful exchange among all directors.

A skillful chair has governance acumen. As the presider over meetings, the chair

navigates the rules of order and follows policies. The chair help ensures records and reports are adequately provided.

A respected chair is found to be trustworthy. There are instances when the board is entrusted with confidential and sensitive information. The chair sets the example for honest stewardship.

An effective chair accepts the final decision of the board. The chair understands that the majority rules when an issue is given to the assembly to decide.

The role of the chair may involve coaching to some extent. The lead director accepts the responsibility of identifying areas where improvements can be made among the board members.

The chair is able to deal with the occasional conflicts that arise in the board room. It is to be expected that disagreements will surface among directors. The chair serves to mediate differences and help the board arrive at acceptable conclusions.

Finally, we have observed an effective chair maintains transparency with the board. Openness empowers all directors to work at their best. The chair models the right message when hidden agendas are avoided.

An effective board requires an effective chair. The church benefits when the leader is capable and qualified. ■



# Avoiding Insider Church Lawsuits

Recently, we have received a spate of calls from potential clients dealing with internal quarrels. In most of these instances, church members are fighting one another over control of the church's assets, ministries, and practices. The issues include spiritual and secular disagreements. These cases are often emotional, complicated, and expensive for the clients.

When church disputes wind up in court, lines are drawn, lawyers file competing motions, and the public peers into family business. This is a stressful time for everyone.

The best solution to a church dispute is to avoid conditions where a fight could arise in the first place. This avoidance is accomplished with effective corporate governance. To press this point, here are some of the most common governance mishaps we see. These problems can lead to internal squabbles at churches.

1. *Dueling Bylaws*: This is when multiple versions of the church bylaws are circulated as authentic. This may come about when changes are made by a few officials without the full participation of the church body.

2. *Improper Official Actions*: Directors create chaos when they violate their own rules of order. The efficacy of a meeting is questioned when there was a lack of sufficient notice or the establishment of a quorum. The resulting decisions are often controversial and confusing to stakeholders.

3. *Conflicts of Interest*: Church officials who fail to put the ministry first violate their fiduciary duty. Nothing should come before the interests of the church. Personal

gains should be put on the back burner. Conflicts of interest often generate distrust and wariness.

4. *Right to Inspection*: Suspicions arise when church members are denied their right to receive church records and financial reports. Unless the bylaws state otherwise, NC law gives members a right to know certain information about their church.

5. *Conversion*: This happens when church officials take church property for personal use with no intention of returning the assets. This infraction can lead to civil and/or criminal claims against the church officers.

There are often no clear winners or losers in an internal church squabble that escalates into a lawsuit. The situation quickly gets personal. Friendships are broken. Some members leave the church. Those who remain report a sense of loss.

We advise our clients to get their governance houses in order before a controversy appears. When no debate is at hand, we find church officials are more cooperative and trusting of each other. Here's a few tips on improving church corporate governance.

1. *Keep Up-To-Date Bylaws*: Over time, bylaws can lose their relevance as church procedures evolve. North Carolina and Federal changes in the law may render some bylaws terms outdated. Churches should review their bylaws periodically. An attorney review will help ensure the most current laws are incorporated in the bylaws.

2. *Hold Regular Church Meetings*: An empowered and informed membership

improves overall governance. Open participation garners trust and compliance. Members feel buy-in when their voices are heard. Members respect their leaders when there is transparency in all business matters.

3. *Ensure Financial Integrity*: Churches that employ sound fiscal systems are more resilient. These practices include dual controls over the finances, internal reviews, checks/balances, and regular reporting to the membership.

4. *Provide Professional Education*: An important key to good governance is trained and equipped church officers. All officials, including board members, should undergo annual education sessions to improve their technical and fiduciary skills.

5. *Hold Strategic Planning Sessions*: High performing churches conduct regular planning exercises. Doing so reduces the risk of internal misalignments that can lead to litigation.

6. *Review Contracts Carefully*: Before signing on the dotted lines, leaders should seek a legal review. A bad deal could invite a lack of confidence in the leadership.

7. *Independent Audit*: One way to allay fears of mismanagement is to be transparent. This can be done by having an independent audit each year and sharing the results with all church officials.

Ineffective management and leadership can lead to internal church disputes. Church leaders can evade court involvement altogether with sound practices. Carefully review the corporate governance health of your church. Look for ways to keep your ministry out of court. ■





# The Moment

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

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

## New Leadership Orientation

All organizations undergo leadership turnover. It is important to ensure that new church directors and leaders are fully equipped to be successful in their roles.

The process of training new leaders is often called orientation. Orientation is a program where new directors, officers and management figures undergo an introduction to their roles in the organization. These leaders must become familiar with the church and their official roles. Here, we will explore some guidelines to help your church onboarding process go smoothly.

The training for directors is somewhat similar to new employees. Leaders should have position descriptions that explains their responsibilities in the ministry. The position description lists the qualifications for the assignment, areas that require focus, and roles the leader is expected to fulfill.

After the new director gets a grasp on his/her role, the focus should turn to corporate governance. The governance for a church is an important responsibility of a leader. Furthermore, each organization's governance dictates a code of conduct. The leader must be aware of the terms in the church's constitution, charter, policies, and bylaws.

After a discussion about corporate governance, this may lead the leader into an exploration of the internal policies the board has previously approved. These policies may include related party transactions, whistleblower protections, code of ethics, and indemnification agreements.

Church officers must abide by legal responsibilities as well. New directors should understand their fiduciary duties to be loyal to the church, avoid conflicts of interest, and act reasonably. It could be helpful to invite the church's attorney to help inform the directors on these matters.

Church leaders should be expected to be financially literate on the fiscal affairs of the ministry. This includes having the ability to read the financial statements, understand trends and grasp how the operations affect the church's economic interests.

An organization's leadership should not just be focused on the present. Leaders are expected to think about the future and help develop strategic plans to meet the church's ambitions. New directors should be given a copy of the strategic plan and business forecasts. This will help a church leader know the vision and direction of the ministry.

New directors may benefit from having a mentor during the first year to help guide the director's development. The mentor can be available to answer questions and offer one-on-one insight. This support can help a new director advance through the learning curve faster.

### MATERIALS FOR ORIENTATION TRAINING PROGRAM

Here are some resources that may be provided to new directors during an orientation training.

- Audited Financial Statements
- Copy of Current Budget
- Recent Bylaws
- IRS 990 Filings
- Roster of all Officers and Directors
- List of all Church Management Officials
- Last Two Board Self-Evaluations
- Summary of Significant Litigations
- Disclosure of Government Investigations
- Press Releases for Last Two Years
- Minutes from Recent Board Meetings
- Copy of Directors' Liability Insurance
- Copy of Fidelity Bond Policy
- Most recent Strategic Business Plan
- Conflict of Interest Rules
- Calendar of Meetings and Events ■

*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.

Communication from M Smith Law, PLLC does not automatically create an attorney-client relationship nor necessarily constitute an offer or acceptance of representation. Representation by M Smith Law, PLLC is established by a mutual affirmative decision to enter into an attorney-client relationship. While every effort is made to protect the privacy of all conversations, until an attorney-client relationship is established, any information disclosed by you may not be deemed confidential.

Post Office Box 27461, Raleigh, North Carolina 27611 919.362.0744 (voice) 888-321.9047 (fax) maurice.smith@msmithlaw.us © M Smith Law, PLLC 2022 All Rights Reserved. [www.legalcounselforchurches.com](http://www.legalcounselforchurches.com)

