

WELCOME TO THE ABC'S OF CHURCH MANAGEMENT

Thank you for your request to be a part of The ABC's of Church Management. This is a living, growing project. We are excited to be releasing the second edition of this work. We have changed formatting to help you find specific subjects easier. We have also added several new blocks. If you have suggestions for additional subjects, please send your ideas to jnance@indianaministries.org.

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DISCLAIMER

This manual is prepared for pastors, administrators, and laypersons.

This manual has been developed to provide compliance guidelines for local congregations concerning state and federal regulations. It is shared as a basic reference manual with the understanding that the publisher is not giving legal, financial, or other professional service/advice. The publisher acknowledges that the laws and regulations of each state may vary. If professional assistance is required, the services of a competent professional should be secured.

HUMAN CONNECTION

This manual comes to you with a human connection. If you should have questions, please feel free to contact any of our contributors. If you would like to arrange a seminar (at a minimal cost), please contact Julie Nance. Thanks to each of those listed who contributed articles and time.

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Introduction

Church and Politics

The colonists came to America to escape the persecution and tyranny of the Church of England. In America, they were able to establish their own houses of worship and communities free from persecution. However, by the time the colonists began to claim their independence from England, those leading the people had become students of John Locke and Rousseau who espouse humanist theology.

This theology declared there to be a supreme being, however, this may or may not be God. Therefore, a debate began to determine just where did the church fit into American life and government. Having endured government ruled by the church, the early creators of American government endeavored to make sure such tyranny could not be established again.

Therefore, the First Amendment was added to the Constitution to serve a two-fold purpose: (1) to insure people the right to worship as they desire; (2) to prohibit the government from establishing a Church State. The First Amendment states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise therefore;...

Shortly after the first amendment to the Constitution was penned, Thomas Jefferson wrote the following to the Danbury Baptist Association:

Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislative should “make no law respecting an establishment of religion, or prohibiting the free exercise thereof,” thus building a wall of separation between church and state.¹

Jefferson was the first to refer to the Establishment cause as a separation of church and state. George Washington would support this stance in the treaty signed with Tripoli in 1796:

¹ C. Stanley Lowell, The Great Church-State Fraud (Washington-New York: Robert B. Luce, Inc., 1973): p.191.

As the Government of the United States of America is not in any sense founded on the Christian Religion; as it has in itself no character of enmity against the laws, religion, or tranquility of Musselmen; and as the said States never have entered into any war or act of hostility against any Mehomitan nations, it is declared by the parties, that no pretext arising from religious opinions shall ever produce an interruption of the harmony existing between the two countries.²

In the years that followed the writing of the Constitution and the Bill of Rights, definitions had to be established for what constitutes religion. It was not until 1890 that the United States Supreme Court established as judicial definition:

The First Amendment of the Constitution...was intended to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relations to his Maker, and the duties they impose, as may be approved by his conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the rights of others, and to prohibit legislation for the support of any religious tenets, or the modes of worship of any sect.³

This definition and interpretation of religion and the First Amendment were expanded by the United States Supreme Court in 1947:

Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups, or vice versa.⁴

² Gary E. McCuen, Religion and Politics: Issues in Religious Liberty (Hudson, WI: Gary E. McCuen

Publications, Inc., 1989): p. 69.

³ Victoria Sherrow, Separation of Church & State (New York: Impact Books, 1992): pp. 10-11.

⁴ *ibid.*; p. 11.

The definitions and interpretations of the First Amendment have not ended the separation of church and state debate. The fear of the founders of the United States was that there would not be a definitive line drawn between the two. Legislation that has occurred during the last thirty years, indicate an ever elimination of the line between church and state.

In 1981, a conference was held in Washington, D.C. to address the growing intrusion of government into the church. This conference had representatives from the National Council of Churches, the U.S. Catholic Conference, the Synagogue Council of America, the National Association of Evangelicals, the Lutheran Council in the U.S.A., the Southern Baptist Convention, the Mormons, Salvation Army, Seventh-day Adventists, Christian Scientists, Unitarians, and several other church bodies. At this conference, the following list of intrusions was introduced:

1. Regulation of religious fund-raising.
2. Lobbying disclosure requirements of religious bodies thought to be trying to influence legislation.
3. Regulation of curriculum content and teachers' qualifications in private religious schools.
4. Requirements that church-related colleges institute coeducational sports, hygiene instruction, and dormitory and off-campus residence facilities that they may consider morally objectionable.
5. Threats to such colleges and even theological seminaries to cut off loans or other aid to students if the schools do not report admissions and employment dates by race, sex, and religion, even though the schools receive no direct government aid.
6. Sampling surveys of churches by the Bureau of the Census, requiring voluminous reports, though the Bureau admitted it had no authority to do so.
7. Grand jury interrogation of church workers about internal affairs of churches.
8. Use by intelligence agencies of clergy or missionaries as informants.
9. Subpoenas of ecclesiastical records by parties in civil and criminal suits.
10. Placing a church in receivership because of complaints by dissident members of alleged financial mismanagement.
11. Withdrawal of tax exemption from various religious groups for alleged "violation of public policy."
12. Definition of what is "religion" or "religious" activity by courts or administrative agencies, contrary to the long-standing definition by churches.
13. Redefinition by courts of ecclesiastical polities, so that hierarchical churches are "congregationalized," while "connectional" churches are deemed hierarchical, contrary to their own self-definition.

14. Denying to church agencies or institutions are exemptions afforded to “churches,” thus in effect dismembering the churches.⁵

In more recent years, churches have lost their tax-exempt status for involvement in political campaigns or their buildings for failure to pay taxes. As the line defining the separation of church and state continues to disappear, the church must define its stance with the government.

Paul’s writings call the church to obey the government. However, this is often difficult for Christians to understand, especially when the leaders of the government display moral behavior contrary to biblical principles.

Paul and Peter write regarding the government in the following passages:

Romans 13:1-7 – Everyone must submit himself to the governing authorities, for there is no authority except that which God has established. The authorities that exist have been established by God. Consequently, he who rebels against the authority is rebelling against what God has instituted, and those who do so will bring judgment on themselves. For rulers hold no terror for those who do right, but for those who do wrong. Do you want to be free from fear of the one in authority? Then do what is right and he will commend you. For he is God’s servant to do you good. But, if you do wrong, be afraid, for he does not bear the sword for nothing. He is God’s servant, an agent of wrath to bring punishment on the wrongdoer. Therefore, it is necessary to submit to the authorities, not only because of possible punishment but also because of conscience. This is also why you pay taxes, for the authorities are God’s servants, who give their full time to governing. Give every what you owe him: if you owe taxes, pay taxes; if revenue, then revenue; if respect, then respect; if honor, then honor. (NIV)

Titus 3:1-2 – Remind the people to be subject to rulers and authorities, to be obedient, to be ready to do whatever is good, to slander no one, to be peaceable and considerate, and to show true humility toward all men. (NIV)

1 Peter 2:13-17 – Submit yourselves for the Lord’s sake to every authority instituted among men: whether to the king, as the supreme authority, or to governors, who are sent by him to punish those who do wrong and to commend those who do right. For it is God’s will that by doing good you should silence the ignorant talk of foolish men. Live as free men, but do not use your freedom as a cover-up for evil; live as servants of God. Show

⁵ McCuen, pp.58-60.

proper respect to everyone: Love the brotherhood of believers, fear God, honor the king. (NIV)

Both Paul and Peter declare that the church and Christians are to submit to the government. But what is meant by submit? Tertullian may help to answer that question. He writes:

We offer prayer for the safety of our princes to the eternal, the true, the living God, whose favour, beyond all other things, they must themselves desire....Without ceasing, for all our emperors we offer prayer. We pray for life prolonged; for security to the empire; for protection for the imperial house; for brave armies, a faithful senate, a virtuous people, the world at rest – whatever, as man or Caesar, an emperor would wish.⁶

It is clear that Christians are called upon to pray for the government and its leaders. They are also to demonstrate respect for each. Christians may not agree with the moral behavior or decisions of the government or its leaders, however, Scripture does not free them from the obligation to pray for the leaders.

Christians must keep in mind that God has placed the government in authority to maintain order and to punish those that do wrong. Without such leadership the world would be in a constant state of chaos. While it is true, many leaders have abused their power, others have given their lives to directing the country the best they know how.

Church's Role in Politics

Politics is always a hot potato no matter what the setting might be, this holds true for the church and its ministries and staff persons. The local congregation must be very careful about taking an active role in local and national politics. There are areas in regards to politics that the church is **prohibited to participate**. These include:

- 1. Contributions to political campaign funds.**
- 2. Public statements of position (verbal and written) in favor of or in opposition to candidates for office—in official church publications and at official church sponsored functions.**
- 3. Provision of a forum for expression of candidates' views on a partisan basis.**

⁶ William Barclay, The Letter to the Romans (Philadelphia, PA: The Westminster Press, 1975): p. 172.

4. **A church distributes a voters guide containing questions demonstrating a bias on certain issues.**
5. **The endorsement of candidates.**
6. **Campaign activities by employees within the context of their employment.**
7. **A church fails to “disavow” the campaign activities of persons under “apparent authorization” from the church, by repudiating those acts “in a timely manner equal to the original actions” and taking steps “to ensure that such unauthorized actions do not recur.”**
8. **Engaging in fund raising on behalf of a candidate.**
9. **Newspaper ads urging voters for or against a candidate.**

If a church participates in any of these prohibited activities, they jeopardize their federal 501 (c)(3) tax-exempt status. There could also be additional penalties in the form of a tax percentage assessed on monies spent by the congregation and/or its officers and leaders for participating in a political campaign.

The church is not completely forbidden to participate in politics. There are areas in which they are **permitted to participate**. These areas include:

1. **Public comments made by ministers and other church employees in connection with political campaigns, not made at church facilities or in church publications and accompanied by statements that the comments are strictly personal and are not intended to represent the church.**
2. **A church invites all candidates for a political office to address the congregation, and informs the congregation before each candidate’s speech that the views expressed are those of the candidate and not the church and that the church does not endorse any candidate.**
3. **A church distributes a compilation of voting records of all members of Congress on major legislative issues involving a wide range of subjects; the publication contains no editorial opinion and its contents and structure do not imply approval or disapproval of any members or their voting records. Churches should exercise extreme caution before deciding**

whether or not to distribute campaign materials prepared by other organizations.

4. Neutral voter registration drives.

Church leaders should be aware that a precedent has already been set for a church losing its tax-exempt status.

Branch Ministries, Inc. functioning as the Church at Pierce Creek, placed a full page ad in the Washington Times and USA Today on October 30, 1992. This ad called into question the moral character of Bill Clinton. The ad proclaimed “Christian Beware. Do not put the economy ahead of the Ten Commandments.”⁷

Investigation of the church’s status began on November 20, 1992. The IRS revoked the tax-exempt status of the church on January 19, 1995. The courts upheld the IRS’s decision.

Church leaders need to keep in mind that **neutrality** is the safest avenue to protect the church during any state, local, or national election.

⁷ Richard R. Hammar, 2005 Church & Clergy Tax Guide (Matthews, NC: Christian Ministry Resources, 2005): p. 489.

RESOURCES

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Block A1

Leadership Styles

LEADERSHIP CHARACTERISTICS

A responsibility of parishioners is to choose those who will lead them. Many leaders are chosen because of their popularity. There should be much more behind a leader than just popularity. Scripture is specific on leadership characteristics. There are additional characteristics that should be considered. Below are listed Scriptural and other characteristics that potential leaders should possess.

The New Testament is very detailed in its descriptions of the characteristics which leaders of the church should possess. Each passage listed below is from the New International Version. The Biblical characteristics of a leader include:

Titus 1:6-9 – *An elder must be blameless, the husband of but one wife, a man whose children believe and are not open to the charge of being wild and disobedient. Since an overseer is entrusted with God's work, he must be blameless – not overbearing, not quick-tempered, not given to drunkenness, not violent, not pursuing dishonest gain. Rather he must be hospitable; one who loves what is good, who is self-controlled, upright, holy and disciplined. He must hold firmly to the trustworthy message as it has been taught, so that he can encourage others by sound doctrine and refute those who oppose it.*

1 Timothy 3:1-7 – *Here is a trustworthy saying: If anyone sets his heart on being an overseer, he desires a noble task. Now the overseer must be above reproach, the husband of but one wife, temperate, self-controlled, respectable, hospitable, able to teach, not given to drunkenness, not violent but gentle, not quarrelsome, not a lover of money. He must manage his own family well and see that his children obey him with proper respect. (If anyone does not know how to manage his own family, how can he take care of God's church?) He must not be a recent convert, or he may become conceited and fall under the same judgment as the devil. He must also have a good reputation with outsiders, so that he will not fall into disgrace and into the devil's trap.*

It may be difficult in today's society to find a person of one spouse. However, Scripture sets the guideline for the characteristics of a leader

and these characteristics should be carefully considered when choosing church leaders.

George Barna suggests three additional characteristics that should be considered when choosing church leadership:

1. A Christian leader is called by God. He is called to servanthood, but a unique brand of servanthood. This is one who serves by leading.
2. A Christian leader is a person of Christlike character. Because the central function of a leader is to enable people to know, love and serve God with their entire hearts, minds, souls, and strength, the leader must himself possess the kind of personal attributes – characteristics of the heart, manifested through speech and behavior – that reflect the nature of our God.
3. A Christian leader possesses functional competencies that allow him to perform tasks and guide people toward accomplishing the ends of God's servants. These are the abilities that receive prolific attention: inspiring people, directing their energy and resources, casting vision, building teams, celebrating victories, delegating authority, making decisions, developing strategy, accepting responsibility for outcomes and so on.⁸

Gene Getz has designed thirteen leadership principles that potential Christian leaders should ascribe to:

Leadership principle 1: A leader should be living an exemplary life that is obvious to both Christians and non-Christians.

Leadership principle 2: A leader should be morally pure, maintaining God's standard of righteousness.

Leadership principle 3: A leader should walk by faith, demonstrate hope and manifest true biblical love in all relationships.

Leadership principle 4: A leader should be wise, discerning and experienced; the kind of Christian who reflects true humility and is disciplined by God's grace to live a godly life and to be a person of prayer.

Leadership principle 5: A leader should live a well-ordered life that makes the gospel attractive to unbelievers.

Leadership principle 6: A leader should be unselfish and generous, willing to open his home for ministry and to share his earthly blessings with both Christians and non-Christians.

Leadership principle 7: A leader should be able to communicate in a nonargumentative, nondefensive and nonthreatening way –

⁸ George Barna, Leaders on Leadership: Wisdom, Advice and Encouragement on the Art of Leading God's People (Ventura, CA: Regal Books, 1997): p. 24.

demonstrating gentleness, patience and teachability without compromising the message of the Word of God.

Leadership principle 8: A leader should not be in bondage to any sinful cravings of the flesh; furthermore, that person should carefully consider the way his or her freedoms in Christ might lead others to sin.

Leadership principle 9: A leader should be able to control angry feelings, never expressing these feelings in hurtful ways nor allowing them to linger indefinitely.

Leadership principle 10: A leader should be able to demonstrate strong conviction and directness in taking a stand for righteousness, but to also balance these attributes and actions with a loving spirit.

Leadership principle 11: A leader should relate to others by using a style of communication that does not make them feel controlled, manipulated and defensive.

Leadership principle 12: A leader should be a generous Christian, giving regularly, systematically, proportionally and joyfully to the Lord's work.

Leadership principle 13: A leader who is also a parent should have a good relationship with his or her children, giving proper direction to the family unit.⁹

Rarely will an individual be found that has mastered each principle but they should be individuals striving to master these principles.

LEADERSHIP STYLES

As the leadership styles are reviewed, it needs to be understood that pastors can come from each leadership style. Once a leader is chosen, he or she will operate under his or her own style. There are as many leadership styles as there are leaders. No one leader fits one specific style. Usually leaders will operate in a small variety of styles depending on the situation.

For the purpose of this paper, two sets of styles will be discussed. The first set to be explored is based on the four-temperament model of personality types. Traditionally these four types are choleric, sanguine, melancholic, and phlegmatic. These personality types lend themselves to the following leadership styles:

1. **Autocratic:** These leaders, like the apostle Paul, are self-starters who love a challenge and expect immediate results. They are quick decision-makers who take charge and are good

⁹ *ibid.*: pp. 84-102.

at managing trouble and solving problems. They exhibit a dominant style that is highly task oriented. They make good primary leaders (senior pastors, superintendents, etc.) because they get the job done. However, due to their high task orientation, autocratic leaders risk offending people in the process. Therefore, they benefit by partnering with those who have good people skills. While people with this style make good leaders, at times they may have trouble being good followers. They can be strong-willed and may respect only those who are strong with them.

2. **Democratic:** Peter exhibited this style. Democratic leaders are enthusiastic people who enjoy being around others and motivating them. They make favorable impressions and are usually articulate, preferring to minister in teams, while they prefer to make the final decisions. In combination with an autocratic leader, democratic leaders make some of the best pastors. As primary leaders, they are very people oriented and are good change agents who stimulate and motivate followers to action. They are better leaders than followers. While they have the abilities to follow, they prefer and function best leading various ministries in Christian organizations. They function best when they receive significant amounts of recognition and approval.
3. **Participatory:** These leaders, such as Abraham, are patient, good at listening, and able to calm excited people. They are also loyal, focused, and cooperative. This facilitating leader works for peace and smooth operation within an organization. Participatory leaders serve best on a ministry team in which someone else serves as the primary leader. As primary leaders themselves, participatory leaders prefer stability, resist change, and seek to maintain past traditions. Because they are loyal, patient, and supportive of others, they make outstanding followers and support staff.
4. **Bureaucratic:** Bureaucratic leaders, such as Moses, are very analytical, paying close attention to standards and focusing on details. They are critical thinkers who check for accuracy and comply with authority. They serve best on ministry teams in which someone else is the primary leader. They make good followers because they are logical, thorough, and analytical, preferring that ministry be done well or not at all. Bureaucratic leaders work best with those who are interested in quality. They provide a supportive and predictable environment.¹⁰

¹⁰ James D. Berkley, Leadership Handbook of Management and Administration: Practical insight from a cross section of ministry leaders (Grand Rapids, MI: Baker Books, 1994): pp. 178-179.

Each style has its strengths and weaknesses. Leaders should determine which leadership style is natural to them since the leadership style impacts the leader's servanthood. Leaders should follow the guidelines set forth in Philippians 2:3-8 in dealing with their congregations. The New International Version states the passage this way:

Do nothing out of selfish ambition or vain conceit, but in humility consider others better than yourselves. Each of you should look not only to your own interests, but also to the interests of others. Your attitude should be the same as that of Christ Jesus: who being in very nature God, did not consider equality with God something to be grasped, but made himself nothing, taking the very nature of a servant, being made in human likeness. And being found in appearance as a man, he humbled himself and became obedient to death – even death on a cross!

The second set of leadership styles explores the task-oriented, total involvement, person oriented, passive involvement, and chameleon leadership styles.

Task Oriented Leader

Their intent is to provide a high degree of structure and direction for the team to accomplish its tasks and to ensure effective programs and/or efficient use of stewardship resources.¹¹

Leaders who operate in this style can appear to be unfeeling and uncaring towards people. However, this is not the case, they are just driven by getting the task at hand completed. They will also tend to push hard when they feel the team involved is not carrying their end to get the task completed.

Leaders with this style can tend to push too far and become controllers. At this point, the leader can abuse those around them for their own personal gain. Controllers operate under these psychological forces:

1. A strong need to control;
2. A need to be revered;
3. A need to overwork (thus producing guilt and pity); and
4. A basic concept that the group can never do the job well enough.¹²

¹¹ Roger Heuser, Leadership & Team Building: Transforming Congregational Ministry (Matthews, NC: Christian Ministry Resources, 1999): p. 39.

¹² *ibid.*: p. 40.

All leadership styles have a positive and a negative attitude to them. In the case of the task oriented leadership style, the positive attitude is:

*These people are unable to carry out a task without clear supervision. My leadership role is to lay out clear tasks, direction and a structure to help them move toward effectiveness. If I do this they will become more capable of assuming new responsibilities in the future.*¹³

The negative attitude is:

*These volunteers are not equipped to carry out significant ministry tasks. I cannot trust them to do anything right unless I lay it out for them and check up on them to be sure they are doing it right. Some don't have a clue to what is right, so I have to somehow get them on track with my program.*¹⁴

Total Involvement Leader

*Their intent is to get everyone involved – the leader and all of the team members working together to accomplish a task while, at the same time, providing the necessary socio-emotional support among the group members....When everyone is involved in the task at hand and when the team maintains close working relationships, there will be greater ministry effectiveness as the result.*¹⁵

Leaders with this style are able to instill in those around them ownership in the ministry. Leaders with this style must be careful not to become glorified activities directors. One of the pitfalls of this leadership style is that the leader stresses involvement on all decisions by the entire group, which can bog down the group and cause it to become ineffective.

This style has its positive and negative attitudes. The positive attitude is:

*These people are doing well. I see new growth occurring. They don't need me to bail them out of problems. But they do need me to be there – and to be fully involved, as one of them. My role is to inspire them by my participation and to model good relationships and planning/work behavior.*¹⁶

The negative attitude is:

¹³ *ibid.*: p. 41.

¹⁴ *ibid.*: p. 41.

¹⁵ *ibid.*: p. 42.

¹⁶ *ibid.*: p. 43.

It is important that we are close in our relationships. Even though people don't want to take the time, I have insisted that we spend an extra day at our annual retreat to play games together so that we have close relationships. We must also schedule more than enough time to have in-depth discussions about all the issues we face as a team. We want everyone at all meetings.¹⁷

Person Oriented Leader

Their intent is to emphasize the interpersonal, working relationships on the team more than its task.¹⁸

This type of leader emphasizes emotional support for those around them. Usually this type of leader has confidence that people have all the ability and resources to accomplish the ministry.

The pitfall of this style is that the leader becomes a people pleaser. They spend so much time trying to rescue people and trying to fulfill people's wishes, they become ineffective.

A compliant (people pleaser) stifles relationships and cripples the group's effectiveness. The belief system of a compliant leader embraces a theology of uniformity, not unity; speaking what others want to hear and not speaking what they need to hear. The compliant leader wants desperately to be accepted, appreciated, loved, needed, taken care of and approved by others.¹⁹

The positive attitude for this style is:

I care about people on this team. Being in good relationships is valuable to me. Our team is competent, and I honestly feel members together can do their tasks well. However, I will stay close by to encourage them if they need my support. Basically, if I help them create a safe and accepting team environment, they will do the job on their own – and become more capable to take on larger assignments.²⁰

The negative attitude for this style is:

I care about what other people think. Some members of the team are powerful and influential. If I'm not responsive to them, they will not like me. Other members are so brittle and immature that, if I

¹⁷ *ibid.*: p. 44.

¹⁸ *ibid.*: p. 44.

¹⁹ *ibid.*: p. 45.

²⁰ *ibid.*: p. 45.

were to correct them or instruct them to do better, they would break like crystal. Pleasers build up resentment inside themselves until they become bitter and cynical, suffering from pent-up hostilities and disappointments.²¹

Passive Involvement Leader

Their intent is to delegate leadership responsibilities to the team, and then intervene only when necessary.²²

The passive involvement leader believes his or her people are well-equipped and self-motivated and only need occasional directions. This type of leadership can instill confidence and trust in the people, however, it does have a dark side.

A leader with this leadership style can become a slave leader. The slave leader eschews any responsibility for making ministry decisions, and when a decision is finally made by someone, the slave rushes in to do all of the work – alone.²³

Just as with the task oriented leader, the passive involvement leader has certain psychological forces which drives him or her.

1. A strong need to feel needed;
2. A need to avoid any semblance of conflict and to have pleasant interpersonal relationships;
3. A need to be overworked; and
4. A basic concept that the group can never do the job well enough.²⁴

The positive attitude of the passive involvement leader is:

I do care. This team – along with their purpose, growth and maturity – are important to me. I think the team is fully capable of working through this situation on their own and providing the needed relational support for one another. This is a good opportunity for them to decide what needs to be done, and how to do it. If I leave them alone, they will grow in their ability to accomplish their tasks, to take responsibility for the quality of their own relationships and in their ministry effectiveness. Now I will think of other areas to train this team or perhaps another team with a purpose that is needed in

²¹ *ibid.*: p. 46.

²² *ibid.*: p. 46.

²³ *ibid.*: p. 47.

²⁴ *ibid.*: p. 47.

*our congregation. Whatever this team accomplishes I will support and celebrate the results.*²⁵

The negative attitude is:

*I care, but nobody else on the team does. Why does this team always fail me? Here I am again by myself doing the work of the team. If only I were a better leader, then the team would be more motivated and effective to do its work. I put in so many hours, I just hope sooner or later someone will notice. Why can't we get more people motivated to volunteer to team assignments? Wait until the new leader comes and demands some changes, like a bigger salary, for putting up with all this grief.*²⁶

Chameleon Leader

This leadership style is the most dangerous of all the styles. On the surface, this type of leader appears to be flexible and accommodating. However, this type of leader is only doing what is advantageous to him or her.

*Chameleons on the surface are compliant in their relationships with the team. Whatever the group wishes chameleons will support, even when they inwardly disagree with the group. Chameleons do not truly care for the people, but do care very much about what they can get out of the relationship. However, in the hands of a skilled chameleon, compliance can also be a manipulative, control mechanism. Since the chameleon's compliant behaviors create an atmosphere in which there is no room for public assertiveness or strong disagreement, he or she becomes all the more able to get what he or she wants. Outwardly chameleons care, but inwardly they are merely looking for ways to manipulate others so that they may have things their own way.*²⁷

Congregations should beware of placing someone of this style in a leadership position.

Leaders should discover their most natural style of leadership. This will help them understand their strengths and weaknesses. Congregations also need to determine which style they function best under and look for a leader of that type. Just beware of the chameleons.

²⁵ *ibid.*: p. 48.

²⁶ *ibid.*: p. 49.

²⁷ *ibid.*: p. 50.

Resources

Barna, George. Leaders on Leadership: Wisdom, Advice and Encouragement on the Art of Leading God's People. Ventura, CA: Regal Books, 1997.

Berkley, James D. Leadership Handbook of Management and Administration: Practical insight from a cross section of ministry leaders. Grand Rapids, MI: Baker Books, 1994.

Heuser, Roger. Leadership & Team Building: Transforming Congregational Ministry. Matthews, NC: Christian Ministry Resources. 1999.

Block A2

GOVERNANCE STRUCTURES

Just as there are multiple leadership styles, there are a variety of structures which churches can use to establish their church government. Each structure has its positives and negatives. Some structures work better for large churches while they may be too cumbersome for churches of less than 100. Therefore, church leaders need to evaluate the various structures to determine which best fits the size and mission of the church.

The Traditional Basic Model

One board has total authority in this model. This one board makes all decisions along with the pastor. They concentrate mainly on property issues and managing ministry through funds allocations. Three structures that would fall under this model are the Steering Committee, Trustees Structure, and Board of Directors.

The strengths of this model include:

Can be an effective model for small congregations, particularly those with limited lay leadership. Allows for efficient governance of a congregation whose ministry is modest. Can provide support for pastoral leadership as a structure for accountability.²⁸

The weaknesses of this model include:

This model, when standing alone, is inadequate to serve the diverse functions of a larger congregation. Trustees may abuse their authority to control budget in a way that hampers programmatic endeavors. They may also, without just cause, place themselves in an adversarial relationships with the pastor, thus stalemating the congregation's progress.²⁹

The Multiple Board Model

Under this model a Church Council oversees the operation of a variety of boards. These boards can include Trustees, Christian education, Outreach & Missions, and Worship. Structures that would fall into this

²⁸ Organizing for Ministry in the Local Congregation: A Resource from the Task Force on Governance and Polity of the Church of God, 1991. : p. 9.

²⁹ *ibid.*: p. 9.

model include Church Council, Pastor's Cabinet, Coordinating Council, and Advisory Council.

This type of structure can be very cumbersome to a congregation of 150 or less because there probably is not enough effective lay leadership to fill all positions.

The strength of this model include:

This model can work well for congregations blessed with gifted laity and leaders highly skilled in orchestrating cooperative efforts. It gives comprehensive attention to the congregation's Body life and ministry needs and can effectively provide for a desired division of labor.³⁰

The weaknesses of this model include:

This model can become cumbersome. Decision making can get bogged down in layers of bureaucracy, if approval must be obtained from more than one board and/or staff persons before action can be taken on a project. Leadership must be especially gifted in drawing the various boards to a singleness of purpose; otherwise, a competitive spirit may develop between boards and staff members, checkmating progress.³¹

The Central Board Model

Under this model, the pastor and a single board make the decisions for the church while committees and subcommittees do the work of the church. This model is actually an expanded version of the trustee model. Structures that would fall under this model include: Board of Deacons, Leadership Council, and Ministry Leadership Council.

The strengths of this model include:

This model provides for efficient operation of both business and programmatic aspects of church life and maximum responsiveness to leadership initiatives. Greater flexibility in programming becomes a plus, because committees work as effectively as boards for short-term projects and are easier to disband when the goal is achieved. The one Central Board gives stability, focus, and effective coordination to all aspects of Body Life.³²

The weaknesses of this model include:

³⁰ *ibid.*: p. 9.

³¹ *ibid.*: p. 9.

³² *ibid.*: p. 10.

Centralization of authority can lead to various abuses of power. Board members can become subservient to pastoral leadership. Or if an adversarial relationship develops between board and pastor, they can threaten his or her position. The Central Board can assume an elitist mentality and close itself off from the opinions and desires of other members.³³

The Spiritual Gifts Model

Under this model, task forces replace boards. People volunteer for task forces based on their interests and spiritual giftedness. There is an elected leadership team that regulates scheduling. The majority of decision making rests with the task forces. This model requires strong discipling, discovery and understanding of spiritual gifts. This structure is not a popular model because it requires so much to keep it operating effectively.

The strengths of this model include:

This model can be an effective means of “unleashing the church.” Instead of being channeled into service through a nominating and electing process, members can opt to do what they personally feel God has suited and called them to do. Morale is greatly enhanced with many more people directly involved in decision-making and ministry roles. Flexibility of programming is a plus, since ministry groups can be more readily organized and disbanded than boards as ministry needs change. While definite guidelines stating appropriate operating parameters for the various ministry groups are essential for accountability, guidelines are more readily adjusted than bylaws when ministry needs change.³⁴

The weaknesses of this model include:

A high level of coordination, supervision, and moral support are required of pastoral and lay leaders. Consequently, the model may lack cohesiveness and could lead to fragmentation of the church’s focus on ministry goals. Without coordination, competition can develop among the various ministry groups. A great deal of turnover is likely with volunteer staffing, which can have positive or negative implications. Disbanding ministries, if guidelines for continuation are not clearly and frankly stated from the outset, may be difficult to do without hurting the feelings of volunteers who may see the ministry as a “pet project” in which they have made a deep personal investment.³⁵

³³ *ibid.*: p. 10.

³⁴ *ibid.*: p. 10.

³⁵ *ibid.*: p. 10.

The Eldership Model

Under this model, the pastor(s) and the Elders are the decision-makers of the church. Elders are appointed and hold the position for longer than a board member in the multiple board or central board models. Elders can become “life” elders, if the church so chooses. However, this can lead to the under development of younger leaders to replace “life” elders when they pass on. This model does not utilize committees and subcommittees generally.

The strengths of this model include:

Like the Central Board Model, the Eldership Model provides for efficient operation and maximum responsiveness to leadership initiatives. It provides a spiritual frame of reference for congregational governance, an aspect sometimes overlooked in organizational plans patterned after secular business, industrial, or governmental models. Long tenure carries with it certain advantages. Strong, long-term leadership can build momentum for long-range vision and goal-setting. Less frequent turnover of leadership gives stability. Investment in leadership training yields long-term results. Elders also grow in leadership skills through long-term experience.³⁶

The weaknesses of this model include:

Since it centralizes authority to a greater degree than any other model, this model carries inherent dangers for abuse of power. A strong pastor may nominate a subservient board. A strong-willed eldership, on the other hand, could virtually dictate to the pastor(s) or stifle pastoral initiative and effectiveness by assuming an adversarial stance to pastoral leadership. Seeing themselves also as spiritual leaders for the congregation, elders may become less responsible to the opinions and desires of other members. After a time, long tenures of office can lead to stagnation of ideas and status quo thinking. Failure to follow strict guidelines for choosing elders would greatly weaken the effectiveness of this governance plan. These problems can intensify if the elders are elected for life or if their status is self-perpetuating through the nominating process or other political means.³⁷

³⁶ *ibid.*: p. 11.

³⁷ *ibid.*: p. 11.

Resources

Organizing for Ministry in the Local Congregation: A Resource from the Task Force on Governance and Polity of the Church of God. 1991.

Block A3

Bylaws and Policies

One struggle that faces pastors and church leaders is the development of functional bylaws and policy manuals. Many church bylaws are encumbered with details that should appear in policy manuals. Some church bylaws are missing vital sections in their bylaws that may help when crisis arises. In this block, the elements that should appear in church bylaws along with examples will be discussed. Those items that would be better served in a policy manual will also be addressed.

Essential Elements for Functional Bylaws

Preamble

A statement of purpose for the bylaws.

Example #1

These Bylaws are intended to govern the corporation known as (*name of Church*), hereafter referred to as ("*church*", "*congregation*", or "*corporation*") chartered for religious, charitable, and educational purposes, and for the buying, selling, and holding of real estate in keeping with its primary purposes.

These Bylaws, as adopted on _____, 2005, shall take precedence over all previously adopted Bylaws, except it is understood they must conform to the limits set forth in the Articles of Incorporation on file in (*city, state*), and that if conflicts should occur between these Bylaws and the Articles of Incorporation, the legal limitations of the Articles of Incorporation shall take precedence.

Example #2

The purpose of this organization, as organized under these bylaws, is the direction of the affairs of the Congregation; governing all business pertaining to the acquiring and holding of real estate; collecting and disbursing monies, as described and provided for by these bylaws; and the appointing and directing of the agencies for these and all matters of like nature. These bylaws are to serve as guidelines for the Congregation, and are not in any way to hinder the spiritual workings of the church body.

Example #3

These bylaws are hereby adopted in order to govern and facilitate the business affairs of (*name of the church*) according to the civil law of the State of _____ and in order to facilitate the fulfillment of the church's mission statement: We exist to worship the Lord, reach the lost, disciple believers, equip for ministry, celebrate unity and live out the love of Jesus Christ. The church recognizes the Word of God, the Holy Bible, as the only divine standard of faith and practice and as the final authority on all matters of life and conduct.

Identification

The legal name of the congregation. The name listed here should match exactly with name found on the Articles of Incorporation or if the church is unincorporated, on the church charter.

Example #1

The name of the corporation is (*church's name*) (hereafter referred to as the "church"). The "church" means the corporation, its civil and ecclesiastical business and its congregation.

Example #2

This organization shall be known as the (*church's name, city, and state*).

Example #3

The name of this Corporation shall be (*church's name*) located in (*city, state*), a non-profit Corporation located in the County of _____ and the State of _____.

Affiliation

A statement of affiliation with the denominational organization, both the regional and national judicatories. The examples below demonstrate both an affiliation statement as a stand alone section or as part of the preamble or identification section. (*These last examples will start with ...*)

Example #1

We, as a local church body, acknowledge our identity and affiliation with (*state or regional office*) with offices in (*city, state*) and General Assembly of the Church of God with offices in Anderson, Indiana.

Example #2

The (*church's name*) is an affiliate of the General Assembly of the Church of God which maintains executive offices in Anderson, Indiana.

Example #3

...We recognize the Word of God as the only Divine Standard of faith and practice, and as our final authority in all matters of life and conduct. Its doctrine, customs, and practices are expected to harmonize with the standard of God's Word, as directed by the General Assembly of the Church of God, which meets annually in Anderson, Indiana and its affiliate, (*name of state or regional office*) in (*city, state*).

Example #4

...It shall maintain a harmonious relationship with the Church of God, who's General offices are located in Anderson, Indiana.

Membership

A definition of membership in the corporation. Though the Church of God does not have formal membership, it is essential to define the conditions that must be met for individuals to participate in the official business of the church. Many not-for-profit state corporate laws require a voters' roster be on file for each business meeting. This section may contain multiple subsections.

Example #1

Section 1: The membership of this Congregation shall be restricted to those who meet the following conditions:

- a. They shall be eighteen (18) years of age or older.
- b. They shall have worshipped regularly with the local congregation for a period of at least six (6) months immediately preceding any meeting at which they exercise rights of membership.
- c. They shall have lived during this period of six (6) months in harmony with the accepted standards of the (*church's name, city, and state*) and in harmony with the General Assembly of the Church of God, Anderson, Indiana.

Section 2: All persons shall be regarded as voting members of the Congregation upon their own declaration of eligibility as defined in

Section 1. This declaration shall be by means of signing the voters' registration list provided by the Congregation. The voting requirements herein stated shall apply to the business organization only and shall not affect in any way the standing of members in the fellowship of the Congregation.

Section 3: The right of any person to voting membership may be challenged by any other member. In such a case the right of voting membership shall be determined by a majority vote of the members present and voting.

Section 4: Two weeks prior to the annual meeting of the Congregation, the Secretary shall post a typed notice of Sections 1 and 2 of Article III (*or the number that is appropriate*) in the church lobby or some other conspicuous place(s).

Section 5: The Congregation may, by a three-fourths vote at any business session, waive the requirement in Article III (*or appropriate number*), Section 1b, pertaining to six (6) months church attendance.

Example #2

Section 1. Membership in the Congregation shall be defined as those who:

- a. Have accepted and assimilated into their individual lives the precepts and principles of Christianity according to the Bible and their most honest understanding and evaluation of the same, and profess to be a Christian.
- b. Live in harmony with the teachings of the New Testament according to their personal understanding, providing they try harmoniously and honestly to accept and assimilate the views, doctrines, and practices of the Church of God, Anderson, Indiana.

Section 2: All members of the congregation shall have the right to vote in its annual and or special business meetings, as herein provided:

- a. They must be eighteen (18) years of age or over.
- b. They must have worshipped regularly with this congregation at least six (6) months, and if the member desires to participate in the annual or special meetings their name shall be added to a voting membership roster which the secretary shall maintain.

Example #3

Section 1. Definition:

Members of the (*church's name*), shall be those who:

1. Have accepted Christ as their Lord and Savior;
2. Faithfully support this church through attendance and participation in our ministries for a period of three (3) months;
3. Are cheerful givers of their time, talent, or treasures as lead by the Lord;
4. Have a teachable spirit.
5. Shall strive to live according to the Membership Promise of Article 2 (*or appropriate number*) Section 2.

Section 2. Membership Promise

- A. With the help and guidance from the Holy Spirit, I shall:
 1. Love God, neighbors, fellow members, and as I do love myself with a love given and directed by God.
 2. Be committed to prayer with and for one another, thus demonstrating a willingness to share burdens, sorrows, and joys.
 3. Worship and come together for fellowship on a regular basis with those who I am called to serve in this body.
 4. Contribute to the support of the church with my regular tithes and special offerings, with my time and with my gifts and talents for the edification and growth of the body.
 5. Treat all members fairly and with dignity, and to be slow to take offense and quick to forgive.
 6. Engage in personal Bible studies.
 7. Bring up any children entrusted to my care in the nurture and admonition of the Lord.
 8. Live my life by biblical and ethical principles and moral practices.
 9. Serve as an example and witness to win others to an acceptance of Jesus Christ as Savior and Lord.
 10. Consider water baptism, if not already baptized, as part of my Christian experience and witness to others.
- B. To help orient potential new members, we offer a class to instruct in the church's teachings, practices, and spirit.

Section 3. Voting

Only person, eighteen (18) years of age and older, meeting the criteria of Article 2 (*or appropriate number*), Section 1, may vote for all corporate issues and matters including real estate transactions.

Meetings

It is required that an annual meeting be stipulated and provision be made for special called meetings. Instruction for absentee balloting should be provided.

Example #1

Section 1. Regular Meetings

- a. The annual business meeting of the church shall be held at the church building on the last Sunday of August, unless it coincides with Labor Day weekend.
- b. The Secretary shall post a written notice of the meeting, the proposed budget, and list of nominations, announcing the annual business meeting, at least 2 weeks prior to the meeting.
- c. A quorum shall consist of 20 of the members as defined in Article 2 (or appropriate number), Section 1.
- d. All ratifications shall be by ballot.
- e. In the event a member of the corporation is unable to be present, for extenuating circumstances; he/she may cast an absentee ballot. The absentee ballot must be requested, not later than two (2) days before the meeting. The completed ballot must be sealed in an envelope, with the name appearing on the exterior of the envelope, and presented to the Chairperson or Secretary, before the business meeting. The absentee elector must be ratified as a qualified voting member, and recorded in the minutes.
- f. The procedural format followed in meetings shall be "Roberts Rules of Order, newly revised, current edition".

Section 2. Special Meetings

- a. Special meetings maybe called at any time by the Pastor or upon written requests by the Leadership Council.
- b. Special meetings, and their purpose, shall be previously announced at regular services of the church at least one (1) week prior to the meeting.

Section 3. Order of Business – Annual Meeting

The annual business meeting shall follow a plan similar to the outline below.

- a. Opening prayer.
- b. Roll call to verify qualified voters.
- c. Approval of last annual and special business meeting minutes.
- d. Annual Reports.

- e. Old business issues.
- f. Ratification.
- g. Original resolutions and new business.
- h. Adjournment.
- i. Closing prayer.

Example #2

Section 1. Business Meetings

The Board of Directors shall set the date and time for the annual business meeting of the church for the purpose of presenting annual reports, the annual budget, annual election of Board and Committee members and various ratifications. Special meetings may be called at any time by the Chair of the Board of Directors, the Senior Pastor, or upon the written request of twenty-five eligible voting members of the church, stating the purpose for which they desire the meeting called. All meetings and proposed agenda shall be announced at all regular services of the church for at least two weeks prior to the event. In case of an urgent matter a one-week notice is sufficient and an attempt shall be made to notify all eligible voters of the upcoming meeting. An exception to the two-week rule shall exist in the calling of a pastor. The Board of Directors shall be responsible for determining the order of business for all meetings.

Section 2. Ballots and Nominees

All elections shall be by previously prepared official ballot and all nominees must give prior consent to having their names place on the ballot and shall be approved by the Nominating Committee. In the event a qualified member of the church finds it necessary to vote by absentee ballot, the ballot shall be provided upon request.

Section 3. Quorum

A quorum for the business meetings of the church shall be fifty eligible voters.

Corporation Officers

The number of corporate officers required is normally set by the not-for-profit corporate laws of a particular state. The majority of states call for at least three (3) corporate officers, these being the President, Secretary, and Treasurer. It is advisable that these three individuals not be related if possible.

Example #1

Officers of the Corporation shall be:

- a. President (chairperson of the Church Council), designated as the senior pastor.
- b. Vice-chairperson of the Church Council.
- c. Secretary, designated as the secretary of the Church Council.
- d. Treasurer, nominated by the Nominating Committee, approved by the Church Council, and ratified by voting members of the corporation.
- e. Member-at-Large, a member of the pastoral staff designated by the Church Council to act as “Interim President” in the event the corporation is without a senior pastor.

Example #2

The officers of the corporation shall be: Chairperson, Vice-Chairperson, Secretary, Treasurer and the Recording Secretary. The Secretary shall be elected by the Corporation for a term of one (1) year. The Treasurer and the Recording Secretary shall be appointed by the Board of Directors and ratified by the Corporation for the term of two (2) years. The Secretary, Treasurer, and the Recording Secretary may serve a maximum of five (5) consecutive terms. After a lapse of one (1) year, they may again be nominated for that office.

Governing Board

The proper name for the governing board is: Board of Directors. However, the bylaws may use a variety of designations (Trustees, elders, leadership team, etc.).

Governing Board Powers

This board should have broad powers to act on behalf of the congregation. It is in this section that many bylaws become encumbered with items that would be better served in a policy manual.

Example #1

Duties of the Church Council:

- a. The Church Council shall appoint task forces as necessary to carry out the ministry of the Congregation.
- b. The Church Council shall act basically as a planning and coordinating body with the pastor(s). It shall work with the pastor on such matters as worship, fellowship, community outreach, missions, evangelism, and such other matters as help to provide a well-rounded, long-range program in the Congregation.

- c. A specific listing of the Church Council's various duties relating to the general operation of worship can be found in the policy and procedures manual.
- d. The Church Council shall serve as the Budget Committee of the Church. It shall compile the annual budget of estimated expenses for the coming fiscal year and submit it to the Congregation for action at the annual business meeting.
- e. When a pastoral change occurs or when the need arises, the Church Council shall appoint five persons to serve as a pulpit committee for the Congregation. These appointees shall be subject to the ratification of the Congregation.
- f. In case of vacancy in a church office, the Church Council shall appoint a successor to serve until the next business meeting of the Congregation.

Example #2

Responsibilities:

- a. To hold in trust all the property of the corporation, as its Board of Directors, in accordance with the laws of the State of _____.
- b. To support and advise the senior pastor in his/her function of organizing and empowering/administering the ministries of the church.
- c. To hold accountable the senior pastor and staff, in the performance of their duties on behalf of the corporation.
- d. To approve compensation and leave policies for the pastoral staff and support staff.
- e. To approve the hiring and dismissal of pastoral staff other than the senior pastor.
- f. To designate, by resolution, two other persons that have the authority to sign checks for the corporation in the absence of the treasurer.
- g. To nominate members of the Nominating Committee for ratification by the voting members of the corporation.
- h. To appoint persons to serve on the following committees in the event of death, resignation, or removal of a member according to the guidelines stated in these Bylaws: Finance Committee, Nominating Committee, and Missions Committee.
- i. To oversee the processes for reconciliation, restoration, and if needed, discipline in the event the senior pastor, pastoral staff, support staff, ministry leaders or any member of the corporation is unfaithful to the trust they have been given or when their personal involvement in as issue impedes resolution.

- j. To approve the annual operating budget prepared by the Finance Committee.
- k. To appoint a Bylaws Committee as required by these Bylaws.
- l. To appoint a Pulpit Committee as needed during times of transition in the senior pastorate as required by these Bylaws.
- m. To clearly communicate the long-range goals and the direction God is leading the church, and to promote the ministries of the church to the congregation.

Limitations

The membership should define those decisions that they will not delegate to any board or officer. The decisions that usually fall into this category would be:

- a. Purchases over a specified dollar figure.
- b. Purchase of land.
- c. Removal of a pastor.

Committee Structure

It is not necessary to delineate complex committee structures. The governing board may appoint such committees, as it deems appropriate and necessary. The duties and limitations of these committees is better relayed in a policy manual.

Pastoral Relations

The matters of selection, call, discipline and termination of pastoral staff need to be clearly stipulated.

Example #1

Section 1. Selection and call of a pastor:

In the event the church is without the services of a regular pastor, the pulpit committee selected by the Church Council shall have the following duties:

- a. It shall be responsible for the regular services during the period when the church is without pastoral leadership.
- b. It shall investigate the availability of prospective pastors and study their qualifications as to character, leadership abilities, experience, ministerial recognition, and state. It shall seek the guidance of both (*state or region office*) and Congregational Ministries in Anderson, Indiana.

- c. When agreement has been reached by the pulpit committee on the prospective pastor, a special business meeting of the Congregation shall be called. It shall present the name of one prospective pastor and give a description of his/her qualifications.
- d. It shall submit the name of only one prospective pastor at a time for consideration and possible call. In the event he/she does not receive as much as a three fourths vote of the members present and voting, the committee shall proceed to select the name of another prospective pastor for presentation. This order of procedure shall be followed until a pastor is duly elected.
- e. The pulpit committee may arrange with the duly elected pastor and with ministers of the area for a service of installation that will add dignity to his/her call and express the Congregation's recognition of his/her leadership.
- f. A clear agreement shall be reached with the pastor regarding responsibilities and working relationships, preferably in writing.
- g. The pastor's salary allowance, provision for housing, fringe benefits, and similar considerations shall be reviewed annually by the Church Council when the Congregation budget is being prepared.

Section 2: The retention or removal of a pastor:

- a. If one-fourth or more of the regular members of the Congregation objects to the continued leadership of the pastor, they may present their objections in writing to the Church Council where the objections shall be carefully studied. If no solution to the problem is reached, the Church Council shall bring the matter to the Congregation, being responsible to properly call and conduct the meeting in keeping with these bylaws. The decision of the Congregation shall be final.
- b. The decision to remove a pastor from his/her office shall require a majority vote of the members present and voting. If the vote is for removal, a minimum of sixty (60) days shall be allowed for termination of the pastorate, unless there has been a defection of character resulting in the loss of recognized ministerial status. In such case, the removal shall be immediate and the Congregation shall have no further financial obligation.
- c. If the pastor should desire a vote regarding his/her continued leadership, this vote may be taken in a regular or special meeting of the Congregation. The details of the vote shall be arranged by the pastor in consultation with the Church Council.
- d. Should the pastor feel inclined to terminate his/her leadership, he/she shall present his/her resignation in writing to the Church Council which, in turn, shall present the pastor's resignation to the Congregation in the proper manner. The resignation should

provide for a minimum of sixty (60) days before vacating the pastorate, unless other arrangements are worked out to the satisfaction of both the Congregation and the pastor.

Example #2

Section 1. Pastoral Selection

- a. If the church is without the services of a regular Pastor, a five (5) member Pulpit Committee shall be appointed by the Leadership Council. Each team Chairperson or Assistant Chairperson shall appoint one of its members for this committee. This team shall elect its own chairperson.
- b. The Pulpit Committee shall conduct a congregational composite to determine the style of leadership that they prefer. The (*state or regional office*) shall be consulted to supply ministerial briefs of candidates.
- c. The Leadership Council shall provide a written Pastoral job description, to each candidate.
- d. The Pulpit Committee shall submit one name of a prospective minister, at a time, for membership endorsement. If three-fourths (3/4) of the membership does not ratify the candidate, the Pulpit Committee shall repeat the Pastoral selection process, until a Pastor is duly ratified.
- e. After a candidate is considered for presentation to the membership, the Board of Trustees and the Budget Committee shall meet with the candidate and agree upon salary, benefits, and housing arrangements (calling agreement).
- f. The Pulpit Committee, to add dignity and leadership recognition for the new Pastor shall arrange a Pastoral installation service, with help from area and state ministers, local community leaders and ministry groups.
- g. The Leadership Council shall be responsible for maintaining regular services during any period without Pastoral leadership.

Section 2. Paid Staff and Pastoral Resignations and Terminations

- a. The Leadership Council, after consulting with (*state or regional office*) to determine proper course(s) of action, shall have the authority to ask for the resignation of any member of the pastoral or paid church staff, in light of clear evidence that inappropriate sexual relationships and conduct, intentional mishandling of church funds, or teachings clearly contrary to the Church of God as a whole, has taken place.
- b. The Leadership Council, after consulting with (*state or regional office*) to determine the proper course(s) of action, shall immediately place any member of the pastoral or church staff on a paid or un-paid (as appropriate) leave of absence if said

person is arrested on either a misdemeanor or felony charge under (*state*) or Federal statutes. If said person is found guilty of said charge, the Leadership Council and Board of Trustees shall terminate that person in consultation with (*state or regional office*).

- c. If the Pastor is inclined to retire or answer another calling, he/she shall notify the Leadership Council first, and then the congregation of his/her intentions. A formal letter of resignation shall then be submitted to the Leadership Council. A 30 to 60 day notice is requested.
- d. The Corporation's maximum financial responsibility to a member of the pastoral or paid staff that is leaving under Paragraph A of this article shall be one (1) week of pay per year of service, but shall not exceed two (2) months pay severance package. If a member of the pastoral or paid staff is leaving under the circumstances of Paragraph C, in cooperation with the Leadership Council, shall determine an appropriate severance package.

Member Relations

Procedures for disciplining and removing members, as well as officers, should be clearly defined.

Example #1

Section 1. Conflict Resolution

- a. Conflict resolution with the church leadership (or any members) shall be handled by scriptural direction as per Matthew 18:15 and following.
 1. A person having a difference with another should privately and lovingly, discuss that issue, to seek resolution, after prayerful consideration.
 2. If the person with a complaint involves a third party, the third party should refer that person back to the individual with whom they have conflict. Then, if there is still no resolution, the third party should be willing to go with the first person and to mediate differences.
 3. If resolution is still not reached, the third party should accompany the first party, and bring the issue to the Leadership Council, for resolution. All three parties involved shall be invited to this meeting.

Example #2

Section 1. Any officer or member elected under the provisions of these bylaws may be recalled by a three-fourths vote of the members and his/her term of office, together with all the rights and privileges pertaining thereto, may be terminated at any regular or special business meeting, provided that notice of such action to be taken is announced at a regular Congregation service at least one week prior to the meeting.

Section 2. If any officer, Board of Trustees member, or appointed task force member fails to function or, for any reason, leaves this Congregation, his/her official connection with this Congregation shall thereby be terminated, his/her tenure of office shall thereby cease at once, and such vacancy shall be filled.

Example #3

Section 1. Any officer of this Corporation or member of any board or committee may be expelled from office by a three-fourths (3/4) majority affirmative vote of the members present and voting at any regular or special business meeting.

Section 2. Expulsions may be for conduct deemed to be unbecoming to a member of the Church of God or detrimental to the purpose of the church, for failure of duty, or for other reasons the congregation may deem sufficient grounds for expulsion.

Section 3. When one has been expelled from office, the authority of such a person in that office ceases at once.

Section 4. Notice stating the time, place and reason of meeting for expulsion shall be posted on the church bulletin board at least seven (7) days before the date of meeting. The Secretary or Chairperson of the Board of Directors shall furnish the person to be expelled with a written statement of the charges against him or her at least three (3) days before the notice is posted as set out above.

Other Items

Additional items to delineate are: Terms of office, quorum, dissolution procedures, amendment requirements and others.

Quorum

Many times the required number or percentage of voting member present to form a quorum is listed in the meeting section of the bylaws.

Terms of Office

This can either appear as a separate section or the length of terms of office can be included in the corporation officers or governing boards sections.

Dissolution Clause

The IRS requires all not-for-profits to include a dissolution clause in their bylaws or articles of incorporation. It is suggested to include the dissolution clause in both. If a dissolution clause is not provided, the courts can distribute the assets to any not-for-profit of its choice and it does not have to be a church. The majority of states do not allow not-for-profits to dissolve to themselves and distribute assets.

Example #1

Should a division occur in this Congregation, it's property, real and personal, shall belong to that part, regardless of size, which remains faithful to these bylaws, and which adheres to the doctrines and teachings of the Church of God, with general offices in Anderson, Indiana. Should this Congregation elect to no longer affiliate with the Church of God, whose general offices are in Anderson, Indiana or should the Congregation elect to dissolve, its property, real and personal, shall become the property of *(state or regional office, city, state)*. All properties of the Congregation are to be conditionally deeded to *(state or regional office)*.

Example #2

Should a division occur in this Congregation, it's property, real and personal, shall belong to that part, regardless of size, which remains faithful to these bylaws, and which adheres to the doctrines and teachings of the Church of God, with general offices in Anderson, Indiana. Should this Congregation decide on any of the following, its property, real and personal, shall become the property of *(state or regional office)*:

1. Decide to no longer adhere to the doctrines of the Church of God, Anderson, IN.
2. Decide to sever relations with the Church of God, Anderson, IN.
3. Decide to stop functioning as a church body.

All properties of the Congregation are to be conditionally deeded to *(state or regional office)*.

Indemnification Clause

This clause is not required but recommended. It covers legal fees in the case of litigation brought against a pastor, board member, or agent of the church.

Example #1

Section 1. General

The church shall indemnify any person, including heirs and legal representatives, who shall be made a party to, or threatened with, any civil or criminal action, suit or proceeding because of being a member or agent of the church or because of any acts or omissions in such capacity taken or not taken, for and in the interest of the church, in good faith and in the exercise of reasonable care. This indemnification is against all liability, and reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with such action, suit, or proceeding, whether actual or threatened, or in connection with any appeal thereof. If a director or officer in any such action, suit or proceeding is wholly successful, on the merits or otherwise, he/she is entitled to complete indemnification.

The church may also reimburse to any member or agent the amounts (other than amounts paid to the church) of judgments, fines, and penalties resulting from, and the reasonable costs of settlement and expenses, including attorneys' fees, actually incurred and connected therewith, of any action, suit or proceeding if a majority of the directors not involved in the matter of controversy (even if such directors do not constitute a quorum), or a majority vote of the church, finds that such member or agent acted in good faith and in the exercise of reasonable care in the judgment of duty and that the payment of such judgments, fines or penalties, whether resulting from a plea of nolo contendere or otherwise, and costs of settlement are in the interests of the church. The fact that an action, suit or proceeding was terminated by judgment, settlement or conviction, or upon a plea of guilty or nolo contendere or its equivalent, shall not create a presumption that any such member or agent did not act in good faith for purposes reasonably believed to be in the best interest of the church. However, no member or agent shall be indemnified in relation to any matter to which he/she is adjured in any such action, suit or proceeding to be able for negligence or misconduct in the performance of duty to the church. The church may, in its discretion, advance any expenses to, or at its expense undertake the defense of, any such member or agent, by any amounts so advanced or spent shall be repaid to the church to the extent that is ultimately determined that such member or agent is not entitled to indemnification or reimbursement.

Section 2. Non-exclusive Rights

The rights of indemnification or reimbursement provided in this section do not exclude any other rights to which any member or agent of the church or such other corporation may be entitled by law.

Example #2

The church shall indemnify any person, including heirs and legal representatives, who shall be made a party to, or threatened with any civil or criminal action, suit or proceeding because of being a member or agent of the church or because of any acts or omissions in such capacity taken or not taken, for and in the interest of the church, in good faith and in the exercise of reasonable care. This indemnification is against all liability, and reasonable expenses, including attorney's fees, actually and necessarily incurred in connection with such action, suit, or proceeding, whether actual or threatened, or in connection with any appeal thereof. If a director or officer in any such action, suit or proceeding is wholly successful, on the merits or otherwise, he/she is entitled to complete indemnification.

The church may also reimburse to any member or agent the amounts (other than amounts paid to the church) of judgments, fines, and penalties resulting from, and the reasonable costs of settlement and expenses, including attorney's fees, actually incurred and connected therewith, of any such action, suit or proceeding if a majority of the directors not involved in the matter of controversy (even if such directors do not constitute a quorum), or a majority vote of the church, finds that such member or agent acted in good faith and in the exercise of reasonable care in the judgment of duty and that the payment of such judgments, fines, or penalties, whether resulting from a plea of nolo contendere or otherwise, and costs of settlement are in the interests of the church. The fact that an action, suit or proceeding was terminated by judgment, settlement or conviction, or upon a plea of guilty or nolo contendere or its equivalent, shall not create a presumption that any such member or agent did not act in good faith for purposes reasonably believed to be in the best interests of the church. However, no member or agent shall be indemnified in relation to any matters to which he is adjured in any such action, suit or proceeding to be able for negligence or misconduct in the performance of duty to the church. The church may, in its discretion, advance any expenses to, or at its expense undertake the defense of, any such member or agent, but any amounts so advanced or spent shall be repaid to the church to the extent that is ultimately determined that such member or agent is not entitled to indemnification or reimbursement.

The rights of indemnification or reimbursement provided in this section do not exclude any other rights to which any member or agent of the church or such other corporation may be entitled by law.

Parliamentary Authority

Bylaws should contain a section describing the rules of parliamentary procedure that will be followed in all business meetings. The customary reference is *Robert's Rules of Order Newly Revised, current edition*.

Example

The rules contained in the current edition of *Robert's Rules of Order Newly Revised* shall govern the church in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules the Board of Directors may adopt and any statutes applicable to this organization that do not authorize the provision of these bylaws to take precedence.

Amendments

The bylaws should contain a section that describes the process through which bylaws can be amended or changed.

Example #1

When and if the Board of Directors determines the need for revision, these bylaws may be altered, amended, clarified, or replaced at any annual or special business meeting of the church by a two-thirds vote of the members present and voting provided that public announcement of such proposed action is made at all regular services of the church at least two (2) weeks prior to the meeting; and provided, further, that a written copy of the proposed change, is posted and verbal announcements are made of said posting.

Example #2

These bylaws may be amended by a two-thirds (2/3) affirmative vote of the recognized members present at any regular or special meeting provided the suggested amendment shall have been studied by a committee of not less than three (3) members, appointed by the Board of Directors and shall have been posted on the church bulletin board at least seven (7) days previous to the time of voting thereon. Not more than one (1) member of the Board of Directors shall be appointed to this committee.

Example #3

Section 1. Review Policy

- a. The bylaws and constitution shall be reviewed a minimum of every three (3) years.
- b. These bylaws may be modified at any annual or special business meeting of the corporation. Revisions shall be approved by a three-fourths (3/4) ratification of the present, member voters. Two (2) weeks prior to the bylaws meeting, a public announcement about the bylaws proposal is to be made at a regular church service. The proposed bylaws or specific changes shall be posted on the church bulletin board, and copies of it shall be available upon request.

Length of Bylaws

Ideally a set of bylaws should range between five (5) and seven (7) pages with no more than ten (10) pages. If the bylaws contain more than 10 pages, there are items contained in the bylaws that would be better served in a policy and procedures manual.

Policy and Procedures Manual

Policy and procedures manuals should contain the detailed information of the duties, responsibilities, job descriptions, and activities that each pastor, board member, committee member, or church leadership needs to function successfully in their role.

Example #1: policy manual outline

1. Introduction (*Description of manual and church's mission statement*)
2. Functional Church Model (*Flowchart of Leadership*)
3. Elder Responsibilities and Activities
 - a. Description of Responsibilities
 - b. Ministry Responsibilities (Selection and Definition)
 - c. Preparation for Elder meetings
 - d. Elder meetings
 - e. Communion
 - f. Congregational Business Meetings
 - g. Elder Retreat
 - h. Elder Resignation
4. Executive Committee

- a. Committee Selection process
 - b. Chairperson
 - c. Vice-Chairperson
 - d. Treasurer
 - e. Secretary (Clerk)
 - f. Elder At Large
 - g. Executive Committee Responsibilities
5. Church Bylaws
6. Administration (*Covers general operations of the church*)
7. Policies and Procedures
- a. New Pastoral Staff Hiring Process
 - 1. Preparation for Hiring Process
 - 2. Selecting Potential Candidates
 - 3. Interviewing the Candidates
 - 4. Introduction of a Pastoral Staff Candidate to the Congregation and Voting
 - 5. Compensation Package
 - a. Salary
 - b. Vacation Days Granted to New Pastoral Staff
 - c. Fringe Benefits
 - b. Budget process
 - c. Selection of Elders

Example #2: policy manual outline

Part 1:

Mission Statement
Statement of Faith

Part 2: Personnel Policies

Classification of Personnel

- a. Senior Pastor
- b. Associate Pastor
- c. Support Staff
- d. Contract Staff

Selection of Full Time and Part Time Staff

- a. Senior Pastor
- b. Associate Pastor
- c. Secretaries
- d. Custodians

- e. Nursery Attendants
- f. Program Staff
- g. Financial Secretary
- h. Contract Personnel

Policy Manual Distribution
Probation Policy
Residency Policy
Working Hours and Conditions Policy
Salary Administration Mileage Reimbursement
Days Off with Pay
Vacation Leave
Bereavement Leave
Sick Leave
Maternity Leave
Salary Review
Performance Review
Continuing Education and Outside Employment
Sabbatical Leaves
Benefits
Grievance Procedures
Termination
Employee Responsibilities

Part 3: Job Descriptions

Senior Pastor
Associate Pastor(s)
Minister of Music and Worship
Minister of Youth
Part-time Church Secretary
Custodian
Tithing Secretary
Financial Secretary

Part 4: Facility Utilization

Property Management
Signs and Banners
Physical Changes
Wedding Policy – both member and non-member policies
Kitchen Use Policy
Minibus (Van, Bus) Policy
Special Events

Part 5: Financial Management

Offering Counting Procedures
Signatures for Checks
Required Reports

Below are various examples for the above mentioned categories of a policy manual. Some sections have already been discussed in other blocks of this manual.

Personnel Policies – see Block B4
Financial Management – see Block B1

Mission Statements:

- To help persons become completely committed servants of Jesus Christ.
- To share the knowledge and saving love of Jesus Christ by doing God's will to glorify His name.
- "Whatever it takes to Know, Grow, & Sow" – To know God intimately; To Grow in the knowledge of His Word; & To Share the Gospel with others!
- A presence shaped to inspire excellence – personally, spiritually, & corporately.
- Touching lives, reaching out, building the Kingdom.
- To expand the Kingdom of God.
- To develop people into fully functioning followers of Jesus Christ.

Statement of Faith:

Example:

As members of this church, we believe,

1. The Bible as the inspired, infallible Word of God; the final authority in all matters of faith and conduct.
2. One God, eternally existent in three persons: Father, Son, and Holy Spirit.
3. Jesus Christ, His Deity, virgin birth, sinless life, vicarious death, burial and bodily resurrection, His ascension to the right hand of the Father and His personal future return in power and glory.
4. The sinfulness of man and salvation only by grace through faith in the shed blood of Christ.
5. The present ministry on the Holy Spirit by whose indwelling the Christian is enabled to live a godly life.
6. The resurrection of the dead: the believer to life everlasting and the unbeliever to the resurrection of judgment.
7. The church as the body of Christ, for which He will return, as comprised of all who have accepted the redemption provided in Him.

Job Descriptions:

Senior Pastor

Example #1:

The Senior/Lead Pastor will be a maturing Christian whose desire is to minister to his congregation.

They shall exemplify in their lives the Christian values held in Scripture (see 1 Tim. 3:1-12; Titus 1:5-16, 2:1-8; 1 Peter 5:1-4) and this congregation.

They shall be the custodian of the church's vision statement and work to equip the congregation to live out that statement.

They shall provide pastoral care for the congregation in conjunction with the other staff and lay leaders.

They shall be responsible for the oversight, administration and operation of the congregation's ministry program.

They shall endeavor to insure there is a balance of regular devotional, educational, and fellowship times. They shall work with the various committees of the church to accomplish this.

They shall work to incorporate, equip and use volunteers within the church's program.

They shall work to communicate with and cultivate communication with congregation.

They shall be responsible for the day to day operation of the church and the staff.

They shall be accountable to the Church Council and shall work within the guidelines of the church bylaws and personnel policy.

Example #2:

Position Title: Senior Pastor
Reports To: Board of Elders

Position Summary: The Senior Pastor is the spiritual leader of the congregation. In addition, he/she is the ex-officio chairman of the corporation. He/she is responsible for supervising and directing the entire program and staff of the church.

Work Hours: The Senior Pastor is considered a full-time, salaried employee, and is expected to keep office hours from 9:00 AM until 4:00 PM during Monday through Thursday to be available to the congregation. The Senior Pastor is off on Fridays as well as church holidays.

Duties:

1. To be spiritually prepared through Bible study and prayer to lead the church and speak the Word of God to the congregation.
2. Over see the worship program of the church and prepare spiritually challenging, inspiring, and informative messages.
3. Supervise and evaluate progress of the pastoral and office staff of the church.
4. Conduct periodic meetings with the ministerial staff of the church to ensure all events are fully coordinated, communication is open, and their needs are met for their various areas of ministry.
5. Seek God's vision for the church and communicate it to the leadership and the congregation in such a way that they can see it also.
6. Teach at least one Bible study per week.
7. Periodically teach, or supervise the teaching of, an orientation class for newcomers.
8. Officiate at member's funerals and weddings and other weddings he/she chooses.
9. Chair the Board of Elders and be available to meet with and/or serve on any committee of the church as the need arises.
10. Chair the annual and special business meetings of the corporation (unless said meeting concerns him/her personally).
11. Be available to serve the wider church by participating in district, State, and national Church of God organizations.
12. Be active in community activities, of interest to himself/herself, that help extend the Kingdom. Prudence should govern the extent of such involvement.
13. Serve in other ways at the pleasure and under the leadership of the Holy Spirit, with the advice and counsel of the Board of Elders.
14. Be available to counsel and console parishioners as the need arises.
15. Conduct annual performance reviews of subordinates. More frequent reviews may be conducted, as needed.
16. By word and example, model the Christian life to the church and especially to the staff. Be the kind of Christian others can follow.

Associate Pastor

Example #1:

1. Serve Jesus Christ and exemplify His Spirit in all that is said and done.
2. Fully support the senior pastor in all ministry endeavors.
3. Preach as requested.

4. Lead Wednesday night Bible studies.
5. Counsel as needed.
6. Assist with visitation for those in the hospital, and the shut-ins.
7. Oversee small group ministry.
8. Inaugurate a ministry to senior adults.
9. Serve as Chairman of the Missions Board.
10. Serve as a member of the Church Council.
11. Officiate at weddings as requested.
12. Officiate at funerals as requested.
13. Conduct baptism classes and baptize persons as requested.
14. Represent church in the community.

Specialized Associates

Pastor of Family Ministries and Counseling

Description of responsibilities: The Pastor of Family Ministries and Counseling will have as his/her primary responsibilities the responsibilities of every pastor as outline in our vision to reach, teach, and heal.

The primary areas of responsibility are outlined in the ministry position title – families and counseling. This represents a beginning point and not the job as it necessarily will be performed on a daily basis. Ultimately the pastor of Family Ministries & Counseling is responsible to the Senior Pastor and as such his/her assignment is dynamic in that it changes from time to time. More specifically, his/her responsibilities will be as follows:

1. Provide outreach opportunities for families in the community.
2. Provide activities within the church body specifically designed to strengthen the family.
3. Provide learning opportunities related to marriages, parenting, and other family relationships.
4. Provide learning opportunities related to mental health, behavioral, and childhood issues.
5. Provide support groups for various issues related to the family and other relationships.
6. Provide family counseling.
7. Provide pre-marital counseling for couples being married at the church.
8. Provide marriage counseling.
9. Provide individual counseling.
10. Provide opportunities for assessment related to personality style, ADHD, behaviors, etc.
11. Provide pastoral support related to preaching and teaching.
12. Provide pastoral support related to wedding ceremonies.
13. Provide pastoral support related to visitation.
14. Provide pastoral support related to funeral services.

15. Provide other duties as assigned.

Accountability: The Pastor of Family Ministries and Counseling will be accountable to the Senior Pastor. Additionally, his/her ministry will be most closely aligned with the Ministry Board. He/she will also access clinical supervision services as stipulated by the State of _____ Counselor and Social Worker Board.

Supervision:

1. The Pastor of Family Ministries and Counseling shall be supervised by the Senior Pastor.
2. The Pastor of Family Ministries and Counseling shall access clinical supervision services as stipulated by the State of _____ Counselor and Social Worker Board.

Qualifications:

1. Be a licensed or ordained Minister.
2. Be licensed by the State of _____ to solemnize marriages (if applicable).
3. Possess a Masters Degree in field related to ministry and counseling.
4. Possess a License by the State of _____ to provide counseling (LSW, LISW, LPC, LPCC or what is applicable to the state).

Minister of Pastoral Care and Small Groups

Reports to: Senior Pastor

Position Summary: He/she is responsible for supervising and directing the pastoral care and small group programs of the church under the supervision of the Senior Pastor. He/she is expected to administer his/her areas of ministry and to contribute to the team spirit of the pastoral staff and assist in maintaining and providing continuity for the overall program of the church.

Work hours: The Minister of Pastoral Care and Small Groups is also considered a full-time, salaried employee but should keep office hours from 9:00 AM until 4:00 PM during Monday through Wednesday and Friday. He/she is off on Thursdays as well as church holidays. The Minister of Pastoral Care and Small Groups is responsible to perform the following duties:

1. By word and example, model the Christian life to the church. The minister is expected to be the kind of Christian others can follow.
2. Establish a "caretaker ministry" (name of ministry will be chosen by the minister with the advice and consent of the Ministries Division of the Board of Elders).

3. Recruit a corps of “caretakers” who will each provide pastoral care to a group of Church families. (Ideally each “caretaker” would have six to eight families in his/her group).
4. Train “caretakers” for hospital visitation, shut-in visitation, crisis care, etc.
5. Assign church families to a “caretaker” for training and encouragement.
6. Coordinate monthly “caretaker” meetings for training and encouragement.
7. Supply “caretakers” with necessary materials (stamps, cards, etc).
8. Provide a current list of contacts to “caretakers” (Coordinator of Meals that Heal, Coordinator of Funeral Dinners, small group leaders, Sunday School teachers, staff, etc.).
9. Receive monthly activity reports from the “caretakers.”
10. Help “caretakers” identify the spiritual gifts and talents of people in their care and find ways to get them involved in the life of the church.
11. Liaison with the Senior Pastor concerning celebrations, comments, problems, etc.
12. Be the “caretaker” to the “caretakers.”
13. Coordinate home Bible studies by providing curriculum and recruiting and training leaders and hosts.
14. Publicize and encourage participation in home Bible studies.
15. Create and staff new small groups of various kinds for study and fellowship (sports teams, interest groups, men’s groups, women’s groups, recovery groups, etc.).
16. The Minister of Pastoral Care and Small Groups will attend all regular worship services and participate in worship services at the request of the Senior Pastor and Minister of Music. He/she will preach when invited by the Senior Pastor.
17. The Minister of Pastoral Care and Small Groups will be encouraged to participate in teaching in Sunday School, home Bible studies, or Equipping Disciples as the need arises and as subjects are chosen which the Minister of Pastoral Care and Small Groups is passionate about.
18. The Minister of Pastoral Care and Small Groups is expected to be a person passionate about ministry and open to God’s leading. This job description is not intended to limit the Minister of Pastoral Care and Small Groups’ involvement or stifle his/her creativity. The Minister of Pastoral Care and Small Groups should, however, discuss and seek advice of the Senior Pastor in regards to proposed new ministries and how they fit into the church’s overall purpose and strategy.
19. The Minister of Pastoral Care and Small Groups may be asked to supervise or help supervise ministerial interns from time to time.
20. The Senior Pastor may assign the Minister of Pastoral Care and Small Groups other duties.

Children's Minister

Example #1:

Reports to: Senior Pastor

Position Summary: He/she is responsible for supervising and directing the children's ministries of the church under the supervision of the Senior Pastor. He/she is expected to administer his/her areas of ministry and to contribute to the team spirit of the pastoral staff and assist in maintaining and providing continuity for the overall program of the church.

Work hours: The Children's Minister is a full-time, salaried employee who will maintain office hours from 9:00 AM until 4:00 PM during Monday through Thursday. He/she is off on Fridays as well as church holidays. The Children's Minister is responsible to perform the following duties:

1. Plan a Children's Program, which includes opportunities for spiritual growth, for service to the church and the community, and for fellowship and fun. The children's program should provide child-centered opportunities in line with the church's purpose statement.
2. Creates opportunities for children to encounter Jesus Christ at their level of understanding.
3. Become involved in the lives of the children and their families offering help and counsel.
4. Plan and provide leadership for Children's Church during morning worship.
5. Serve as the principal of the Children's Sunday School to include selection of curriculum, recruitment of teachers and workers, providing teacher and worker training, and plan annual teacher appreciation events.
6. Recruit, screen, train, and coordinate any workers needed for various children's programs.
7. Plan and execute annual Vacation Bible Schools. This includes selection of curriculum, recruitment of teachers and workers, providing teacher and worker training, and related publicity within and without the church.
8. Direct or recruit a director for children's choir(s) and/or other worship groups, which may include drama and/or dance.
9. Encourage children and their parents to participate in camping program.
10. Plan and supervise a mid-week children's program.
11. Create or recruit someone to create bulletin boards to highlight children's activities.
12. Make Christian children's literature available to the children of our church through a children's library or bookshelf.
13. Keep the church informed of the children's program by writing articles for the church newsletter.
14. Publicize children's programs both within the church and to the public.

15. Assist the Senior Pastor in other pastoral duties, as requested by the Senior Pastor.
16. By word and example, model the Christian life to the church and especially the children. Be the kind of Christian others can follow.

Example #2:

The Children's Minister will be a maturing Christian whose desire is to minister to children and the community.

He/she shall exemplify in their lives the Christian values held in Scripture (see 1 Tim. 3:1-12; Titus 1:5-16, 2:1-8; 1 Peter 5:1-4) and this congregation.

Areas of Responsibility:

1. He/she will oversee and administrate the children's program for ages birth through 5th Grade.
2. He/she will develop and provide primary leadership for the Children's Church program.
3. He/she will develop, provide primary leadership for the Wednesday night Children's program.
4. He/she will coordinate, administrate and supervise the children's Sunday School hour classes.
5. They will oversee the children's Vacation Bible School Program.
6. He/she will develop outreach programs for children.
7. He/she will develop fellowship and recreational activities or the children's program.
8. He/she will work to develop and train teachers and volunteers to assist them and to provide leadership within the children's department.
9. He/she will work with parents to provide holistic ministry for the children.
10. He/she will develop, oversee and administrate the church's community ministry programs.
11. He/she will live in the town of _____ and be an active part of its ongoing life.
12. He/she will develop community outreach and mission activities.
13. He/she works to inform the congregation of local needs and opportunities for service.
14. He/she will find and catalog community ministry services that are available.
15. He/she will develop collegial relationships with other are ministry services.
16. He/she will work to map and identify the families living within _____.
17. He/she will work to develop and train people who have a desire to serve the Kingdom of God through community ministry.
18. He/she shall carry out those pastoral duties assigned by the Senior Pastor.

Points of accountability: He/she will be accountable to the Senior Pastor and the Church Council. He/she will work in conjunction with the entire staff and with the Council person of Christian Education and the Council person of Missions and Outreach.

Minister of Music and Worship

Reports to: Senior Pastor

Position Summary: He/she is responsible for supervising and directing the music and worship ministries of the church under the supervision of the Senior Pastor. He/she is expected to administer his/her areas of ministry and to contribute to the team spirit of the pastoral staff and assist in maintaining and providing continuity for the overall program of the church.

Work hours: The Minister of Music and Worship is a part-time, salaried staff position and does not have office hours. He/she is expected to be present for Sunday services, scheduled music rehearsals, and scheduled staff meetings.

Duties:

1. Plan Morning Worship – Glorify God and enhance the theme of the message the pastor will be delivering. Use any worship resources available including: choir, children’s choir, drama, special soloists and groups, and instrumentalists, etc.
2. Direct Worship Choir – Lead a weekly rehearsal to prepare Sunday specials and one to two musical services per year. Create an atmosphere that will encourage people to participate in the ministry of the church. The tasks of practicing, preparing, and presenting music to glorify the Lord should be an enriching and enjoyable experience.
3. Develop Special Music – Discover, encourage, and coordinate vocalists and instrumentalists to use their talents in worship.
 - a. Responsible to schedule soloists, musicians, special music and audio and video technicians for Sunday worship services.
 - b. Responsible to publish schedule of musical and technology requirements with no less than 30 days advance notice.
 - c. Church’s agent for all CCLI requirements including annual renewal and required reports.
4. By word and example, model the Christian life to the church and especially to the musicians. Be the kind of Christian others can follow.

Youth Minister

Example #1:

Reports to: Senior Pastor

Position Summary: He/she is responsible for supervising and directing the youth ministry of the church under the supervision of the Senior Pastor. He/she is expected to administer his/her areas of ministry and to contribute to the team spirit of the pastoral staff and assist in maintaining and providing continuity for the overall program of the church.

Work hours: The Youth Minister is a part-time, salaried staff member and does not have office hours. He/she is expected to be present for Sunday services, scheduled youth activities, and scheduled staff meetings.

Duties:

1. Plan Youth Program – Plan, with the help of the lay youth workers, a well-rounded program of youth activities. This should include opportunities for spiritual growth, for service to the church and the community, for fellowship and fun, and for raising funds for special events (when required).
2. Spiritual Leadership for Youth – Create opportunities for young people to come to Christ and grow in Him.
3. He/she is expected to provide at least Sunday and mid-week services to the youth.
4. Pastor the Youth – Become involved in the lives of the youth and their families.
5. Encourage Participation in State and National Youth Activities – Publicize and encourage attendance at camps and youth conventions. The youth minister should involve himself/herself, as much as time allows, in these events.
6. Encourage Youth to Participate in the Church as a Whole – Help the youth to attach to the church and participate in all activities. Youth-led worship services and service projects are suggested as a way of helping them feel part of the total church.
7. By word and example, model the Christian life to the church and especially to the youth. Be the kind of Christian others can follow.

Example #2:

1. The Youth Pastor will be a maturing Christian whose desire is to minister to young people.
2. He/she shall exemplify in their lives the Christian values held in Scripture (see 1 Tim. 3:1-12; Titus 1:5-16, 2:1-8; 1 Peter 5:1-4) and this congregation.
3. He/she shall be responsible for the oversight, administration and operation of the youth program to include regular devotional, educational, and fellowship times.
4. He/she shall pay particular attention to developing the youth in areas of discipleship and evangelism.

5. He/she shall work to incorporate, equip and use adult volunteers within the program.
6. He/she shall work to communicate with and cultivate communications with youth parents.
7. He/she shall be accountable to the Senior Pastor, Church Council and shall work within the guidelines of the church bylaws and personnel policy.
8. He/she shall counsel under the guidance of the Senior Pastor.

Church Secretary/Administrative Assistant

Example #1:

Duties:

1. Receptionist:
 - a. Answer and direct incoming calls
 - b. Take detailed messages and distribute appropriately
 - c. Check voice mail messages regularly
 - d. Greet all persons as they enter the building
2. Sort incoming & outgoing mail
 - a. Sort and distribute incoming mail
 - b. Take outgoing mail to post office
3. Prepare weekly bulletin
 - a. Type, run copies and fold approximately 230 weekly bulletins
 - b. Contact helpers to place inserts and communication cards in weekly bulletin
4. Prepare bi-monthly newsletters
 - a. Collect upcoming articles
 - b. Layout, type, prepare and fold newsletters
 - c. Contact helpers to prepare bulk mailing of newsletters
 - d. Calculate mailing rate form and deliver to post office
5. Maintain church calendar
 - a. Schedule calendar events
 - b. Update and maintain accurate calendar information
6. Coordinate purchase order system
 - a. Assign purchase order numbers to each item purchased for the church
 - b. Receive signatures from appropriate council member
 - c. Prepare purchase order forms with receipts for accounting department.
7. Maintain church records/files
 - a. Maintain vacation records
 - b. Maintain record of church financial secretary's information
 - c. Maintain and update filing cabinet records
8. Maintain weekly church attendance & visitor information
 - a. Make updated attendance rosters

- b. Sort communication cards and record attendance
 - c. Prepare cards and mail to absentee list
 - d. Prepare staff update
 - e. Record prayer requests, praises, hospital information, etc. from communication cards
 - f. Prepare cookie bags for new visitors
 - g. Send informational letters to first time visitors
 - h. Add new visitor information to rolodex and database
9. Maintain bus/van schedule
- a. Schedule bus/van usage events
 - b. Provide keys and usage chart to approved drivers as scheduled
 - c. Calculate and ensure usage payment following trip
10. Update Hospital/Nursing Home Board
- a. Maintain accurate list of nursing home/shut-in residents
 - b. Monitor and maintain current hospital list
 - c. Order flowers for new babies, hospital patients, funerals
11. Word Processing
- a. Type and mail all greeters, cookie crew, and ushers schedules
 - b. Type monthly meeting minutes for various church groups
 - c. Type reminder cards for various meetings and committees
 - d. Type brochures, letters, and booklets for various groups
 - e. Prepare Church of God yearbook information
12. Purchasing
- a. Maintain supply of postage stamps and monitor bulk mail account for mailings
 - b. Order and maintain supplies for supply room
 - c. Place orders occasionally for pastoral members and congregational groups
 - d. Order flowers for new births, hospital patients, and funerals
 - e. Order New Testaments for baby dedications
 - f. Order and prepare baptismal certificates
13. Coordinate and distribute wedding policy information
- a. Schedule weddings and receptions according to availability of pastor and church facilities
 - b. Calculate and receive wedding deposit and payment
 - c. Arrange custodial and sound technician assistance
14. Miscellaneous projects
- a. Basic copying upon request
 - b. Basic word processing upon request
 - c. Assists in various ways to congregation & pastoral staff

Example #2:

Reports to: Senior Pastor

Position Summary: He/she is responsible for performing the secretarial work of the church under the supervision of the Senior Pastor. The secretary reports to both Senior Pastor and the Administration Division. He/she is expected to administer his/her work as a ministry and to contribute to the team spirit of the pastoral staff and assist in maintaining and providing continuity for the overall program of the church.

Work hours: The church secretary is a part-time, hourly staff member with assigned office hours. Office hours will be from 9:00 AM until 4:30 PM during Monday through Friday. He/she is provided with a half hour paid lunch break.

Duties:

1. Perform duties assigned by the Senior Pastor.
2. Screens phone calls, takes messages, types, copies, files, and helps as needed.
3. Assists Board of Elders, as needed (meeting reminders, scheduled appointments).
4. Screen know-your-neighbor pads.
5. Monitor cookie drops in conjunction with the know-your-neighbor pads to ensure visitors receive cookies and information packets.
6. Responsible to gather, type, proofread, and produce finished bulletins.
7. Assist newsletter editor with the publication of the newsletter.
8. Responsible to maintain the petty cash account.
9. Periodically update and republish the church directory.
10. Maintain rolodex file for the church office.
11. Establish and maintain office files.
12. Responsible to control and distribute audiotapes of services.
13. Maintain the church calendar.
14. Maintain the wedding file.
15. Responsible to request, compile, and publish annual report.
16. Purchase needed office supplies.
17. Post, collect, sort, and distribute mail.
18. Coordinate with the Communion team prior to communion.
19. Serve as liaison for prayer chain calls.
20. Coordinate ordering of special occasion flowers, as needed.
21. Perform other duties as assigned.

Custodian

Example #1:

Reports to: Administration Division, Board of Elders

Position Summary: He/she is responsible for performing the custodial duties as a ministry under the supervision of the Administration Division of the Board of

Elders. He/she is expected to administer his/her duties and contribute to the team spirit of the pastoral staff and church and to assist in maintaining God's house.

Work hours: The custodian is a part-time, contract staff member. He/she is expected to accomplish the duties identified below and ensure all actions are completed before the facility is scheduled to be used.

Duties:

1. The following duties will be accomplished twice weekly:
 - a. Empty all trash containers, remove trash from the buildings to the dumpster.
 - b. Vacuum, dust, and pick up loose paper on the floor of all classrooms, hallways, and entryways. This includes the sanctuary, balcony, and common areas and nursery.
 - c. Clean restrooms, which includes sinks, mirrors, toilets, and urinals.
 - d. Polish water fountains with metal cleaner.
 - e. Check and restock as necessary: soap, paper towel dispensers, toilet tissue, and facial tissue.
2. The following duties will be accomplished weekly:
 - a. Mop restroom floors – remove shoe-marks as needed.
 - b. Mop kitchen floor.
 - c. Wipe down cribs in the nursery with an anti-bacterial cleaning solution.
 - d. Wipe piano with a damp cloth (do not use wax) and dry thoroughly. Replace cover on piano.
 - e. Clean organ wood surfaces with furniture polish and wipe keys with a damp cloth only.
 - f. Clean office as much as possible.
 - g. Monitor inventory of cleaning supplies – turn in list of needed supplies to the office for ordering.
 - h. Note any needed maintenance and turn in list of needed repairs to the office for forwarding to the Administration Division.
 - i. Clean inside windows.
 - j. Vacuum pew cushions.
 - k. Clean and sweep the annex.
3. The following duties will be accomplish monthly:
 - a. Wash all accessible outside windows, weather permitting.
 - b. Wipe out windowsill and wipe down Venetian blinds.
 - c. Clean cobwebs from ceilings, doorways, and lighting fixtures using cobwebs broom.
 - d. Clean metal appliances in the restrooms with metal cleaner: faucets, handrails, towel dispensers, and urinal metal work.
 - e. Vacuum stairwells.
 - f. Wax kitchen and restroom floors.

- g. Wash baseboards.

Example #2:

Daily:

1. Empty trash
2. Clean entire church (excluding baptistery)
3. Dust and sweep
4. Mop entryways
5. Clean entry doors
6. Contact Property & Maintenance Deacon when needed
7. Schedule carpet cleaning

Secure building after activities on Sunday's & Wednesday's

1. Lock and unlock
2. Check lights
3. Check thermostats
4. Check offices
5. Turn off equipment

Wedding & Rehearsals

(Wedding party is responsible for set-up/tear-down and all areas used put back as found)

1. Unlock and lock
2. Clean restrooms
3. Sweep

Facility Utilization:

Example #1

Property Management: The Board of Elders is responsible to ensure all facilities are maintained to the highest standard. The cleanliness and physical condition of our facilities is a testimony to our respect for God and His Word. In addition, the Board of Elders is responsible to ensure the scheduling of the facilities to ensure the primary mission of the church is enhanced and dissimilar activities do not conflict with one another. Facilities and equipment may be used as indicated below:

1. Equipment may not be removed from church property unless it is being used for church-related reasons.
2. Equipment may not be used for personal business (for profit) on or off church property.
3. Designated items may be borrowed for personal use. The Administration Division has the authority to make such designation.
4. Any use of church facilities must reflect the philosophy and ministry of the church. Use of tobacco and/or alcohol is expressly prohibited on church grounds.

Signs and banners:

1. The Ministry Division of the Board of Elders must approve all signs and banners displayed within and without the church.
2. Specifically excluded are signs and posters specifically related to the on-going lessons of various Sunday School classes provided the following rules are followed:
 - a. All signs and posters displayed will be in good condition.
 - b. No signs or posters will be affixed to the walls with cellophane tape.
 - c. Bulletin boards should be used to the maximum extent possible.
3. Specific ministries of the church that require a bulletin board should request one from the Administration Division of the Board of Elders.
 - a. The Board of Elders should attempt to meet the needs of the specific ministry for both size of bulletin board and its location.
 - b. Bulletin boards should be standardized to enhance the overall décor of the church.
 - c. Once a bulletin board is approved for a specific ministry, a member of that ministry is responsible to ensure that it is utilized as intended.
 - i. All material should be neat and orderly.
 - ii. All material should be current.
 - iii. All material should be checked no less than weekly and replaced as required.

Physical Changes: The church is used for many functions and often the use of a particular portion of the church may significantly impact on the overall use of the whole facility. To ensure our facilities are maintained to the highest standard and contribute to the overall ministry of the church the following policy applies to physical changes to the use of any part of the facility.

1. No physical changes may be made to the facilities without the express consent of the Board of Elders.
2. To request a change to the physical environment a written request should be provided to the Board of Elders addressing the following:
 - a. Brief statement of what the current environment and use is.
 - b. Brief statement of what physical changes are requested.
 - c. Brief statement of the benefits the physical changes will provide.

Wedding Policy: The church may be used from time to time for weddings. These weddings may be between members of our church and occasionally non-members. The policies for each are listed below.

Guidelines for member weddings:

1. A Christian marriage is a total commitment of two people before God. If one person is not a Christian, yet come to a conference with the minister,

- he/she will explain what being a Christian is about and how that affects a marriage. It is the pastor's prerogative to decline or accept the invitation to perform a wedding ceremony.
2. All couples to be married must have been in a dating relationship for a minimum of one year prior to the wedding date and will need to attend at least four premarital counseling sessions with the pastor.
 3. A waiting period of one year is necessary for a person(s) seeking remarriage after divorce. The pastor will determine if there are Biblical grounds for remarriage after the first counseling session.
 4. An adequate notice should be given for a marriage to be performed. A minimum of three months notice is required unless there are extenuating circumstances.
 - a. Weddings are not confirmed on the church calendar until a conference with the request to the Senior Pastor.
 - b. The Senior Pastor will gather the pertinent facts and make a recommendation to the Board of Elders.
 - c. The Board of Elders will review the recommendation and make a determination.
 - d. The Senior Pastor will convey the decision of the Board of Elders to the minister requesting the use of the facility.
 5. Requests for specific counseling dates and/or wedding dates may conflict with ongoing programs. Requests will be met to the maximum extent possible. The ministry of the church will take precedence.
 6. The positioning of the photographer and the placement of video equipment during the service should be discussed with the minister. Such activities need to be discreet and in good taste.
 7. All weddings occurring at the church should be performed by one of the pastoral staff. Any other minister must have the approval of the Board of Elders to conduct a wedding at our facilities.
 8. Ministers other than those on staff at the church should make their request to the Senior Pastor.
 - a. The Senior Pastor will forward the request with his/her recommendation to the Board of Elders.
 - b. Approval by the Board of Elders by simple majority.
 - c. The Senior Pastor will inform the minister requesting to conduct the ceremony of the Board of Elders' decision.
 - d. The process should be conducted as expeditiously as possible to include the use of telephone polls of the Elders.
 9. Birdseed must be used in place of rice.
 10. No alcoholic beverages or smoking is allowed on the church property.
 11. All refreshments must be kept in the fellowship hall.
 12. The following schedule of fees is provided:

a. Sanctuary	No charge
b. Fellowship Hall	No charge
c. Sound technician	Negotiable
d. Instrumentalist(s) (Each)	Negotiable

e. Singer(s) (Each)	Negotiable
f. Custodian	\$25-\$50*
g. Kitchen Coordinator	\$25
h. Minister	Not required

*Based on whether or not the fellowship hall is used

13. The fees are due to the church office during normal business hours not later than one day prior to the rehearsal. The original marriage license and duplicate must also be delivered to the office when the fees are paid. The bride and groom should fill out the duplicate license as completely as possible before submitting it. Church office hours are Monday through Friday from 9:00 AM until 4:00 PM.
14. It is the responsibility of the bride and groom that before they leave the facility that the following conditions have been met:
 - a. All furniture moved or items used need to be returned to their original place immediately after the ceremony.
 - b. Items used from the kitchen for the reception must be cleaned and replaced under the supervision of the kitchen coordinator.
15. The church provides actual cleaning of the building.
16. The wedding party is responsible to replace any broken or damaged items.
17. The kitchen may not be used unless a kitchen coordinator is contracted and present.
18. If a candelabra is used, clear plastic must be placed beneath it/them to protect the carpet from melted wax.
19. A wedding scheduling form will be used and must be on file in the church office prior to the first counseling meeting with a minister.

Guidelines for non-member weddings:

1. A Christian marriage is a total commitment of two people before God. If one or both persons are not Christians, yet come to a conference with the minister, he/she will explain what being a Christian is about and how that affects a marriage. It is the pastor's prerogative to decline or accept the invitation to perform a wedding ceremony.
2. All couples to be married must have been in a dating relationship for a minimum of **one** year prior to the wedding date and will need to attend at least four premarital counseling sessions with the pastor.
3. A waiting period of one year is necessary for a person(s) seeking remarriage after divorce. The pastor will determine if there are Biblical grounds for remarriage after the first counseling session.
4. An adequate notice should be given for a marriage to be performed. A minimum of three months notices is required unless there are extenuating circumstances.
5. Weddings are not confirmed on the church calendar until a conference with the minister, at which time a determination will be made if the minister will conduct the wedding.

6. All weddings occurring at the church should be performed by one of the pastoral staff. Any other minister must have the approval of the Board of Elders to conduct a wedding in our facilities.
 - a. Ministers other than those on staff at the church should make their request to the Senior Pastor.
 - b. The Senior Pastor will gather the pertinent facts and make a recommendation to the Board of Elders.
 - c. The Board of Elders will review the recommendation and make a determination.
 - d. The Senior Pastor will convey the decision of the Board of Elders to the minister requesting the use of the facility.
7. Requests for specific counseling dates and/or wedding dates may conflict with ongoing programs. Requests will be met to the maximum extent possible. The ministry of the church will take precedence.
8. The positioning of the photographer and the placement of video equipment during the service should be discussed with the minister. Such activities need to be discreet and in good taste.
9. Birdseed must be used in the place of rice.
10. No alcoholic beverages or smoking are allowed on the church property.
11. All refreshments must be kept in the fellowship hall.
12. The following schedule of fees is provided:

a. Sanctuary	\$150
b. Fellowship Hall	\$150
c. Sound technician	Negotiable
d. Instrumentalist(s) (Each)	Negotiable
e. Singer(s) (Each)	Negotiable
f. Custodian	\$25-\$50*
g. Kitchen Coordinator	\$35
h. Minister	\$150

*based on whether or not the fellowship hall is used
13. The fees are due to the church office during normal business hours no later than one day prior to the rehearsal. The original marriage license and duplicate must also be delivered to the office when the fees are paid. The bride and groom should fill out the duplicate license as completely as possible before submitting it. Church office hours are Monday through Friday from 9:00 AM until 4:00 PM.
14. It is the responsibility of the bride and groom that before they leave the facility that the following conditions have been met:
 - a. All furniture moved or items used need to be returned to their original place immediately after the ceremony.
 - b. Items used from the kitchen for the reception must be cleaned and replaced under the supervision of the kitchen coordinator.
15. The church provides actual cleaning of the building.
16. The wedding party is responsible to replace any broken or damaged items.

17. The kitchen may not be used unless a kitchen coordinator is contracted and present.
18. If a candelabra is used, clear plastic must be placed beneath it/them to protect the carpet from the melted wax.
19. A wedding scheduling form will be used and must be on file in the church office prior to the first counseling meeting with a minister.

Kitchen Use Policy: The kitchen may be used for church-related functions. To ensure no scheduling conflicts occur, the use must be scheduled and approved by the church office. All use of the kitchen (as well as the remainder of the facility) must be in accord with the philosophy and purpose of the Church of God.

The following additional requirements must be met:

1. A single point of contact for the use of the kitchen must be designated. They will be known as the kitchen coordinator.
2. The kitchen coordinator will ensure all foodstuffs kept in either the refrigerator or freezer are clearly marked and dated. Once the event the kitchen was reserved for is over they will ensure all foodstuffs are removed.
3. The kitchen coordinator will ensure all appliances, pots and pans, dishes, serving utensils, and silverware are thoroughly cleaned and returned to their original location.
4. The kitchen coordinator will ensure any cloth products used from the kitchen are washed, folded, and returned within 48 hours of the completion of the event.
5. The kitchen coordinator will ensure all trash is removed from the building and placed in the dumpster after the event. They will also ensure new trash liners are replaced in all trash containers used.
6. The kitchen coordinator will ensure all additional facilities used (fellowship hall, classrooms) are cleaned and returned to their original configuration immediately after the event is completed.
7. The kitchen coordinator will report any problems, damage, malfunction of any appliances to the church office as soon as is practical after they are observed.

Guidelines for use of minibus:

1. The Administration Division will appoint a bus administrator on a yearly basis. He/she will be in charge of all bus functions including scheduling use and maintenance, safety checks, cleaning, record keeping, and all required paperwork. He/she will work with the Administration Division, church office, and pastoral staff to avoid and/or resolve any scheduling conflicts.
2. The bus administrator must ensure the bus stays mechanically sound and clean in according with the following guidelines:

- a. Bus should be cleaned inside as required.
 - b. Bus should be cleaned/washed outside as required.
 - c. Bus should have oil/fluid changed every 3,000 miles or three (3) months.
 - d. A master maintenance and expense record must be maintained.
 - e. Operators must use the logbook in the bus each time the bus is used.
3. The bus will be used on a no charge basis for the various ministries of the church.
4. The bus may be used on a charge basis for non-church functions if the following conditions are met:
- a. There must be some connection between the non-church use of the bus and the church. For example, if a member of the church is also the member of a club that wishes to use the bus that would be assumed the connection. The church member will be the requestor and must make the request to the Board of Elders through any elder. The church member making the request must be 21 years of age or older.
 - b. The following procedure will be followed to request the use of the bus:
 - i. The requestor makes his/her request known to a member of the Administration Division, Board of Elders.
 - ii. The elder who received the request will present it (or ensure it is presented by another elder) at the next regularly scheduled board meeting.
 - iii. The board will ensure the requestor is advised immediately following the board meeting of the board's decision.
 - c. The Board of Elders must approve all use for non-church functions. This includes approval of the driver who must be a member of the church.
 - d. The charge for the bus is \$0.43 per mile driven. The mileage starts and stops at the church. This mileage charge includes fuel. If the user of the bus provides fuel that fuel will be deducted from the mileage charges provided the receipt is provided.
 - e. Church functions have priority on the use of the bus.
 - f. Prior to using the bus, the non-church entity must have a signed contract on file with the church. The church reserves the right to request a deposit of \$100 or 25% of the expected expense; whichever is less prior to releasing the bus.
 - g. The user of the bus is expected to keep the interior of the bus clean while in use and clean the bus inside and out after they use it. If the bus is not cleaned after use, a \$50 cleaning fee will be assessed.
5. All drivers are expected to perform the following safety checks prior to using the bus each day.
- a. Check the operation of all lights.
 - b. Check all fluid levels.

- c. Check for inflation of all tires.
- d. Ensure trash can is empty and spare bags are available (may be obtained from church).
- e. Ensure bus is fully fueled prior to leaving town or being used for a non-church function (to ensure non-church entity only pays for fuel used if they chose to fuel the bus after use).
- f. Reports all deficiencies to the bus administrator that are not critical.
- g. Critical safety deficiencies must be reported to the bus administrator and repaired prior to using the bus. Critical deficiencies include:
 - i. Illumination of brake warning system light.
 - ii. Deflation of tire(s).
 - iii. Burned out headlight (if possibility of being used at night).
 - iv. Inoperative turn signal (either side or both).
 - v. Broken/missing fan belt.
 - vi. No/low oil pressure.
 - vii. Abnormally high engine temperature.
- 6. When children are being transported there must be another adult present to ensure their safety. The driver is expected to concentrate fully on the safe operation of the bus and not maintaining order.
- 7. All passengers will wear seatbelts while the bus is in motion.
- 8. Small children on local trips should not consume food and drinks.

Guidelines for special events: Special events occur throughout the year. These may be annual events or one of a kind events. The Ministries Division may be responsible for selected events; however, organizations within the church may sponsor events from time to time. Special events may include all-church picnics, Valentine Day dinners, holiday dinners, ice cream socials, funeral dinners, and other similar events.

The Ministries Division should be the central clearinghouse of all special events within the church to ensure adequate facilities and resources exist for that event as well as to de-conflict events throughout the church year. As events are planned, the Ministries Division is responsible for ensuring they are placed on the church calendar. The following guidelines should be followed for all special events.

Note: Funeral dinners will be done for a member's immediate family, which include parents, grandparents, children grandchildren, siblings, and spouse.

1. When a special event is planned a committee should be formed or a coordinator appointed.
2. The sponsor of the event should inform them of the resources they have available. The resources include funding, reports from previous events, and facilities.

- a. The sponsor of the event must inform the committee of exactly how much money they can spend.
 - b. The sponsor of the event must inform the committee of how the money will be provided or reimbursed. If reimbursement is chosen, the sponsor is responsible to provide all required forms to the committee for their reimbursement.
 - c. The sponsor must inform the committee of the church's tax-exempt status and provide instructions and the church's tax ID to eliminate the need to pay sales tax.
3. The special event committee should ensure they adequately plan the event based on available resources.
 4. The special event committee is responsible to ensure the event is publicized to the maximum extent possible. This may be done through special announcements, a specific announcement slide during morning worship, newsletter, and bulletin inserts.
 5. At the conclusion of the special event, the planning committee is responsible to provide a final report to the Ministries Division, which will be used in the planning of subsequent events.
 6. The Ministries Division is responsible to ensure they receive an adequate report from all special events.

Example #2:

Weddings fees for members: A member is defined as one who is faithfully attending, serving, and supporting the congregation, and has done so for six (6) months prior to the date of the request to reserve the facilities for their wedding.

Members of the church who attend as listed above may have immediate family members (son/daughter) that have attended in the past utilize the member policy.

Deposit	\$25.00
Church Facilities	No Charge
Pastor Honorarium	\$100.00 suggested fee
Organist	\$50.00 suggested fee
Pianist	\$50.00 suggested fee
Audio Technician	\$50.00
Soloist	Negotiable
Janitor	\$75.00

A refundable \$25.00 deposit is required to hold your wedding date on the church calendar. The deposit fee must be paid to the church at the time of reserving the date and will be returned the week following the wedding.

The wedding payment is due at the church office one week prior to the wedding. A fee statement will be sent to the couple to be married. Checks must be written individually upon the above listed services.

Wedding fees for non-members: A member is defined as one who is faithfully attending, serving, and supporting the congregation, and has done so for six (6) months prior to the date of the request to reserve the facilities for their wedding.

Members of the church who attend as listed above may have immediate family members (son/daughter) that have attended in the past utilize the member policy.

Deposit	\$25.00
Church Facilities	\$100.00
Pastor Honorarium	\$100.00 suggested fee
Organist	\$50.00 suggested fee
Pianist	\$50.00 suggested fee
Audio Technician	\$50.00
Soloist	Negotiable
Janitor	\$75.00

A non-refundable \$25.00 deposit is required to hold your wedding date on the church calendar. This will be applied toward the balance of the wedding payment. The deposit fee must be paid to the church at the time of reserving the date.

The wedding payment is due at the church office one week prior to the wedding. A fee statement will be sent to the couple to be married. Checks must be written individually upon the above listed services.

Special notes:

- Throwing rice creates special safety problems both inside and outside the church. Use bird seed only.
- Flower petals leave a dark stain on the carpet. Please use only silk or paper ones.
- Please remove belongings from the sanctuary and dressing areas before leaving the church.
- All wedding items must be taken down and removed or there will be an extra \$15.00 custodial charge to remove the items.
- Set up or tear down of tables and chairs for rehearsal dinners or receptions is the responsibility of the wedding party.
- For receptions or other events that require the use of the church kitchen, the family is responsible to restore the kitchen to a clean condition.
- Use only approved clamping devices for decorating pew ends. No screws, nails, excessive tape, etc.
- When candles are used, they must be protected by hurricane lamps.
- Please make sure that plastic is placed under any candelabras to protect the carpeting.
- Absolutely no smoking or alcohol anywhere on the church property.

Conclusion

Each state, regional, or providential office of the Church of God seeks to partner with congregations and to provide resources that enable congregations to be healthy, viable organizations in their communities. The functionality of a congregation's bylaws plays a significant role in enabling a local church to provide ministry to its members and those who the church seeks to serve.

Resources

Robert, Henry M. Robert's Rules of Order Newly Revised, 10th Edition. Chicago, et. al. Scott, Foresman and Company, 2000.

Block A4

Directional Statements

Organizations, churches, and ministry groups are products of the ways people think and interact. For positive change to occur, people need to adjust their manner of cognitive reflection and individual relationships. A leader is challenged to assist individuals in mental-model adjustments leading toward an alteration of their attitudes, beliefs, skills, capabilities, perceptions, and/or level of commitment. Participation in the writing of directional statements creates an environment for a new level of strategic thinking.

The continued capability for change may be constructed in directional statements. Given directional focus, individuals gain new insight for ministry and purpose. Interaction will lead them to greater intensity, stronger relationships, and heightened commitment. Motivation for involvement occurs as individuals catch and understand the vision of future direction.

MISSION/PURPOSE STATEMENT: “*Why do we exist?*”

The Mission/Purpose Statement declares the ministry direction of the organization. It is written as a comprehensive, understandable, distinctive, and invariable statement of intention. It serves as a rationale for existence.

Comprehensive: The statement should be comprehensive enough to cover the reason for the organization to exist. How does it describe the intention for witness and ministry?

Understandable: Clarity is achieved when the statement is brief, direct, and to the point. Is it understandable?

Distinctive: A distinctive statement accentuates the organization’s unique context and mission. How are we different from other similar organizations?

Invariable: The statement should be consistent with biblical ideals. Does the statement reveal the policy, practice, and teaching of scripture?

Examples of mission statements:

- To help persons become completely committed servants of Jesus Christ.

- To share the knowledge and saving love of Jesus Christ by doing God's will to glorify His name.
- "Whatever it takes to Know, Grow, & Sow" – To know God intimately; To Grow in the knowledge of His Word; & To Share the Gospel with others!
- A presence shaped to inspire excellence – personally, spiritually, & corporately.
- Touching lives, reaching out, building the Kingdom.
- To expand the Kingdom of God.
- To develop people into fully functioning followers of Jesus Christ.

CORE VALUES: *"What is the driving force for what we do?"*

Core values are consistent, passionate, and particular convictions that have a biblical basis for influencing our decisions, driving our ministry, and describing our behavior. They are the penetrating motivators which describe an organization's intrinsic excellence or desirability. They describe the essence of an organization. Written in the present or past tense, they state the organization's driving passion.

- Consistent:** Core values will remain in tact throughout an organization's duration. They may be tweaked, but they may not be changed. Will these values stand the test of time?
- Passionate:** Associated with emotions and intellect, they inspire and move people to action. Do these values generate enthusiasm and energy? Do these values touch people's emotions?
- Particular:** Core values describe the essence of a person's or organization's existence. They must be based on biblical principles which reflect God's unique assignment. Can these values be found in scripture?
- Influences Decisions:** Decisions are made based on clearly expressed values. Are the core values comprehended so that the correlating behavior will be recognized? Are decisions of the organization based on the stated values?
- Drives Ministry:** When everyone in the organization shares the values, then they act together for the common cause. Can the motivations of strong commitment within the organization be tied to the statement of values?
- Describes Behavior:** The characterization of the organization will be recognized by the stated values and the way in which

they are exercised. The values will be congruent and model a consistency of behavior. Does the performance of the organization reflect the core values?

Examples of core value statements:

- Become:
 - B**alance
 - E**xcellence
 - C**ommitment
 - O**thers-centered
 - M**ultiplying
 - E**ngaging Culture

We are living out our value of multiplying by our becoming a multi-site church --- one church with multiple locations.

- Values:
 - Accountability to God and the Body
 - Biblical Preaching and Teaching to Equip the Body
 - Equipping the Body to be Equippers
 - Mobilizing the Laity
 - Training through Discipleship
 - Outreach to Meet Felt Needs
 - Excellence in All things to Please God
- Core values define who we are and who we will become as we make choices and engage in the world around us.
 - Truth: The Bible is our ultimate guide and authority, the standard by which we live.
 - Worship: We respond to the greatness and goodness of God by humbling ourselves before Him.
 - Community: Our love for God is proved true by the way we love one another.
 - Mission: Jesus came to proclaim, heal, free, and restore. So do we.
- Those values which define our mission and drive our ministry.
 - Christ's Headship: We acknowledge Christ as the head of our church and submit ourselves and all of our activities to His will and good pleasure (Ephesians 1:22-23).
 - Biblical Teaching: We strive to teach God's Word with integrity and authority so that seekers may find Christ and believers will mature in Him (2 Timothy 3:16).

Authentic Worship: We desire to acknowledge God's supreme value and worth in our personal lives and in the corporate, contemporary worship of our church services (Romans 12:1-2).

Prayer: We rely on private and corporate prayer in the conception, planning, and execution of all the ministries and activities of this church (Matthew 7:7-11)

Sense of Community: We ask all our people to commit to and fully participate in biblically functioning small groups where they may reach the lost, exercise their gifts, be shepherded, and thus grow in Christlikeness (Acts 2: 44-46).

Family: We support the spiritual nurturing of the family as one of God's dynamic means to perpetuate the Christian faith (2 Timothy 1:5).

Grace Orientation: We encourage our people to serve Christ with hearts of love and gratitude rather than guilt and condemnation (Romans 6:13).

Creation and Innovation: We will constantly evaluate our methods, seeking cultural relevance and maximum ministry effectiveness for Christ (1 Chronicles 12:32).

Lost People: We value the unchurched and will use every available Christ-honoring method to pursue, win, and disciple them (Luke 19:10).

Mobilized Congregation: We seek to equip all of our uniquely designed and gifted people to effectively accomplish the work of our ministry (Ephesians 4:11-13).

Ministry Excellence: Since God gave his best (our Savior), we seek to honor Him by maintaining a high standard of excellence in all of our ministries and activities (Colossians 3:23-24).

VISION STATEMENT: “What are we going to do?”

A Vision Statement delineates a clear, shared, and compelling picture of the desired future. Visions are an exhilarating forecast which motivates individuals within an organization toward accomplishment. It serves as a directional guide for change.

Clear: A clear picture is written in the Vision Statement so leaders and participants of an organization may understand how to proceed and what actions will be consistent to obtain the desired future. Do we understand where the vision is leading us?

Shared: A shared vision avoids disunity and misdirected actions. When the individuals of an organization are working together, they are engaged in community and cooperative ministry. Are individuals empowered to share in the vision?

Compelling: A compelling vision motivates participants to action. Has the vision caught the imagination and energy of all the participants?

Examples of vision statements:

- To become a diverse congregation, reflecting the diversity of our communities, through the love of Jesus Christ.
- To become a New Testament community of spirit-led believers in which every person is completely committed to accomplishing God's purposes for the world.
- We envision sharing the good news of Christ's death and resurrection with thousands of unchurched friends and neighbors in the valley area. We envision developing new believers, as well as established believers, into fully functioning followers of Christ through people-friendly worship services, discipleship, training, small groups, and special events. We envision becoming a church of small groups where our people model a biblical community: a safe place where we accept one another and are accepted, love and are loved, shepherd and are shepherded, encourage and are encouraged, forgive and are forgiven, and serve and are served. We envision helping our people, youth as well as adults, to discover their divine designs so that they are equipped to serve Christ effectively in some ministry, either within or outside of our church. Our goal is that every member will be a minister. We envision welcoming members into our body who are excited about Christ, experiencing growth in their marriage and family relationships. We envision recruiting, training, and sending out many of our members as missionaries, pastors, and church workers all over the world. We also see some pursuing short term mission service in various countries. We envision helping plant churches in America and abroad. We envision a facility that will accommodate growth. This facility will provide ample room for teaching small groups, Bible study, prayer, and other meetings. While we do not believe that "bigger is better," numerical growth is a by-product of effective evangelism. Thus, we desire to grow as God prospers us and uses us to reach a lost and dying world.

OBJECTIVES: "What do we wish to accomplish?"

Objectives are viewed as the larger picture of the desired outcomes. As broad considerations, they are general, focused, and collective. Objectives identify the desired possibilities for change and improvement. They offer a specified end which can be established for an indefinite length of time through which purposes can be achieved and translated into goals and actions.

- General:** Objectives share the broad considerations in contrast to goals which are more specific intentions. Objectives state the general purposes of an organization. What changes do we desire to implement?
- Focused:** Objectives focus the resources on the change efforts. What elements in the organization are needed for change to be accomplished?
- Collective:** Objectives cluster groups of information and needs into categories that will be found within the scope of the organization. What are the collective factors and constituents that need to be changed?

Examples of objective statements:

- To construct a multi-ministry facility on the church's new property and move our operation to that new facility.
- To seek to bring unchurched people into a relationship with Jesus Christ and into the fellowship of the church.
- Encourage Bible learning and life application of Biblical principles among members and help them find and execute God's individual ministry for them.
- Encourage church members to grow in love and care for each other and encourage a family atmosphere at the church.
- Help those in need of our community, our state and around the world simply because they have a need and we have ability to provide help.
- Increase attendance at church activities.
- Giving to the church should grow proportionately with attendance
- Continue to staff the church for growth.

GOALS: "How do we specifically intend to accomplish our objectives?"

A goal is a statement of dated intent to obtain a describable quality and/or quantity of results. It is written as a measurable, attainable, pragmatic, and specific plan for accomplishing an objective. It serves as a precise concentration for task attainment.

- Measurable:** A goal should contain a quantifier which provides the standard for measuring completion. Does the goal describe a means for determining the level of achievement?
- Attainable:** A realistic goal is reachable. Can the goal be accomplished?

Pragmatic: Given the needs and available resources, is it practical to invest time and talent in the goal? Is it a sensible and worthy cause?

Specific: A goal states in detail the task to be accomplished and when it will be completed. Does the goal state what the organization wishes to accomplish and the time frame for completion?

Examples of goal statements:

In relation to the above mentioned objectives three goals are listed for each:

- The building committee will seek wish-lists from its various subcommittees. These lists will be compiled by the end of January 2004.
- The building committee will select an architect or design/build firms to make proposals by the end of February 2004.
- The building committee will present a building plan to the board by the end of June 2004.
- The staff will continue to design worship that will be comprehensible and attractive to the unchurched to challenge them to come to faith in Jesus and become part of the church.
- To baptize 100 people in the next five years.
- In time for the budget process in 2004-2005 the board will appoint a task force to assist the pastor with formulating a marketing/advertising strategy and budget.
- The Sunday school in its present form is about maxed out. The rooms that are not being used are very small. They are now being used for short-term classes, but they are not really adequate. The ministries division should continually evaluate the current Sunday school situation to see if and what can be done to make room for growth now and to prepare for growth in the new facility.
- At least one new small group Bible study should be added each year.
- The staff and ministries division will sponsor annual training opportunities for Sunday school teachers and Bible study leaders.
- The ministries division will plan quarterly all-church fellowship events. Examples: Harvest Dinner, bowling night, skating party, church picnic. (The ministries division may want to appoint a fellowship task force to plan these events.) This should start in 2004-2005.
- The ministries division will continue the Suppers for Eight Program and find ways to encourage more participation.
- The board and ministries division will encourage the newly starting senior adult fellowship as it develops.
- The church will continue to give from the general offerings 6% to Church of God World Ministries and 4% to Indiana Ministries of the Church of God.

- The missions task force will submit to the board a missions budget beginning in 2003-2004 that will be funded largely by special giving and fund raisers to do special mission projects that the task force recommends.
- The missions task force will sponsor a work camp Kima International School of Theology in Kenya in 2004-2005. They will plan ways to raise money for the materials needed for the project and to help participants with expenses.
- The attendance in Sunday morning worship at the church should be about 400 in 2007-2008.
- Sunday school attendance should be about 160 the same year.
- 150 people should be involved in Sunday evening activities by then.
- The regular budget giving should be around \$550,000 per year by 2007-2008.
- Capital funds giving should be around \$175,000 per year by 2007-2008.
- By the end of this period the “over and above” giving for missions should be about \$25,000.
- Every effort should be made to keep our fine current staff.
- In 2004-2005 a new support position should be created as Business Manager. This part-time position would combine the two financial secretary jobs and oversee the maintenance of the building and grounds, vacation and sick leave days, filing system, etc.
- In 2006-2007 our youth pastor, given continued growth in the youth program, should be brought on to the full-time staff.

ACTION PLANS: “What is our strategy?”

Action plans describe the strategy to be employed in accomplishing the goals. They proclaim the methods, resources, activities, and training necessary for moving toward the desired change in an organization. They serve as a road map for the journey.

- Methods:** A systematic path needs to be established for the journey toward change. What procedures will be used to fashion a completed plan?
- Resources:** Financial, physical, and human resources are available. Action plans should capitalize on the skills and interests of individuals in the organization. What will be utilized in the change process?
- Activities:** Various steps are created to lead from the beginning point to the final destination. What activities will be designed to guide the excursion?

Training: Provisions to train individuals for implementing the plan are necessary. What training events will be conducted to equip leaders?

Examples of an action plan or can look more like a time line:

2003-2004

- Staff will offer an evangelism training experience
- Staff will offer a spiritual gifts class
- Administration division will implement maintenance and beautification plan
- Administration division will implement policy manual
- Continue and expand the Suppers for Eight program this year and subsequent years
- Ministries division will off a ministries fair
- Ministries division will evaluate current Sunday school situation and a plan to deal with continued growth
- Continue Meals that Heal and funeral dinner ministries this year and subsequent years
- Continue giving 6% to Church of God Ministries and 4% to Indiana Ministries of the Church of God and subsequent years
- Mission task force will submit a mission budget and a plan to raise
- Continue the ministerial internship program this year and subsequent year

2004-2005

- Task force for marketing/advertising will offer a strategy and budget
- Finance division will provide quarterly stewardship education bulletin inserts or articles
- Ministries division will implement quarterly all-church fellowship activities
- Missions Task Force will develop a procedure to enable the church to react to special emergency situations such as fire, flood, or other disasters both locally and world-wide
- Staff and ministries division will plan a special event with the express purpose of interesting the unchurched in the Lord and our church.
- At least one new small group will be added this year and subsequent years
- The staff and ministries division will provide an appreciation event(s) for teachers and workers this year and subsequent years
- Ministries division will take an interest survey and use it to place volunteers in ministry and to determine interest in new ministry possibilities
- Finance division will sponsor a workshop, seminar or class on Christian financial management and a similar event in each subsequent year
- Staff and ministries division will offer a marriage retreat
- Finance division will study the feasibility of providing funds for continued formal education for staff members who request it
- Ministries division will encourage the senior adult fellowship

- Ministries division will work with the youth staff to find ways to serve college age people
- Nicholas Ministry will keep pace with the growth of the church this year and each subsequent years

EVALUATION: “How did we do?”

Evaluation is the ending activity which provides new insight for futuring. Assessment and compliance help to determine if the direction of the organization has remained on target.

Assessment: How well did we achieve the objectives and goals? What changes needed to be made in the strategy and action plans? What would we do differently if we were just starting the journey now? How did we respond to road blocks and difficulties? What did we learn that will guide a new directional plan for the organization?

Compliance: How did our efforts remain congruous with the mission and values of our organization? Where and why did we deviate from our directional statements?

To see how you have done, review your list of objectives and goals. How are you doing? How many were accomplished? How many were done well? What are the road blocks that kept you from accomplishing other objectives and goals? What can be done to eliminate those road blocks.

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Block B1

Internal Controls

Churches depend on charitable giving in order to operate financially. The people responsible for the donations expect their money to be secure and to be handled with wise stewardship. Just as the church calls its people to be good stewards, it must also practice what it preaches.

As faithful stewards, church leaders must establish procedures that provide for the greatest safety of the financial resources of the church and provide for wise distribution of these resources. This chapter will help church leaders to establish an internal controls system that will monitor the flow of money in the church as well as establishing correct reporting of these funds.

A. PROCEDURE MANUAL

Church leaders need to develop a procedure manual that details each step for accounting and reporting financial resources. This manual should include:

- ❖ Preparing the budget
- ❖ Handling transactions
 - Internal Controls:
 1. All of the internal controls used when receiving cash or other assets, whether in the offering or at the office.
 2. All of the internal controls used when disbursing cash, whether by check or through the petty cash fund.
 - Processing of Transactions
 1. The forms and procedures used to record both cash receipts, including memorials or restricted gifts, and cash disbursements.
 2. The forms and procedures used to record gifts of property and securities.
 3. The accounts used to record the transactions, together with a written description of the types of transactions that should be entered in each account.
- ❖ Assuring reliable recordkeeping
 - Internal Controls:
 1. The procedures used to reconcile totals of cash receipts and cash disbursements against individual amounts.
 2. The procedures used to reconcile church cash records against bank records.

❖ Preparing and distributing financial reports

Financial Reporting:

1. Membership
2. Management (finance committee, program leaders, pastor, business administrator and so on).
3. Others (regional/national church offices, the bank, the Internal Revenue Service, and so on).³⁸

This manual should be kept on the church property at all times. It should also be reviewed occasionally to make sure all information is current and in compliance with IRS regulations.

Church leaders must understand that **once the procedure manual is created it must be followed**. If a crisis situation should arise and the procedure manual has not been followed, it could be costly for the church. As church staff, both hired and volunteer, change, they should be made aware of the procedures for the handling of financial resources.

B. SEPARATION OF DUTIES

Churches need to protect themselves from the risk of embezzlement. One way is to separate the duties of handling the money. This is accomplished by assigning different individuals from different families (if using volunteer help) one of the following duties:

1. Transactions: This person(s) is responsible for authorizing the financial transactions of the church. This would include bill paying, etc.
2. Receipts: There should be at least two unrelated persons that are responsible for counting and depositing the income of the church.
3. Disbursements: This person(s) is responsible for completing transactions that have been approved by the person with transactional authority.
4. Signatures: It is best to have two unrelated persons sign the checks. This could include the person who created the check, however, it is better to have someone else. **The pastor should never be one of the signatures.**
5. Recorder: This person(s) responsibility is to record all receipts and disbursements of the church.

The majority of churches have one individual that cares for all of the above duties. Many small churches do not have the personnel to cover all the duties. Therefore, it is essential to have a different person count and

³⁸ Richard J. Vargo, The Church to Internal Controls (Matthews, NC: Christian Ministry Resources, 1995): pp. 15-16.

deposit the income of the church from the one that disburses the money. These two people should never be relatives. Pastors should not be one of the individuals.

When money comes into the church, it should be stored in a safe until it is ready for deposit in the bank. Money should never go to an individual's home before being deposited in the bank. The church should provide a night deposit key for the person(s) responsible for depositing the money if the church does not have a safe.

C. AUDITS

Church board members have a long list of responsibilities. Among these is the responsibility for the money that flows through the church.

An annual audit of the church's records is a must. External audits are performed by an independent auditor who has no impairing relationship to the church and, therefore, can review its data procedures with maximum objectivity. Internal audits generally are performed by church members or by persons closely associated with the church.

External Audits

The ideal is to have an annual audit performed by independent CPAs. However, only large churches generally can afford this extra expense. External audits of smaller churches often are done on a non-GAAP basis – the statements do not conform to the full accrual method with depreciation recognized. Non-GAAP audits of smaller churches often are acceptable to banks and other agencies that require audited financial statements. (GAAP stands for Generally Accepted Accounting Principles).

Internal Audits

Members of the church may form an audit committee to perform an internal audit to determine the validity of the financial statements. (Sample internal audit guidelines for churches follow below.) If the committee takes its task seriously, the result may be significant improvements in internal control and accounting procedures. Too often, the internal audit committee only conducts a cursory review, commends the treasurer for a job well done, and provides the church with a false sense of security.

Church Internal Audit Guidelines

Financial Statements

1. Are monthly financial statements prepared on a timely basis and submitted to the church board?

2. Do the financial statements include all funds (unrestricted, temporarily restricted, and permanently restricted)?
3. Do the financial statements include a statement of financial condition and statement of activity?
4. Are account balances in the financial records reconciled with amounts presented in financial reports?

Cash Receipts

General

1. Are cash handling procedures in writing?
2. Has the bank been notified to never cash checks payable to the church?
3. Are Sunday school offerings properly recorded and delivered to the money counters?
4. Are procedures established to care for offerings and monies delivered or mailed to the church office between Sundays?

Offering Counting

1. Are at least two members of the counting committee present when offerings are counted? (The person counting the money should not include the pastor or church treasurer.)
2. Do money counters verify that the contents of the offering envelopes are identical to the amounts written on the outside of the envelopes?
3. Are all checks stamped with a restrictive endorsement stamp immediately after the offering envelope contents are verified?
4. Are money counters rotated so the same people are not handling the funds each week?
5. Are donor-restricted funds properly identified during the process of counting offerings?

Depositing of Funds

1. Are two members of the offering counting team in custody of the offering until it is deposited in the bank, placed in a night depository, or the church's safe?
2. Are all funds promptly deposited? Compare offering and other receipt records with bank deposits.
3. Are all receipts deposited intact? Receipts should not be used to pay cash expenses.

Restricted Funds

1. Are donations for restricted purposes properly recorded in the accounting records?
2. Are restricted funds held for the intended purpose(s) and not spent on operating needs?

Donation Record/Receipting

1. Are individual donor records kept as a basis to provide donor acknowledgments for all single contributions of \$250 or more?
2. If no goods or services were provided (other than intangible religious benefits) in exchange for a gift, does the receipt include a statement to this effect?
3. If goods or services (other than intangible religious benefits) were provided in exchange for a gift does the receipt
 - a. inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of the amount of any money and the value of any property contributed by the donor over the value of the goods and services provided by the organization, and
 - b. provide the donor with a good faith estimate of the value of such goods and services?
4. Although not required by the IRS, has your church adopted a policy of issuing an annual contribution report to donors listing at least each week's donations, if not each donation?
5. Are the donations traced from the weekly counting sheets to the donor records for a selected time period by the audit committee?

Cash Disbursements

1. Are all disbursements paid by check except for minor expenditures paid through the petty cash fund?
2. Is written documentation available to support all disbursements?
3. If a petty cash fund is used, are vouchers prepared for each disbursement from the fund?
4. Are pre-numbered checks used? Account for all the check numbers including voided checks.
5. Are blank checks ever signed in advance? This should never be done.

Petty Cash Funds

1. Is a petty cash fund used for disbursement of a small amount? If so, is the fund periodically reconciled and replenished based on proper documentation of the cash expenditures?

Bank Statement Reconciliation

1. Are written bank reconciliations prepared on a timely basis? Test the reconciliation for the last month in the fiscal year. Trace transactions between the bank and the books for completeness and timeliness.
2. Are there any checks that have been outstanding over three months?
3. Are there any unusual transactions in the bank statement immediately following year-end? Obtain the bank statement for the first month after year-end directly from the bank for review by the audit committee. Otherwise, obtain the last bank statement (unopened) from the church treasurer.

Savings and Investment Accounts

1. Are all savings and investment accounts recorded in the financial records? Compare monthly statements to the books.
2. Are earnings or losses from savings and investment accounts recorded in the books?

Land, Buildings, and Equipment Records

1. Are there detailed records of land, buildings, and equipment including date acquired, description, and cost or fair market value at date of acquisition?
2. Was an equipment physical inventory taken at year-end?
3. Have the property records been reconciled to the insurance coverages?

Accounts Payable

1. Is there a schedule of unpaid invoices including vendor name, invoice date, and due date?
2. Are any of the accounts payable items significantly past due?
3. Are there any disputes with vendors over amounts owed?

Insurance Policies

1. Is there a schedule of insurance coverage in force? Reflect effective and expiration dates, kind and classification of coverages, maximum amounts of each coverage, premiums, and terms of payment.
2. Is Workers' Compensation insurance being carried as provided by law in most states? Are all employees (and perhaps some independent contractors) covered under the Workers' Compensation policy?

Amortization of Debt

1. Is there a schedule of debt such as mortgages and notes?
2. Have the balances owed to all lenders been confirmed directly in writing?
3. Have the balances owed to all lenders been compared to the obligations recorded on the balance sheet?

Securities and Other Negotiable Documents

1. Does the church own any marketable securities or bonds? If so, are they kept in a safety deposit box, and are two signatures (excluding a pastor) required for access?
2. Have the contents of the safety deposit box been examined and recorded?

Personnel Matters

1. Does the church maintain the following documents?
 - a. Applications for employment
 - b. Personnel files
 - c. Performance appraisal and evaluation forms
 - d. Employee handbook
 - e. Immigration I-9 forms

Federal Reporting Obligations

1. Does the church file on a timely basis the following forms if applicable?
 - a. Federal payroll tax forms (Form 941, Form W-2, Form W-3, Form 1099-MISC)
 - b. Donee information returns (Form 8282)

- c. Annual certification of racial nondiscrimination for Christian schools (Form 5578)³⁹

(The above information was contributed by the Board of Pensions and can be found in their Memo #12)

D. BONDING

Churches should bond all those in the church that have access to the money of the church. This can be cost effective by securing a blanket bond. Blanket bonds will usually cover embezzlement and other mishandling of funds whether committed by an individual or group. Some insurance companies provide a fidelity bond rider with their coverage. This type of bond will usually cover the same situations as a blanket bond.

If a financial problem is suspected in a church that is bonded, the church simply contacts the insurance company and their investigators handle the case. This reduces the church's risk of a lawsuit resulting from false accusations.

E. CASH RECEIPTS

As money comes into the church, it needs to be handled with great care. Money can come into the church from a number of sources including:

1. By passing of collection plates among the congregation during regular worship services.
2. From the offering given by the Sunday church school classes and other groups meeting for Bible study.
3. At weekly church suppers, banquets, and other occasions when members pay for their meals.
4. Mail receipts that come to the church for both regular and designated purposes.
5. Occasional sale of books and literature to members.
6. Special fund-raising efforts through sale of bonds, member solicitation for building programs, etc.⁴⁰

The church should establish procedures for the handling of money as it comes into the church. Examples of these procedures would include:

1. **Counting of money:** The money should be counted as soon as is reasonably possible. This should take place in a secured area,

³Thomas E. McLeod, The Work of the Church Treasurer (Valley Forge, PA: Judson Press, 1992): p. 17.

usually a room away from the flow of people. This should always be done by at least two non-related people. The amounts of cash and checks should be recorded to compare with the deposit slip. It is at this point that amounts in the giving envelopes are compared to the amounts listed on the envelopes. If the amounts do not match, a line should be drawn through the amount on the envelope, the correct amount written and circled on the envelope. All checks should be immediately endorsed with a “for deposit only” stamp or signature.

2. **Create deposit report:** The deposit report works in conjunction with the deposit slip. The deposit slip contains the amount of cash, the numbers of the checks and their amounts, and the total amount to be deposited. This accompanies the money to the bank. The deposit report is for the church financial records. It contains the amount of loose money and the amount of checks or envelope money. The essential part of this report is that the money is broken down into how it is to be distributed between general funds and designated funds. Below is an example of a deposit report:⁴¹

DEPOSIT REPORT FOR _____ CHURCH		
Date: _____	Counted by: _____	
Envelope Summary		
Envelope total	General Budget:	_____
Loose collections		_____
Total		_____
 	Designated gifts:	
Building fund		_____
Organ fund		_____
Other:		_____
_____		_____
_____		_____
Total envelopes		_____
	Deposit Summary	
Total checks		_____

⁴¹ *ibid.*: p. 20.

3. **Deposit money in bank:** If at all possible, the money should be deposited in the bank as soon as it is counted. Churches have a variety of ways for counting and depositing their money. Some churches count the money during the morning service or immediately following the service and place the money in either a safe or in the night deposit of the bank. Some churches place the money in the church safe and count it on Monday morning and deposit it immediately after. Still other churches place the money uncounted in the night deposit of the bank and the counters go to the bank on Monday morning, count the money, then deposit it. Whichever method a church uses, the main goal should be to deposit the money as soon as reasonably possible.
4. **Recording contributions:** The amount of contribution should be recorded on the member's contribution record as soon as possible. The member's contribution record should contain the member's name, the envelope number if used, the date the contribution was received, the amount of the gift, and whether the contribution was designated or undesignated.

Churches need to check their insurance coverage to see if they have theft of funds coverage. If they do, they should check to see if it covers uncounted money as well as counted money. Many insurance policies only cover counted money.

F. CASH DISBURSEMENTS

Churches must establish a line of authority for the approval of expenditures. There are items that are set and do not need to be approved each week or month. These items would include: pastor's salary, pastor's benefit items, and utility bills. There may be other budgeted items that would not need approval for payment such as money set to be sent to missions. All other items would need to be approved before expenditures are made. The person(s) responsible for authorizing expenditures should be someone other than the treasurer and pastor. They could be the chairperson of the corporation or finance committee.

For items that must be approved, a requisition form or purchase order should be filed first. This form should include:

1. the date
2. purchase order number if using this method
3. the account number of the budget category
4. where the purchase will be made
5. the quantity of items needed
6. the item catalog number (if available)

7. a description of the item(s) being purchased
8. the unit price
9. the amount of purchase
10. the signature of the person(s) with authority to authorize
11. the date the items were received
12. the date they were paid for
13. the check number
14. the amount paid

Any receipts should be attached to the requisition form. All invoices should be checked for accuracy before payment is made.

Churches should always use pre-numbered checks. All checks should contain two signatures. The pastor should not be one who has authority to sign checks. No blank checks should ever be signed. For embezzlement protection, the one who fills in the check should not be one with authority to sign the check. This creates difficulty for small churches but it is a safety measure that should be considered. Some churches have created signature stamps and have a secretary or other personnel stamp the checks with the two stamps. This breaks down the wall of protection from embezzlement. It is better to have the persons actually sign the checks or stamp them themselves.

Once a payment is made, that receipt should be marked as being paid including the date of payment, the amount paid, and the check number of the check used to make the payment. If an error occurs when writing a check, the check should be voided and retained for records. No check should ever be made out to cash. This does not give the church proper information to know what the money was used for. After all payments are made, blank checks should be stored in a safe or secured area.

All payments should be recorded in the ledger. Many churches use various computer accounting programs to manage their books. This is just fine, however, a hand written copy is still a good idea. The hand written copy offers a check for the computer program. It is always wise to have a checks and balance system that will find errors.

G. PETTY CASH FUND

Many churches have petty cash funds that cover minor purchases such as stamps, etc. Petty cash funds are created by cashing a check made out to petty cash and placing the proceeds in a locked box. A custodian should be appointed that monitors the petty cash funds. This person would be responsible for distributing petty cash vouchers, which must be completed before funds are released. Once a transaction is completed a receipt should be attached to the voucher and any difference in amount should be

adjusted. It is the custodian's duty to reconcile the petty cash fund and submit requests for replacement money to the treasurer. The custodian will be held personally responsible for any discrepancies in the petty cash fund. An example of a petty cash voucher is shown below:⁴²

PETTY CASH VOUCHER	
Date:	_____
No.	_____
Payee:	_____
For:	_____

Amount:	_____
Charge to:	_____
Approved By:	Received By:
_____	_____

All transactions from the petty cash funds need to be recorded in the accounting records under the proper budget account.

H. RECONCILIATION PRACTICES

Each month the banking accounts should be reconciled. The reconciliation should be performed by someone other than the person responsible for writing and signing checks. This provides a protection against embezzlement since the one writing the checks can not alter bank statements to cover the mishandling of funds.

Reconciliation of accounts can uncover items that are in transition. These kinds of items would include:

⁴² Vargo, p.54

1. **Deposits in transit.** Receipts may be recorded on the church books but not yet recorded at the bank. This situation occurs when deposits made near the end of the month are not included on the bank statement. Deposits in transit are determined by comparing deposits listed on the bank statement with deposits recorded on “the books.”
2. **Outstanding checks.** Checks may be written but not yet processed by the bank. Outstanding checks are determined by comparing checks reported on the bank statement against checks written on church records.⁴³

There may be items on the bank statement that are not recorded in the church’s books. These items could include:

1. Non-sufficient funds checks. Members’ checks may be returned because of lack of funds.
2. Bank service charges for account processing.
3. Interest earned by the church and added to the account.
4. Member contributions made directly to the bank.⁴⁴

Reconciliation follows these steps:

1. Sort checks in numerical order.
2. Beginning with the list of checks outstanding at the end of the previous month, usually in the form of an adding machine tape, compare each returned check to the list to determine which checks have cleared and which are still outstanding. After checking off all the returned checks from the previous outstanding list, continue the procedure for checks recorded in the disbursements journal in the current month. Place a check mark beside each check returned so that a list of the now outstanding checks can be readily prepared – by observing those not checked off.
3. From the list for the previous month’s checks outstanding not cleared as well as those from the current month’s disbursements, prepare a list of checks outstanding.
4. Compare bank deposits recorded on the books with the deposits on the bank statement, and determine if any deposits are not recorded on the bank statement.
5. Determine if any items appear on the bank statement representing checks returned for insufficient funds, service charges, for printing checks, etc., and enter them on the reconciliation.
6. Enter the information above onto a reconciliation form:⁴⁵

⁴³ *ibid.*: p. 56.

⁴⁴ *ibid.*: p. 56.

⁴⁵ McLeod, p. 52.

_____ Church, Bank Reconciliation	
Date: _____	
Balance per bank statement, End of month	_____
Add: Deposits in transit	_____
Less: Outstanding checks	_____
Other: Bank charges, errors, etc.	_____
Balance, per books, End of month	_____

Outstanding checks:	
Total	_____

I. CHARITABLE CONTRIBUTIONS & REPORTING

Churches operating income is generally generated through monetary gifts given by its members. The majority of these contributions will qualify as taxable deductions for the giver. Church leaders and treasurers must be aware of the legal requirements for the handling and reporting of charitable contributions.

To be classified a charitable deduction, a gift must meet the following six requirements:

1. a gift of cash or property
2. claimed as a deduction in the year in which the contribution is made
3. the contribution is unconditional and without personal benefit to the donor
4. the contribution is made "to or for the use of" a qualified charity

5. the contribution is within the allowable legal limits
6. the contribution is properly substantiated⁴⁶

For a church to qualify as a charitable organization, it must maintain 501(c)(3) status. For many churches this is accomplished by being registered in the denominational yearbook. For others, they must have their own papers filed with the IRS. Contributions made to an organization without the 501(c)(3) status are not tax deductible.

Not all contributions to a church are tax deductible. Consider the following:

1. **Personal services:** The value of personal services is never deductible as a charitable contribution, but expenses incurred in performing services on behalf of a church or other charity may be.
2. **Rent-free building space:** The value of rent-free building space made available to a church cannot be claimed as a charitable contribution.⁴⁷

Another consideration for a charitable contribution, is that a **contribution is made at the time delivery** is effected. This comes into play at the end of the year. A member of a congregation realizes they are behind in their giving. He or she dates a check, Dec. 31, 20__, but does not place it in the offering until the first Sunday in January. The contribution must be applied towards the current year. If a check is mailed to the church, but is not received until January, it can still be applied to the previous year so long as the postmark is December 31 or earlier.

If a contributor **donates land** to the church valued at \$5000 or more, they must attach Form 8283 to their return. Several things must be remembered with this:

- a. The land must be appraised by a qualified appraiser no earlier than 60 days to the date of contribution.
- b. All information of the appraisal must be filled in on Form 8283.
- c. If a church has received land, it is in their best interest to contact the donor and make sure they know they must attach Form 8283 to their tax return. The church is responsible to complete and sign Part IV of Section B of the donor's Form 8283 appraisal summary.
- d. Failure to attach Form 8283 to a tax return can cancel the contribution.

⁴⁶ Richard R. Hammar, Church & Clergy Tax Guide 2002 Edition (Matthews, NC: Church Ministry Resources, 2002): p. 271.

⁴⁷ *ibid.*: p. 271.

It may be difficult to determine the proper value of the property for charitable contribution purposes. Publication 526 describes donation of property as follows:

If you contribute property to a qualified organization, the amount of your charitable contribution is generally the fair market value of the property at the time of the contribution. However, if the property has increased in value, you may have to make some adjustments to the amount of your deduction.

Property has increased in value: If you contribute property with a fair market value that is more than your basis (amount you originally paid) in it, you may have to reduce the fair market value by the amount of appreciation (increase in value) when you figure your deduction.

Property has decreased in value: If you contribute property with a fair market value that is less than your basis (amount you originally paid) in it, your deduction is limited to its fair market value. You cannot claim a deduction for the difference between the property's basis and its fair market value.

If you contribute property subject to a debt (such as a mortgage), you must reduce the fair market value of the property by:

- 1. Any allowable deduction for interest that you paid (or will pay) attributable to any period after the contribution, and***
- 2. If the property is a bond, the lesser of:***
 - a. Any allowable deduction for interest you paid (or will pay) to but or carry the bond that is attributable to any period before the contribution, or***
 - b. The interest, including bond discount, receivable on the bond that is attributable to any period before the contribution, and that is not includible in your income due to your accounting method.***

This prevents a double deduction of the same amount as investment interest and also as a charitable contribution. If the debt is assumed by the recipient (or another person), you must also reduce the fair market value of the property by the amount of the outstanding debt. If you sold the property at a bargain price, the amount of the debt is also treated as an amount realized on the sale or exchange of the property.

If a member of a congregation makes a **single contribution of \$250 or more**, they must receive a receipt from the church stating the following:

- a. donor's name
- b. a listing of each individual contribution of \$250 or more
- c. a statement indicating whether or not the church provided any goods or services to the donor in exchange for the donation

All contributions must be substantiated. If a church has not incorporated the sending of contribution statements to its member, it would do well to start. This is not required but will benefit the church and its members. Without the statement, the members are responsible to substantiate their gifts. This may be difficult if the member contributes cash in an offering envelope. Church members can use canceled checks as substantiation.

A myth started a few years ago that the IRS would no longer accept checks as substantiation. The IRS has never said they will not accept canceled checks as proof of contribution. Nor has the IRS dictated that churches must use offering envelopes. (Though the use of envelopes reduces the possibility of theft of loose change.) In Publication 526, Reg. 1.170A-13(a) states that:

if you make a charitable contribution of money you must keep one of the following for each contribution you make: (1) a canceled check, or (2) a receipt (or a letter or other written communication) from the charitable organization showing the name of the organization, the date of the contribution, and the amount of the contribution, or (3) other reliable written records that include the information described in (2).

Contributors need to be aware that there are limits to the amounts they may contribute to the church or any charitable organization. Churches fall in the category of the 50% limit. In Publication 526, the 50% limit is defined as:

The 50% limit applies to the total of all charitable contributions you make during the year. This means that your deduction for charitable contributions cannot be more than 50% of your adjusted gross income for the year.

J. Designated Gifts

There are two types of designated giving that individuals may try to contribute to the church. One is in the name of an individual and the other is to a specific ministry or fund.

Designated gifts to individuals

IRS Publication 526 lists the following regarding contributions to individuals.

- You cannot deduct contributions to specific individuals, including:***
- a. Contributions to individuals who are needy or worthy. This includes contributions to a qualified organization (church) if you indicate that your contribution is for a specific person. But you can deduct a contribution that you give to a qualified organization (church) that in turn helps needy or worthy individuals if you do not indicate that your contribution is for a specific person. Example: You can deduct contributions earmarked for flood relief, hurricane relief, or other disaster relief to a qualified organization (church). However, you cannot deduct contributions earmarked for relief of a particular individual or family.***
 - b. Payments to a member of the clergy that can be spent as he or she wishes, such as for personal expenses.***
 - c. Expenses you paid for another person who provided services to a qualified organization (church). Example: Your son does missionary work. You pay his expenses. You cannot claim a deduction for your son's unreimbursed expenses related to his contribution of services.***
 - d. Payments to a hospital that are for a specific patient's care of for services for a specific patient. You cannot deduct these payments even if the hospital is operated by a city, state, or other qualified organization.***

The other type of designating giving is to specific ministries or projects of the church. While these gifts may be deductible, many feel that they retain control of how the money is used. Richard Hammar writes in his book, *2005 Church & Clergy Tax Guide* on page 338:

Does a donor who makes a designated gift to a church or other charity have a legal right to “enforce” the designation? For example, if a donor gives \$10,000 to a specific church fund, and the church elects to apply the contribution to some other use, can the donor sue the church to enforce the original designation? Some courts have allowed donors to do so.

Other courts, however, have ruled that donors cannot legally enforce designations they place on gifts to charity. To illustrate, one court ruled that donors who make designated gifts to charity have no legal right to enforce their designations unless they specifically reserve the right to do so. The court acknowledged that a designated contribution is held in trust by a charity for the specified purpose. And, while the donor cannot enforce a designated gift, there are others who can. These include the state attorney general, a trustee of a written trust, or anyone with a “special interest” in the enforcement of the designation. But unless the donor reserves the right to enforce the designation in the gift instrument, he or she has no legal “standing” to do so.

The reason for this conclusion is simple – a charitable contribution is a gift, and a gift is a transfer of all of a donor’s “dominion and control” over the donated property. Allowing a donor to enforce a designated gift is not legally possible because the donor has no remaining interest in the gift. This is true even if the gift was “designated” – that is, the donor specified the purpose for which the gift was given. The fact remains that a designated gift is held by a church or charity “in trust” for the specified purpose. While the donor cannot enforce such a “trust,” this does not mean that a church or charity can ignore it.

Donors may not have the legal right to enforce a purpose specified in a designated gift, but this does not mean that a church should ignore requests by donors to honor their designations. After all, there is an ethical component that must be considered. Many donors are prompted to make a charitable contribution because of a desire to further a specific purpose or project. If donors realize that they have no legal right to enforce a designated gift then many of them may decide not to give.

Most states have enacted the Uniform Management of Institutional Funds Act (UMIFA). The UMIFA provides that “with the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.” In other words, the board of a charity can ask persons who donated to an “institutional” or endowment fund for their written consent to release the charity from a designation or restriction. This does not give the donor legal rights to enforce designated gifts. Quite to the contrary, the drafters of the UMIFA stated (in their official interpretation of the statute) that a donor “has no right to enforce the restriction, no interest in the fund and no power to change the [charitable] beneficiary of the fund. He may only acquiesce in a lessening of a restriction already in effect.

K. OTHER ASSETS

The valuables of a church, which include documents such as deeds and securities, should be stored in a safety deposit box at a bank. Even if a church has a fire-proof safe, it is better for such valuables to be stored in a safety deposit box. There should be two signatures required for access to the safety deposit box to reduce the possibility of theft. The church should have a written inventory of all the items stored in the safety deposit box.

Churches should also inventory the church property. For insurance purposes, the church should maintain a detailed inventory of all assets on the church property. This should be reviewed and updated annually. This inventory should be stored in the safety deposit box and a copy given to the insurance agent to have in case of fire or theft.

L. FINANCIAL REPORTS

Financial reports are essential to any organization. Financial reports keep the organization abreast of its financial health.

When preparing such documents for the church, the treasurer or financial secretary should consider the following:

1. They should be easily understood so that any member of the church who takes the time to study them will understand what they are saying. (This is the one characteristic that is the most frequently absent.)
2. They should be concise so that the person studying them will not get lost in detail.
3. They should be all-inclusive and should embrace all activities of the church, such as church schools, summer camp, and so on. If there are two or three funds, the statement should clearly show the relationship between the funds without a lot of confusing detail.
4. They should have a focal point for comparison. In most instances, this will be a comparison with the budget or figures from the corresponding period last year.
5. They should be prepared on a timely basis. The longer the delay after the end of the period, the longer the time before corrective action can be taken.⁴⁸

⁴⁸ David R. Pollock, Business Management in the Local Church (Chicago, IL: Moody Press, 1995): p. 75.

L. RECORD KEEPING

Piles of records can add up in a hurry for details in knowing how long to keep various records see Block B3 the section on record keeping.

Resources

Vargo, Richard J. The Church Guide to Internal Controls. North Carolina: Christian Ministry Resources, 1995.

Board of Pensions of the Church of God. Memo #12: The Annual Church Audit.

McLeod, Thomas E. The Work of the Church Treasurer. Valley Forge: Judson Press, 1992.

Hammar, Richard R. Church & Clergy Tax Guide, 2002 ed. North Carolina: Christian Ministry Resources, 2001.

Pollock, David R. Business Management in the Local Church. Chicago: Moody Press, 1996.

Block B2

The Church and the Law

A. NEGLIGENCE

We are all becoming more acutely aware of the growing trend of law suits being brought against churches and their affiliate ministries. The vast majority of these claims are being based upon “negligence” and/or “gross negligence” in some areas such as; lack of background checks on employees or volunteers, potentially dangerous or hazardous building maintenance issues, lack of proper supervision at events and etc.

Negligence could be defined as a failure to use that degree of care which an ordinary person of reasonable prudence would use under the given circumstances. Negligence may be constituted by acts of either omission or commission, or both.

Gross Negligence is defined as reckless, wanton and willful misconduct, where the standard of due care of a reasonably prudent person has been ignored by such a shockingly wide margin that it reflects an indifference to the natural and probable consequences as to almost amount to an intentional act.

Consequently churches are confronted with multi-million dollar judgments and punitive damage awards. Church leaders must take affirmative steps to address these kinds of potential problems of negligence.

Negligence is conduct that creates an unreasonable risk of foreseeable harm to the person or property of another, and that in fact results in the foreseeable harm.⁴⁹

Churches are not immune from being sued for negligence. There are basically three types of negligence they can be sued for: negligent selection, negligent retention, or negligent supervision. Churches can also be sued for negligent behavior of its employees that occurs in the scope of their employment.

Vicarious Liability (or Respondeat Superior)

The issue of respondeat superior has been discussed in previous chapters. The section of respondeat superior that will be discussed deals

⁴⁹ Richard R. Hammar, Pastor, Church & Law, Third Edition (Matthews, NC: Christian Ministry Resources, 2000): p. 720.

with what constitutes employment. Churches need to understand that under the concept of respondeat superior:

an employer is responsible for the injuries caused by its employees only if (1) an employer-employee relationship existed at the time of the injury, (2) the injury was caused by an employee's negligence, and (3) the employee was acting in the course of his or her employment at the time of the injury.⁵⁰

The Requirement of Employee Status

The issue of respondeat superior for churches has raised a consistent question as to whether the minister is an employee or self-employed. A variety of tests have been used by different courts and the IRS to try to settle this issue. The courts have held that the amount of control that a church or denomination holds on its ministers will be the major determining factor. In reviewing the issue of employee status, the courts have used:

Whether a person performing work for another is an employee or self-employed depends primarily upon whether the one for whom the work is done has the legal right to control the activities of the alleged employee. The power of the employer to terminate the services of the employee gives him the means of controlling the employee's activities. "The right to immediately discharge involves the right of control." It is not essential that the right of control be exercised or that there be active supervision of the work of the employee. The existence of the right of control and supervision establishes the existence of an employment relationship.⁵¹

The Restatement of Agency states concerning employee status:

- (1) An employee is a person employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other's control or right to control.***
- (2) In determining whether one acting for another is an employee or self-employed, the following matters of fact, among others, are considered:***
 - (a) the extent of control which, by the agreement, the employer may exercise over the details of the work;***
 - (b) whether or not the one employed is engaged in a distinct occupation or business;***

⁵⁰ Ibid.: p. 721.

⁵¹ Ibid.: 721-722.

- (c) the kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by specialist without supervision;**
- (d) the skill required in the particular occupation;**
- (e) whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work;**
- (f) the length of time for which the person is employed;**
- (g) the method of payment, whether by the time or by the job;**
- (h) whether or not the work is a part of the regular business of the employer; and**
- (i) whether or not the parties believe they are creating the relationship of employer and employee.⁵²**

In many court cases, the courts have ruled that ministers are employees of the church and therefore the church can be held in a position of respondeat superior. However, the courts have held that churches can also be held as respondeat superior for uncompensated volunteers.

The courts have held that self-employed persons who work for the church or independent contractors can not create a state of respondeat superior for the church.

Negligent Conduct

The doctrine of respondeat superior imputes an employee's negligence to his or her employer....Some courts have expanded respondeat superior to make employers liable for an employee's intentional or even criminal misconduct, if the employee was attempting to serve the employer's interests.⁵³

Course of Employment

The doctrine of respondeat superior imputes an employee's negligence to his or her employer only if the negligence occurred in the course of employment...conduct of an employee is in the course of employment if (1) it is of the kind the employee is employed to perform, (2) it occurs during the hours and within the geographical area authorized by the employment relationship, and (3) it is motivated, at least in part, by a desire to serve the employer.⁵⁴

⁵² Ibid.: 722.

⁵³ Ibid.: p. 728.

⁵⁴ Ibid.; p. 729.

The majority of cases involving churches are the result of sexual misconduct by the pastor or another church employee.

1. Cases Refusing to Apply Respondeat Superior to Intentional or Criminal Acts

Most courts have refused to hold churches liable on the basis of respondeat superior for the sexual misconduct of employees or volunteers.⁵⁵

2. Cases Applying Respondeat Superior to Intentional or Criminal Acts

A small minority of courts have found churches liable on the basis of respondeat superior for the sexual misconduct of employees and volunteers. In reaching such a conclusion, these courts have interpreted the concept of “course of employment” very broadly.⁵⁶

Inapplicability to Nonprofit Organizations

Secular businesses can incorporate into their price costs for the risk of injuries. These additional costs are passed onto consumers. However, churches are not in such a position. Therefore, many courts have held that respondeat superior does not hold to nonprofit organizations.

Churches need to be aware that insurance policies do not always cover negligence cases or provide very limited coverage.

Insurance coverage is not an effective means for churches to allocate risk, for a few very significant reasons. First, insurance is expensive, sometimes prohibitively so for smaller churches. Second, insurance coverage is becoming increasingly difficult for religious organizations to obtain. Third, insurance policies contain numerous exclusions – in some cases excluding one or more of a church’s greatest risk. Fourth, covered risks are subject to the dollar limits of the policy. In some cases, higher risks have reduced coverage. Churches are uninsured for damages claimed in excess of the policy limits.⁵⁷

Negligent Selection of Church Workers

The term negligence means carelessness or a failure to exercise reasonable care. Negligent selection, then, means carelessness or a failure to exercise reasonable care in the selection of a worker.⁵⁸

⁵⁵ *ibid.*: p. 729.

⁵⁶ *ibid.*: p. 731.

⁵⁷ *ibid.*: p. 735.

⁵⁸ *ibid.*: p. 735.

Negligent Selection of Church Workers – Sexual Misconduct Cases Involving Minor Victims

Cases of churches being sued because of sexual misconduct by their employees or volunteers are on the rise especially when minors are involved. In the majority of these cases, the victim alleges:

either or both of the following two theories: (1) the church was negligent in hiring the offender without adequate screening or evaluation, or (2) the church was negligent in its supervision of the offender.⁵⁹

It is important to recognize that churches are not “guarantors” of the safety and well-being of children. They are not absolutely liable for every injury that occurs on their premises in the course of their activities. Generally, they are responsible only for those injuries that result from their negligence. Negligent selection simply means that the church failed to act responsibly and with due care in the selection of workers (both volunteer and compensated) for positions involving the supervision or custody of minors.⁶⁰

Church leaders need to have an understanding of conditions that can lead to misconduct situations. However, that knowledge is not enough. They need to know steps that can be taken to reduce the possibility of sexual misconduct.

Church liability for the sexual misconduct of employees and volunteers is the most significant risk facing churches today for a number of reasons, including the following:

- (1) Many opportunities.** There ordinarily are many opportunities within the church for persons to engage in sexual misconduct with adults or children. Churches have many children involved in a variety of programs, and many pastors engage in extensive counseling.
- (2) Trust.** Churches are institutions of trust, and many members and leaders cannot conceive of acts of sexual misconduct occurring on their premises. As a result, they do not see a need to institute procedures and policies that will reduce the risk of such behavior.

⁵⁹ *ibid.*: p. 737.

⁶⁰ *ibid.*: p. 737.

- (3) **Money damages.** The amount of money damages that courts award in such cases can be substantial.
- (4) **Limited insurance coverage.** Most church insurance policies either exclude sexual misconduct claims, or significantly reduce the amount of coverage. This means that many churches face a potentially large and underinsured risk.
- (5) **Other damages.** The damages that such claims cause to victims, victims' families, offenders, congregations, and church leaders is considerable.
- (6) **Board liability.** Board members face personal liability in such cases if they refused to take steps to address this risk or ignored danger signals, and their conduct amounts to "gross negligence."
- (7) **Punitive damages.** Churches face the possibility of being assessed punitive damages if church leaders willfully refused to address this risk or ignored danger signals. Punitive damages are designed to "punish" wrongdoers for reckless or grossly negligent conduct. They are not covered by church insurance policies.
- (8) **Polarization.** Congregations often are polarized in the aftermath of an incident of sexual misconduct. Some members insist that the offender be forgiven, while others focus on issues of justice, accountability, and protection.⁶¹

Court Decisions Recognizing Negligent Selection Claims

If a church does not exercise reasonable responsibility in investigating the backgrounds of their employees or volunteers, the courts have found them to be liable on the basis of negligent selection in cases involving sexual misconduct between adults and minors.

Court Decisions Rejecting Negligent Selection Claims

If churches demonstrate a reasonable attempt to investigate the backgrounds of their employees and volunteers, courts will usually hold that the churches are not liable of negligent selection.

Risk Management

Churches can reduce the risk of sexual misconduct and negligent selection by placing into policy a risk management strategy. This strategy can include the following:

⁶¹ *ibid.*: p. 738.

1. A Written Application Form

Churches can significantly reduce their risk of legal liability for negligent selection (and the likelihood that an incident of abuse or molestation will occur) by having every applicant for youth work (volunteer or compensated) complete a “screening application.” At a minimum, the application should ask for the applicant’s name and address, the names of other youth-serving organizations in which the applicant has worked as an employee or volunteer, a full explanation of any prior criminal convictions, and the names of two or more references. The application should be completed by every applicant for any position involving the custody or supervision of minors. The application should also be completed by current employees or volunteers having custody or supervision over minors.⁶²

2. Contact References

Significant risk reduction occurs if the church takes the following additional steps:

- ❑ If an applicant is unknown to you, confirm his or her identity by requiring photographic identification (such as a state driver’s license). Child molesters often use pseudonyms.
- ❑ Contact each person and organization listed as a reference in the application, and request a written reference. If you do not receive back the written reference forms, then contact the references by telephone and prepare a written memorandum noting the questions asked and the reference’s responses....Show the date and method of the contact, the person making the contact as well as the person contacted, and a summary of the reference’s remarks. Such forms, when completed, should be kept with an applicant’s original application. They should be kept permanently.
- ❑ Be sure you are aware of any additional legal requirements that apply in your state.
- ❑ The church must treat as strictly confidential all applications and records of contacts with churches or other references. Such information should be marked “confidential,” and access should be restricted to those few persons with a legitimate interest in the information.⁶³

⁶² *ibid.*: p. 748.

⁶³ *ibid.*: pp. 749-750.

- The screening procedure should apply to all workers – both compensated and volunteer. Acts of molestation have been committed by both kinds of workers.

- The screening procedure should apply to new applicants as well as current workers. Obviously, churches need to use some common sense here.

- If the screening application and reference forms seem overly burdensome, consider the following: (1) Your church liability insurance policy may exclude or limit coverage for acts of child molestation. If so, you have a potentially enormous uninsured risk. Reducing this risk is worth whatever inconvenience might be generated in implementing a screening procedure. Just ask any member of a church in which such an incident has occurred. (2) The screening procedure is designed primarily to provide a safe and secure environment for the youth of your church. Unfortunately, churches have become targets of child molesters because they provide immediate and direct access to children in a trusting and often unsupervised environment. In order to provide some protection for the youth of your church against such persons, a screening procedure is imperative. (3) The relatively minor inconvenience involved in establishing a screening procedure is a small price to pay for protecting the church from the devastation that often accompanies an incident of molestation. (4) The resistance to screening will diminish as more charities screen volunteer workers. (5) Think of the screening procedure in terms of risk reduction. A church is free to hire workers without any screening or evaluation whatever, but such a practice involves the highest degree of legal risk. On the other hand, a church that develops a responsible screening procedure has a much lower risk. (6) The services of a local attorney should be solicited in drafting an appropriate screening form to ensure compliance with state law. It is also advisable that such forms be shared with a church's insurance company for its comments. You also should consider sharing your form with the state agency that investigates reports of child abuse. (7) Obtain copies of the application forms used by the Boy Scouts, Big Brothers, and similar organizations. As a result of numerous lawsuits, these organizations have developed effective application forms. Review these forms, and use them as resources when preparing your own forms. The state agency responsible for investigating reports of child abuse may have application forms for you to review, and they often are willing to review the application forms that churches prepare.⁶⁴

⁶⁴ *ibid.*: pp. 750-751.

3. Criminal Records Checks

Churches are using criminal background checks to a greater extent on possible employees and volunteers. Churches are not mandated to do these checks to be protected from negligent selection liability. However, these checks can provide churches with the information needed to make wise selections.

There are two types of criminal checks. These are name checks and fingerprints. The easiest for churches is the name check since it can be done quickly and inexpensively. Churches can request even deeper checks by requesting FBI criminal records check. This is usually done through the designated state agency for the church.

- ❑ Expunged or sealed criminal records. In some states it is unlawful for employers to make employment decisions about employees or applicants for employment on the basis of “expunged” or “sealed” criminal records.⁶⁵
- ❑ Arrests. In some states it is unlawful for employers to make employment decisions about employees or applicants for employment on the basis of arrests.⁶⁶
- ❑ Mandatory criminal records checks. Some states require criminal records checks for child care workers and teachers.⁶⁷
- ❑ What crimes disqualify an applicant for youth work? Not all crimes disqualify a person for a position involving contact with minors. A criminal conviction for a sexual offense involving a minor would certainly disqualify an applicant. In the case of pedophilic behavior (molestation of a pre-adolescent child) such a conviction should disqualify an individual no matter how long ago it occurred (because of the improbability that such a condition can be “cured”). Other automatic disqualifiers would include incest, rape, assaults involving minors, murder, kidnapping, child pornography, sodomy, and the physical abuse of a minor.⁶⁸

4. Interviews

The final candidates for a church position should be interviewed. This will provide the church with an opportunity to inquire into each

⁶⁵ *ibid.*: p. 752.

⁶⁶ *ibid.*: p. 752.

⁶⁷ *ibid.*: p. 752.

⁶⁸ *ibid.*: p. 752.

applicant's background and make a determination as to each person's suitability for the position under consideration....Higher risk individuals (e.g., single males) and persons applying for higher risk positions (e.g., boys groups, scouting groups, camps, overnight or largely unsupervised activities involving either male or female children or adolescents) should be interviewed by a staff member who has been trained to identify child molesters.⁶⁹

5. Six Month Rule

Churches can reduce the risk of incidents of sexual molestation by adopting a policy restricting eligibility for any volunteer position involving the custody or supervision of minors to those persons who have been members in good standing of the church for a minimum period of time, such as six months. Such a policy gives the church an additional opportunity to evaluate applicants, and will help to repel persons seeking immediate access to potential victims.⁷⁰

6. Other Background Checks

There are other background checks available to churches and these should be incorporated into the investigation process. These background checks include:

- (1) educational background (one of the most common misrepresentations that is made on employment application forms);**
- (2) employment (confirming that the applicant worked for prior employers listed on the application form);**
- (3) motor vehicle records;**
- (4) social security number check (confirms identity and residential history);**
- (5) credit history; and**
- (6) professional licenses and certifications⁷¹**

If a credit check is requested as part of a background check and the church decides to not to call a pastor, associate, or volunteer as a result of

⁶⁹ *ibid.*: p. 753.

⁷⁰ *ibid.*: p. 753.

⁷¹ *ibid.*: p. 753.

the findings of that credit check, then church is compelled under the Fair Credit Reporting Act to comply with the following Federal Trade Commission laws (604(b)(3); 609(c)(3); 611; 612) by furnishing the individual with the following:

- A copy of the report
- A description of the candidate's rights under the Fair Credit Reporting Act
- A written statement that includes the following:
 - a. A statement as to why consideration was withdrawn and that the decision was based in whole or in part on the Background and Credit Check report.
 - b. The name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis).
 - c. That the consumer reporting agency nor Indiana Ministries of the Church of God made the decision to withdraw consideration and neither is able to provide the candidate with specific reasons why consideration was withdrawn.
 - d. That the candidate may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

The rights of the individual are as follows:

1. You must be told if information in your file has been used against you. Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
2. You have the right to know what is in your file. You may request and obtain all the information about you in the files of a consumer reporting agency (your "file disclosure"). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a. a person has taken adverse action against you because of information in your credit report;
 - b. you are the victim of identity theft and place a fraud alert in your file;
 - c. your file contains inaccurate information as a result of fraud;
 - d. you are on public assistance;

- e. you are unemployed but expect to apply for employment within 60 days.

In addition, by September 2005 all consumers will be entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.ftc.gov/credit for additional information.

3. You have the right to ask for a credit score. Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
4. You have the right to dispute incomplete or inaccurate information. If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.ftc.gov/credit for an explanation of dispute procedures.
5. Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information. Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
6. Consumer reporting agencies may not report outdated negative information. In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
7. Access to your file is limited. A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need to access.
8. You must give your consent for reports to be provided to employers. A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.ftc.gov/credit.
9. You may limit “prescreened” offers of credit and insurance you get based on information in your credit report. Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on.
10. You may seek damages from violators. If a consumer reporting agency, or, in some cases, a user of consumer reports or a

furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.

11. Identity theft victims and active duty military personnel have additional rights. For more information, visit www.ftc.gov/credit.

7. Limit “Second Chances”

Churches are resources of mercy. Many times they are willing to forgive and to give a second chance. However, when it comes to sexual misconduct between adults and minors, this could be a very dangerous and costly practice.

There are ways the churches can allow persons to work in the church that have been accused or found guilty of child molestation. These include:

- ❑ The church could refuse to use the person in any compensated or volunteer position in the church (including, but not limited to, working with minors). This approach eliminates the risk of negligent selection, and it would be appropriate in the case of a pedophile. Pedophiles are persons who are sexually attracted to pre-adolescent children. The FBI “profile” on pedophiles indicates that such persons are “incurable” and predatory. They are always seeking new victims. Obviously, such persons create a significant risk to children and churches.
- ❑ The church could encourage such an individual to work in the church, but in a position not involving access to children. This is a reasonable accommodation of the individual’s desire to serve the church. A church that permits such an individual to work with children will have a virtually indefensible position should another incident of molestation occur. Some churches have given convicted child molesters a “second chance” by allowing them to work with children – often on the basis that the person has had a religious conversion and no longer is a threat to children. The courts have not been sympathetic to such a defense.⁷²

8. Arbitration Policy

Consider the adoption of a church “arbitration policy.” Such a policy, if adopted by the church membership at a congregational meeting as an amendment to the church’s bylaws, may force church members to resolve their disputes (with the church, pastor, board, or other members) within the church consistently with the pattern suggested in 1 Corinthians 6:1-8. While a discussion of

⁷² *ibid.*: p. 754.

arbitration policies is beyond the scope of this section, churches should recognize that arbitration is an increasingly popular means of resolving disputes in the secular world since it often avoids the excessive costs and delays associated with civil litigation and the uncertainty of jury verdicts. Of course, any arbitration policy should be reviewed by a church's liability insurer before being implemented. Such an approach, at a minimum, merits serious consideration by any church.⁷³

Negligent Selection of Church Workers – Sexual Misconduct Cases Involving Adult Victims

Court cases against churches as a result of sexual misconduct involving adults is on the rise. These cases usually involve a male pastor and a female employee or counselee. As with the cases involving minors, churches can be held liable for negligent selection of the employee.

Court Decisions Recognizing Negligent Selection Claims

If churches do not demonstrate reasonable responsibility in the investigating of employees or volunteers, the courts can hold them liable for negligent selection.

Court Decisions Rejecting Negligent Selection Claims

If churches are able to demonstrate that they did investigate an employee or volunteer in a reasonable manner, the courts will not hold them liable for negligent selection.

Negligent Selection of Church Workers – Other Cases

Sexual misconduct cases are not the only types of negligent selection cases that churches can face. One major type of negligent selection that churches become involved in is drivers of church vehicles.

Risk Management

To **reduce the risk of liability** in this context, churches should refrain from using any driver without taking the following steps:

- (1) Have each prospective driver complete an application form that asks for the person's drivers license number, type of drivers license and expiration date, a description of any**

⁷³ *ibid.*: p. 754.

driving restrictions, and a history of traffic accidents and moving violations.

- (2) Ask the church's liability insurance carrier to check on the individual's driving record. Often, insurance companies will perform this task if requested, at no charge. The insurance company should be requested to update its research on all drivers of church vehicles periodically, to screen out persons with a recent history of unsafe driving.**
- (3) Discontinue using any driver if reports are received that he or she is operating a church vehicle in a negligent manner. Fully investigate such reports, and do not use the individual again unless the investigation clearly demonstrates that the complaints were without merit.**
- (4) If the prospective driver is a new member, then ask for the names and addresses of other churches in which he or she has worked as a driver. Contact those other churches and ask if they are aware of facts that would indicate that the individual should not be used as a driver. Make a written record of such contacts.**
- (5) Periodically invite a local law enforcement officer to speak to all drivers concerning safety issues.**
- (6) Require all drivers to immediately inform the church of any traffic convictions.⁷⁴**

Negligent Retention of Church Workers

A church may use reasonable care in selecting ministers or other church workers but still be responsible for their misconduct if it "retained" them after receiving information indicating that they posed a risk of harm to others.⁷⁵

Court Decisions Recognizing Negligent Retention Claims

Often times church leaders receive information about negligent behavior by an employee or volunteer. If churches do not follow up on this information to determine its credibility, they can recreate a difficult situation for themselves. If the information is found to be credible and the church does not remove the employee or volunteer, the church can be held liable for negligent retention by the courts.

⁷⁴ *ibid.*: pp. 761-762.

⁷⁵ *ibid.*: p. 762.

Court Decisions Rejecting Negligent Retention Claims

Many courts have ruled that the first amendment prevents churches from being legally responsible on the basis of negligent retention for the misconduct of ministers.⁷⁶

Risk Management

To **reduce the risk of liability** for negligent retention, churches can develop a risk management policy. This policy should incorporate the following steps:

1. Investigate

Whenever a church leader receives credible information suggesting that a church employee or volunteer may represent a risk of harm to others, an immediate and thorough investigation should be initiated. Remember this – once such information is received, the church is “put on notice” of the risk and may be legally responsible on the basis of negligent retention for future acts of misconduct by the church worker if it does nothing to investigate or respond to the information. The investigation should include a thorough review of the accusation. This ordinarily will include some or all of the following procedures:

- ❑ **Interviews with the victim (and the victim’s family, if the victim is a minor).**
- ❑ **Interviews with the alleged perpetrator (and the perpetrator’s family, if the perpetrator is a minor).**
- ❑ **Collection of corroborating evidence, such as (1) witnesses; (2) other victims; or (3) documentary evidence including letters and photos.**
- ❑ **Consultation with the church’s insurance agent.**
- ❑ **Consultation with the church’s attorney.**
- ❑ **Consultation with the denominational officers.**
- ❑ **Consultation with other churches or charities in which the alleged perpetrator has worked, to identify whether any similar acts of misconduct has occurred. If so, this tends to**

⁷⁶ *ibid.*: p. 765.

prove a pattern, and supports the inference that the victim's account is correct.

- ❑ **If the alleged misconduct constitutes a crime, conduct a criminal records check to determine if the worker has a history of such acts. If so, this tends to prove a pattern, and supports the inference that the victim's account is correct.**
- ❑ **If the alleged misconduct constitutes child abuse under state law, then church leaders must comply immediately with applicable reporting requirements. Church leaders can then suspend their own investigation and await the outcome of the state's investigation, or proceed with their own investigation independently of the state. In either case, church leaders should consider suspending the alleged wrongdoer until the investigation is concluded, depending on the nature and severity of the alleged wrongdoing.⁷⁷**

2. Restrictions

If the church's investigation results in credible evidence to support the victim's allegations, then the church can reduce its risk of negligent retention by imposing appropriate restrictions on the alleged wrongdoer. The nature and extent of such restrictions will vary depending on a number of circumstances, including the nature and severity of the alleged wrongs and the strength of the evidence. If a church ignores credible evidence of wrongdoing and imposes no restrictions on the alleged wrongdoer, it is exposed to liability based on negligent retention from the time it learned of the allegations.⁷⁸

Negligent Supervision of Church Workers

Negligent supervision...refers to a failure to exercise reasonable care in the supervision of church workers and church activities.⁷⁹

Churches are not immune for liability for negligent supervision of church workers.

⁷⁷ *ibid.*: pp. 770-771.

⁷⁸ *ibid.*: pp. 770-771.

⁷⁹ *ibid.*: p. 771.

Negligent Supervision of Church Workers – Sexual Misconduct Cases Involving Minor Victims

The majority of church cases involving negligent supervision are the result of child molestation. The victims or victims' families charge the church with not providing proper supervision of employees or volunteers that work with children.

Court Decisions Recognizing Negligent Supervision Claims

Some courts have found churches liable on the basis of negligent supervision for a worker's acts of child molestation on the ground that the church failed to exercise reasonable care in the supervision of the victim or of its own programs and activities.⁸⁰

Court Decisions Rejecting Negligent Supervision Claims

Some courts have found churches not liable on the basis of negligent supervision for a worker's acts of child molestation on the ground that the church exercised reasonable care in the supervision of the victim and of its own programs and activities.⁸¹

Risk Management

Churches can **reduce the risk of negligent supervision liability** by developing a supervision policy for its employees and volunteers. Elements that should be considered for that policy include:

1. Two-Adult Policy

Consider adopting a "two-adult" policy. Such a policy simply says that no minor is ever allowed to be alone with an adult during any church activity. This rule reduces the risk of child molestation, and also reduces the risk of false accusations of molestation.⁸²

2. No Early Releases of Minors

Only release minors from church activities to the parent or legal guardian who brought them, or to a third person that the parent or guardian has authorized in writing to receive custody of the child. Churches are legally responsible for the safety of a minor from the time they receive custody until the time they return custody of the minor to

⁸⁰ *ibid.*: p. 773.

⁸¹ *ibid.*: p. 778.

⁸² *ibid.*: p. 784.

his or her parent or legal guardian. As a result, a church may be liable for injuries occurring to a child who is released prematurely.⁸³

3. Claim Check Procedure

Consider adopting a “claim-check” policy for children in the church nursery. As a parent drops a child off at the church nursery, pin a plastic number on the child’s clothes and give the parent an identical number. Inform parents that only those persons presenting the corresponding number will be given custody of children. This policy is designed to prevent the kidnapping of children by non-custodial parents, or by child molesters. Numbers should be assigned on a random basis for each service.⁸⁴

4. Greater Scrutiny If Knowledge of Prior Incidents

If an incident of child molestation occurs on church premises, or in the course of a church activity off of church premises, the church’s duty of supervision increases. The church will be held to a higher standard of supervision because of such knowledge. It is important for church leaders to be aware of this, and to be diligent in implementing some or all of the risk management procedures mentioned in this section.⁸⁵

5. Video Technology

The installation of video cameras in strategic locations can serve as a powerful deterrent to child molesters, and can reduce a church’s risk of negligent supervision.⁸⁶

6. An Adequate Number of Qualified Adults

Any activity involving minors should be staffed with an adequate number of qualified adults. This will help to demonstrate that the church exercised reasonable care in the supervision of minors, and reduce the risk of liability based on negligent supervision in the event that a minor is molested.⁸⁷

7. Off-Site Activities

Churches need to provide adequate adult supervision for all off-site activities.

⁸³ *ibid.*: p. 785.

⁸⁴ *ibid.*: p. 785.

⁸⁵ *ibid.*: p. 785.

⁸⁶ *ibid.*: p. 785.

⁸⁷ *ibid.*: p. 786.

8. Restrooms

Various methods can be used to supervise restrooms. These include:

- ❑ **Video technology.** Using video cameras outside of church restrooms is a powerful deterrent to molesters, and provides the church with helpful evidence in the event of an allegation of molestation.
- ❑ **Designated restrooms.** Restrict young children's restroom breaks to restrooms that have limited access to adults, if this is possible.
- ❑ **2-adult rule.** Have two adults accompany children in groups to the restroom, whenever possible. Do not allow one adult to take one or more children to the restroom.
- ❑ **"Half doors."** Consider installation of "half doors" that will permit adults to have partial vision into restrooms used by young children.
- ❑ **Architecture.** Unauthorized access to nursery areas by outsiders should be discouraged or prevented by the physical layout. Many churches accomplish this with counters staffed by an adult worker or attendant.
- ❑ **State regulations.** State regulations that apply to licensed child care facilities ordinarily do not apply to church nurseries, but they will contain a wealth of information that may be useful in adopting policies to reduce the risk of molestation and other injuries. Further, compliance with selected regulations can be cited as evidence that your church should not be legally responsible on the basis of negligent supervision for such incidents.
- ❑ **Parental notification.** Churches should discourage parents from allowing their children to wander around unaccompanied on church property. This notification can take place in parents' meetings, in church bulletins or newsletters, or through direct appeals prior to or during worship services. Children who wander unaccompanied on church property often were sitting with a parent during a worship service and were permitted to leave (usually to go to the restroom). In other words, unaccompanied children wandering around on church premises often do so with their parents' permission. Parents should be

encouraged to accompany their children to the restroom or any other destination, and not let them leave the service unattended.

- ❑ **Restricting access.** The risk of liability can be reduced by restricting access to unsupervised restrooms where molestation may occur. If possible, lock doors to cut off access to remote and unused areas of the church.
- ❑ **Ushers.** A church can exercise supervision over its restrooms by having ushers observe access to them during services.⁸⁸

9. Encouraging Parents to Accompany Their Children

Churches can reduce the risk of liability based on negligent supervision by encouraging parents of younger children to accompany their child to youth programs and activities.⁸⁹

10. Prevent Access to Remote Areas

Acts of child molestation on church premises often occur in remote, unsupervised rooms or areas. A church can reduce its risk of liability based on incidents of molestation occurring in such locations by restricting access to them. If possible, lock vacant rooms that are not being used, or exercise supervision over them.⁹⁰

11. Windows

Install windows in all doors to classrooms and other areas that are frequented by minors. This will reduce isolation and make it easier to supervise activities.⁹¹

12. Supervision of Known Molesters

If a know molester wants to attend the church, consider the following options:

- ❑ **Exclusion.** The risk of liability based on negligent supervision can be eliminated by completely excluding known child molesters from church property and activities. Some churches have adopted this policy for persons with a record of multiple acts of molestation, or even one severe act. This is not to say that the person is cut off entirely. Ministers or concerned

⁸⁸ *ibid.*: p. 787.

⁸⁹ *ibid.*: p. 788.

⁹⁰ *ibid.*; p. 788.

⁹¹ *ibid.*: p. 788.

laypersons can meet with such a person off of church premises on a regular basis, to provide spiritual support.

- ❑ **Chaperones.** The risk of liability based on negligent supervision can be eliminated if the church designates a “chaperone” to accompany the molester at all times when present on church premises.
- ❑ **Conditional attendance agreement.** Church leaders may allow a molester to attend church and participate in church activities, subject to specified conditions. These conditions can be set forth in a “conditional attendance” agreement that is signed by the molester.⁹²

13. Follow Policies

It is absolutely essential to familiarize youth workers with the church’s policies and to be sure that these policies are followed. At a minimum, this should be part of an orientation process for all new workers (both paid and volunteer). Periodic training sessions are also desirable to reinforce nursery policies.⁹³

14. Review of Policies

It is good practice to have your risk management procedures reviewed periodically by a local attorney and by your church insurance agent. Such a review will help to ensure that your policies are current and effective.⁹⁴

Negligent Supervision of Church Workers – Sexual Misconduct Cases Involving Adult Victims

Sexual misconduct cases that involve adult victims usually result from a male pastor’s conduct towards a female counselee or female employee.

Court Decisions Recognizing Negligent Supervision Claims

Some courts have found churches liable on the basis of negligent supervision for a minister’s acts of sexual misconduct involving adult church members on the ground that the church failed to exercise reasonable care in the supervision of the minister.⁹⁵

⁹² *ibid.*: pp. 788-789.

⁹³ *ibid.*: p. 789.

⁹⁴ *ibid.*: p. 789.

⁹⁵ *ibid.*: p. 790.

Court Decisions Rejecting Negligent Supervision Claims

Many courts have ruled that the first amendment prevents churches from being legally responsible on the basis of negligent supervision for the sexual misconduct of ministers.⁹⁶

Negligent Supervision of Church Workers – Other Cases

A church may be legally responsible on the basis of negligent supervision for injuries resulting from a failure to exercise adequate supervision of its programs and activities.⁹⁷

Risk Management

Churches can **reduce the risk of negligent supervision cases** by employing the following strategies:

1. Adequate Number of Qualified Adults

Use an adequate number of adults to supervise all church activities, especially those involving minors. Also, be sure that the adult supervisors are adequately trained to respond to emergencies.⁹⁸

2. Checking the Policies of Other Charities

Check with the Red Cross, YMCA, Boy Scouts, and similar organizations to obtain guidelines on the number of adults to use, the training of adult workers (based on the type of activity involved), and other safety procedures. Reliance on such standards makes it much less likely that a church will be guilty of negligent supervision. Be sure that you document your research.⁹⁹

3. Swimming and Other Water Sports – Off of Church Premises

If your church sends minors on a trip that will involve swimming (or the possibility of swimming), there are a number of steps that you can take that will reduce the risk of drowning, and the church's risk of liability. They include the following:

⁹⁶ *ibid.*: p. 792.

⁹⁷ *ibid.*: p. 797.

⁹⁸ *ibid.*: p. 800.

⁹⁹ *ibid.*: p. 801.

- ❑ **Encourage parents to accompany their children.** The court in this case concluded that the charity's duty of care was greater because the victim's mother was not present.
- ❑ **Have both parents sign a permission form** that authorizes their child to participate in the event, and that discloses whether or not the child can swim. In some cases, it is not feasible or possible to have both parents sign (due to divorce, separation, or death). But church leaders should recognize that the best protection comes for having both parents sign.
- ❑ **If the parental permission form indicates that the child cannot swim**, then church leaders must recognize that they are assuming a greater risk by allowing the child to participate. This risk can be avoided by not allowing the child to participate....If parents consent to their child's participation despite his or her inability to swim, then under no circumstances should the child be allowed to attend the event without appropriate restrictions. The nature of these restrictions will depend on a number of factors, including the age of the child, the degree of supervision provided by adults, the availability of trained lifeguards, and the relative risk of the location. For example, lakes generally pose more danger than pools, because (1) the water is not clear, making it more difficult to monitor the activities of children or to quickly locate a missing child; (2) concealed hazards may exist below the surface; (3) emergency medical services often are more distant; and (4) the area is more likely to be unsupervised, with no lifeguards present.
- ❑ **Go to locations that have certified lifeguards on duty.**
- ❑ **Check with your church insurance agent for additional recommendations.**
- ❑ **Check with your denominational offices for additional recommendations.**¹⁰⁰

4. Swimming and Other Water Sports – On Church Premises

- ❑ Most communities have enacted zoning regulations that govern the construction and maintenance of swimming pools. These regulations often address fencing, locks, signs, and depth markings. Be sure the pool complies with all zoning requirements since a failure to do so can result in automatic legal liability for a death or injury.

¹⁰⁰ *ibid.*: p. 801.

- ❑ Most communities have laws governing the operation of a pool as a place of public accommodation. Check with city health or safety officials, or with a city council member, for details. Again, be sure the pool is in full compliance, since a violation can lead to automatic liability. These requirements often address the number and training of life guards, maximum pool capacity, and hygienic measures. If there are no such laws in your community that apply to your pool, then consider adopting the rules that apply to other kinds of public swimming pools, if any. This will provide a defense to a charge of negligent supervision. If your community has no laws governing public swimming pools, then contact other local charities with pools (such as the YMCA) and consider following their rules.
- ❑ Place a water alarm in the pool when it is not in use. Such an alarm is triggered by splashing, and it can alert adults to the unauthorized presence of a child in the pool.
- ❑ Place a video camera in the pool area so that the pool can be monitored for unauthorized access when not in use.
- ❑ Use certified lifeguards. Local laws may specify the minimum number, based on the number of persons present. If not, check with the YMCA for recommendations.
- ❑ Do not install a diving board. Many swimming pool accidents are associated with the use of diving boards.
- ❑ Be sure the water is clean and of excellent visibility at all times.
- ❑ Install a safety rope separating the shallow from the deep end of the pool.
- ❑ Check with your church insurance agent for additional recommendations.¹⁰¹

5. Avoid Hazardous Activities

Avoid high-risk activities. Some activities, such as rope-repelling, explosives, and the use of firearms, are so hazardous that a church may be deemed “strictly liable” if an accident occurs, no matter how much care was exercised in supervising the event.¹⁰²

¹⁰¹ *ibid.*: p. 802.

¹⁰² *ibid.*: p. 802.

Counseling

It is not unusual for ministers to counsel with members of their congregations. A few churches even provide counseling services. Whether the counseling is provided by the minister or a staff of lay counselors, church leaders need to be knowledgeable of the legal liabilities that may be involved.

1. Pastoral Counselors

Pastors and ministers can be charged with malpractice or sexual misconduct during the course of counseling. They should take detailed steps to protect themselves from such situations.

2. Lay Counselors

Lay counselors create a different set of legal liabilities for the church.

(1) negligent counseling

“Negligent counseling” is a legal risk associated with lay counseling programs. It can arise in a number of ways. Some persons may claim that their emotional problems were aggravated rather than helped by lay counseling. Others may claim that lay counselors have a legal duty to refer suicidal persons to medical professionals having the authority to involuntarily commit such persons, and that they are responsible for the suicide of a counselee who is not referred.¹⁰³

(2) child abuse reporting

Counselors may receive confessions of child abuse or information giving them a reasonable suspicion that abuse has occurred. It is imperative for church leaders to obtain a copy of their state child abuse reporting statute and ensure that all counselors are aware of their reporting obligations, if any, under state law.¹⁰⁴

(3) seduction of counselees

This is the most common liability that arises in counseling situations.

(4) confidentiality

¹⁰³ *ibid.*: p. 803.

¹⁰⁴ *ibid.*: p. 804.

Counselors (and the church) can be sued if they intentionally or inadvertently disclose confidential information to third parties.¹⁰⁵

(5) negligent hiring

The church should carefully screen any candidate for a lay counseling position to ensure, as much as possible, the suitability of the person for a counseling ministry....The important consideration is this: the church can be sued for injuries inflicted by a lay counselee if the church either knew or should have known of a dangerous propensity of the counselor.¹⁰⁶

(6) negligent supervision

The church should consider adopting mechanisms to ensure that unlicensed lay counselors are supervised by appropriately trained and licensed mental health professionals. The church should also develop a counseling policy setting forth standards on such issues as suicidal counselees, counselees threatening harm to others, counselees who confess to criminal activities, and counselees who are child abusers. Unlicensed lay counselors should understand clearly their responsibilities with regard to these kinds of crises. In most cases they should be advised to refer crisis cases immediately to a designated licensed mental health professional....It is also important for the counseling policy to prohibit lay counselors from engaging in controversial therapies such as “repressed memories” and diagnosis and treatment of multiple personality disorders.¹⁰⁷

(7) fees

Churches must be careful about misleading counselees that counseling fees are tax deductible. If a specific fee is required for the counseling service, such fees are not tax deductible as charitable contributions. The fee must be made in a voluntary manner for it to be considered as tax deductible.

Risk Management

Churches can **reduce the risk of legal liability resulting from counseling situations** by developing a policy that includes the following steps:

¹⁰⁵ *ibid.*: pp. 804-805.

¹⁰⁶ *ibid.*: p. 805.

¹⁰⁷ *ibid.*: p. 805.

1. Reducing the Risk of Sexual Misconduct and False Accusations

(1) the “third person” rule

One effective way to deal with these risks is to adopt a policy prohibiting any male minister or counselor on staff from counseling privately with an unaccompanied female (i.e., opposite sex counseling) unless a third person is present. The third person may be the minister’s or counselor’s spouse, another minister on staff, or a mature and trusted church employee (preferably female).¹⁰⁸

(2) women counsel women

Since the vast majority of cases of inappropriate sexual behavior involve male counselors and female counselees, churches can significantly reduce their risk by using women to counsel women.¹⁰⁹

(3) other measures

Churches have implemented a number of other measures to reduce the risk of sexual misconduct, or false claims of sexual misconduct, during pastoral or lay counseling sessions. These include one or more of the following:

- **Windows.** Installing a window in the pastor’s office making all counseling sessions clearly visible to office staff. Of course, such a precaution is effective only if other staff are present and visible throughout the counseling session. This means that the church should implement a policy limiting counseling sessions to office hours when other staff are present and visible.
- **Open doors.** Some counselors conduct counseling sessions in a room with an open door, so that office staff can clearly see the counselor or counselee. Of course, such a precaution is effective only if other staff are present and visible throughout the counseling session. This means that the church should implement a policy limiting counseling sessions to office hours when other staff are present and visible.

¹⁰⁸ *ibid.*: p. 806.

¹⁰⁹ *ibid.*: p. 807.

- **Telephone counseling.** Many smaller churches have no “staff” that is present and visible in the church office during counseling sessions. Some of these churches limit opposite sex counseling sessions to those involving a third person or those that are conducted by telephone.
- **Video cameras.** Some churches have installed a video camera (without audio) in the office where counseling occurs. The video can be transmitted to a monitor in another location in the church where it is observed by a church employee. Or, the camera can simply record the entire session. If sessions are recorded, tapes should be retained indefinitely, or until they are reviewed by two designated church members who prepare a written summary stating whether or not they observed any inappropriate acts. This review can be performed in “fast forward” mode, and should not take long.
- **Boundaries.** Many courts have recognized the psychological principle of “transference.” To illustrate, one court defined transference as “a phenomenon that occurs that is similar to a state of dependency in which the client begins to project the roles and relationships and the images and experiences that they have had with other people previously in their life, especially other significant people such as mother, father, brothers, sisters, early teachers and adult models, upon the therapist.” Another court defined transference as “a process whereby a patient undergoing psychotherapy for a mental or emotional disturbance (particularly a female patient being treated by a male psychotherapist) develops such overwhelming feelings of warmth, trust, and dependency towards the therapist that she is deprived of the will to resist any sexual overtures he might make.” Similarly, another court observed, “Transference is the term used by psychiatrists and psychologists to denote a patient’s emotional reaction to a therapist and is generally applied to the projection of feelings, thoughts and wishes onto the analyst, who has come to represent some person from the patient’s past....Transference is crucial to the therapeutic process because the patient unconsciously attributes to the psychiatrist or analyst those feelings which he may have repressed towards his own parents....It is through the creation, experiencing and resolution of these feelings that [the patient] becomes well....Understanding of transference forms a basic part of the psychoanalytic technique. Pastoral

and lay counselors often are tempted to engage in inappropriate sexual contact with a counselee because of unfamiliarity with this phenomenon. They misinterpret transference as affection, and fail to engage in anti-transference precautions that reduce the risk of inappropriate physical or emotional bonding. These precautions can include one or more of the following: (1) require a third person to be present for any counseling occurring off of church premises; (2) allow one-on-one counseling on church premises only during office hours if other staff members are present and visible; (3) limit counseling sessions to 45 minutes; and (4) permit no more than 5 counseling sessions with the same person during a calendar year.¹¹⁰

2. Other Risks

(1) counseling policy

Churches that use unlicensed lay counselors should prepare a suitable brochure or statement clearly communicating to each counselee that the church considers counseling to be an essential aspect of its ministry, and that it is important for persons seeking counseling to recognize certain legal considerations that apply in the context of counseling. These may include many considerations, including the fact that the counselee understands and agrees that counseling is provided on the basis of the following conditions:

- The counselors are engaged solely in spiritual counseling based on their understanding of the Bible, and they are not engaged in the practice of psychology, professional counseling, or psychotherapy.
- State law may require a counselor to report allegations of child abuse to civil authorities.
- Statements made in confidence to a pastor in the course of counseling ordinarily are “privileged,” meaning that neither the counselee nor the pastor can be compelled to disclose in a court of law any statements made in the course of the counseling. However, the presence of a third party during a counseling session may jeopardize the privilege, since the counseling may no longer be considered “confidential.”

¹¹⁰ *ibid.*; pp. 807-808.

- Any statements made in confidence in the course of counseling will be kept in strict confidence by the counselor. As noted above, the duty to maintain confidences may not apply in the context of child abuse. Further, the counselor may reserve the right to disclose confidential information in specified situations (such as threats of suicide, or an intent to harm another person).¹¹¹

(2) avoid controversial therapies

Counselors should be instructed to avoid any controversial counseling techniques that have been associated in recent years with staggering levels of liability (such as age regression therapy or multiple personality disorders).¹¹²

(3) referrals

Counselors should have a clear understanding of those cases that need to be referred to a professional counselor.¹¹³

(4) insurance

Does the counselor have counseling insurance? If so, what are the coverage amounts? What exclusions exist? These are questions that should be addressed prior to the time the counselor begins counseling. Also check to see if the church's liability insurance policy covers the counseling activities.¹¹⁴

(5) legal agreement

Consider executing a legal agreement with the counselor that expresses the conditions of the arrangement.¹¹⁵

(6) disclaimer

Have every counselee sign a form acknowledging that the counselor is not acting as an agent or representative of the church, and that the counselor is not acting under the control or supervision of the church.¹¹⁶

¹¹¹ *ibid.*: pp. 808-809.

¹¹² *ibid.*: p. 809.

¹¹³ *ibid.*: p. 809.

¹¹⁴ *ibid.*: p. 809.

¹¹⁵ *ibid.*: p. 809.

¹¹⁶ *ibid.*: p. 809.

(7) use of the term “counselor”

It is unlawful in most states for unlicensed persons to use the term counselor or counseling in connection with their services. Pastors who engage in counseling of church members in the course of performing their pastoral duties are exempted from this limitation, but lay counselors generally are not even though they are working in a church.¹¹⁷

Defamation

Defamation consists of the following elements:

- (1) oral or written statements about another person**
- (2) that are false**
- (3) that are “published” (that is, communicated to other persons),
and**
- (4) that injure the other person’s reputation¹¹⁸**

Usually courts will not intervene in cases of defamation against churches. There have been five different ways in which the courts have responded to such cases:

1. No Civil Court Jurisdiction

Some courts have concluded that the first amendment deprives them of jurisdiction to resolve defamation claims against churches, at least if doctrinal or other pervasively religious issues are involved.¹¹⁹

2. Common Interest Privilege

Many courts have concluded that the law should encourage churches to communicate matters of “common interest” to members without fear of being sued for defamation. These courts have ruled that churches are protected by a qualified privilege when communicating with church members about matters of mutual concern or common interest. This means that such communications cannot be defamatory unless made with malice. Malice in this context means that the person who made the allegedly defamatory remark knew that it was false, or made it with a reckless disregard as to its truth or falsity. This is a difficult standard

¹¹⁷ *ibid.*: p. 809.

¹¹⁸ *ibid.*: p. 815.

¹¹⁹ *ibid.*: p. 815.

to prove, which means that communications between churches and church members will be defamatory only in exceptional cases.¹²⁰

3. Statements Made at Ecclesiastical Disciplinary Hearings

Some courts have ruled that statements made at church disciplinary hearings are protected by a qualified privilege. This means that such communications cannot be defamatory unless made with malice. Malice in this context means that the person who made the allegedly defamatory remark knew that it was false, or made it with a reckless disregard as to its truth or falsity. This is a difficult standard to prove, which means that communications made in the course of church disciplinary hearings will be defamatory only in exceptional cases.¹²¹

4. Defamation Claims Not Involving Doctrinal Inquiries

A few courts have concluded that the first amendment does not prevent them from resolving defamation claims by ministers against churches and denominational agencies to the extent such claims can be resolved without any inquiry into religious doctrine or polity.¹²²

Defenses to Liability

Below is a discussion of the various defenses churches can use when sued for the types of liability that have been discussed in this chapter.

Contributory and Comparative Negligence

Contributory negligence is conduct on the part of a person injured through the negligence of another that itself falls below the standard to which a reasonable person would conform for his or her own safety and protection.¹²³

Most states have attempted to lessen the severity of the rule denying any recovery to an accident victim who was contributory negligent through the adoption of comparative negligence statutes. Under the so-called pure comparative negligence statutes, accident victims whose contributory negligence was not the sole cause of their injuries may recover damages against another whose negligence was the primary cause of the accident, but their monetary damages are diminished in proportion to the amount of their own negligence. Under a pure comparative negligence statute, victims may recover against a

¹²⁰ *ibid.*: p. 821.

¹²¹ *ibid.*: p. 823.

¹²² *ibid.*: p. 823.

¹²³ *ibid.*: p. 826.

negligent defendant even though their own contributory negligence was equal to or greater than the defendant's negligence. Many other states have adopted the equal-to or greater-than rule or the fifty-percent rule. Under these statutes, accident victims whose contributory negligence is equal to or greater than the defendant's negligence are totally barred from recovery. But, accident victims whose contributory negligence is less than the defendant's negligence may recover damages, although their damages are diminished in proportion to the amount of their own negligence.¹²⁴

Assumption of Risk

Persons who voluntarily expose themselves to a known danger or to a danger that was so obvious that it should have been recognized will be deemed to have assumed the risks of their conduct. As a result, persons who voluntarily expose themselves to the negligent conduct of a defendant with full knowledge of the danger will be barred from recovery for any injuries resulting from the defendant's negligence.¹²⁵

Intervening Cause

Many courts have ruled that a person's negligence is not the legal cause of an injury that results from the intervention of a new and independent cause that is (1) neither anticipated nor reasonably foreseeable, (2) not a consequence of his or her negligence, (3) not controlled by him or her, and (4) the actual cause of the injury in the sense that the injury would not have occurred without it. If an intervening cause meets these conditions, it is considered a "superseding" cause that eliminates the original wrongdoer's liability.¹²⁶

Statutes of Limitations

1. In General

In any lawsuit, the plaintiff only has a certain amount of time to file suit. This is referred to as the statute of limitations. The statutes of limitations vary in length depending on the nature of the charge.

2. Extending the Statute of Limitations – Injuries to Minors

The statute of limitations does not begin to "run" in the case of injuries to a minor until the minor's eighteenth birthday.¹²⁷

¹²⁴ *ibid.*: p. 827.

¹²⁵ *ibid.*: p. 828.

¹²⁶ *ibid.*: p. 829.

¹²⁷ *ibid.*: p. 830.

3. Extending the Statute of Limitations – The “Discovery Rule”

Some states have adopted, either through legislation or court decision, a limited exception to the statute of limitations known as the discovery rule. Under this rule, the statute of limitations does not begin to run until a person realizes that his or her injuries were caused by a particular event or condition. The discovery rule has been applied most often in the following three contexts:

(1) Medical malpractice. In some cases, medical malpractice is difficult if not impossible to recognize until after the statute of limitations has expired....Under the discovery rule, the statute of limitations begins to run not when the malpractice occurred, but when the patient knew or should have known of it.

(2) Child molestation. Some courts have applied the discovery rule in cases of child molestation. These courts have concluded that young children may “block out” memories of molestation, and not recall what happened for many years. The statute of limitations does not begin to run until the victim’s eighteenth birthday, or until the victim knew or should have known that his or her emotional or physical injuries were caused by the acts of molestation. Courts that have applied this rule generally have limited it to victims who were very young at the time of the molestation. Adults who claim that they repressed memories of molestation occurring when they were adolescents have had a very difficult time convincing juries that they are telling the truth.

(3) Seduction of adult counselees. Some courts have applied the discovery rule in cases of sexual contact between a minister and an adult counselee. These courts have concluded that adults who engage in such acts with a minister may attempt to repress their memory of them, or be so intimidated by the authority of the minister that they lack the capacity to file a lawsuit.¹²⁸

4. Extending the Statute of Limitations – Fraud and Other Grounds

¹²⁸ *ibid.*: p. 831.

Some courts have permitted the statute of limitations to be suspended in limited circumstances, including fraud or the “active concealment” of the existence of a civil claim by a wrongdoer.¹²⁹

Charitable Immunity

Charitable organizations have been of the opinion that they should be completely immune from legal liability. This opinion has been rejected by the courts. However, many state and federal laws have given charities partial immunity.

1. Limited Liability of Volunteers

Many states have enacted statutes conferring limited liability upon persons who perform uncompensated volunteer work on behalf of a charity. In addition, Congress enacted the federal Volunteer Protection Act in 1997. This legislation provides substantial protection to volunteers who provide services on behalf of churches and other charities. Here is a summary of the Act's provisions:

- Congressional “findings.” The Act begins with several “findings,” including the following:
 - (1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them;
 - (2) as a result, many nonprofit public and private organizations and governmental entities, including voluntary associations, social service agencies, educational institutions, and other civic programs, have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities;
 - (3) the contribution of these programs to their communities is thereby diminished, resulting in fewer and higher cost of programs than would be obtainable if volunteers were participating... (6) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities....
- Effect on state laws. Prior to the enactment of the Volunteer Protection Act, many states had enacted similar laws. What

¹²⁹ *ibid.*: p. 841.

is the legal status of these state laws? The Act addresses this question as follows: This Act preempts the laws of any state to the extent that such laws are inconsistent with this Act, except that this Act shall not preempt any state law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.

- Liability protection for volunteers. The purpose of the Act is to limit the liability of volunteers. This purpose is accomplished through the following provision: No volunteer of a nonprofit organization...shall be liable for harm cause by an act or omission of the volunteer on behalf of the organization or entity if – (1) the volunteer was acting within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission; (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for activities or practice in the State in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity; (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the volunteer; and (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to – (A) possess an operator’s license; or (B) maintain insurance.
- Definitions. The Act defines a nonprofit organization to mean “any organization which is described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code and which does not practice any action which constitutes a hate crime,” or “any not-for-profit organization which is organized and conducted for public benefit and operated primarily for charitable, civic, educational, religious, welfare, or health purposes and which does not practice any action which constitutes a hate crime....” The Act defines a volunteer as “an individual performing services for a nonprofit organization...who does not receive – (A) compensation (other than reasonable reimbursement or allowance for expenses actually incurred); or (B) any other thing of value in lieu of compensation, in

excess of \$500 per year, and such term includes a volunteer serving as a director, officer, trustee, or direct service volunteer.”

- No effect on a charity’s liability. The Act clarifies that it does not “affect the liability of any nonprofit organization...with respect to harm caused to any person.” In other words, the limited immunity provided by the Act extends only to volunteers, and not to charities themselves.
- Punitive damages. The Act specifies that punitive damages “may not be awarded against a volunteer in an action brought for harm based on the action of a volunteer acting within the scope of the volunteer’s responsibilities to a nonprofit organization or governmental entity unless the claimant establishes by clear and convincing evidence that the harm was proximately cause by an action of such volunteer which constitutes willful or criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed.”
- Exceptions. The “immunity” provided by the Act is limited, meaning that it is not absolute. The Act specifies that it confers no immunity upon volunteers whose misconduct (1) is a crime of violence or act of international terrorism for which the volunteer has been convicted in any court; (2) is a hate crime; (3) is a sexual offense, as defined by state law, for which the volunteer has been convicted in any court; (4) is a violation of a federal or state civil rights laws; or (5) occurred while the volunteer was under the influence of intoxicating alcohol or any drug at the time of the misconduct.
- Amount of liability. In the event that a volunteer is found liable in any civil action, the Act limits the amount of “non-economic” damages that can be assessed. Non-economic damages are defined by the Act as “losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium...hedonic damages, injury to reputation and all other non-pecuniary losses of any kind or nature.” The Act specifies that a volunteer “shall be liable only for the amount of non-economic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant...for the harm to the claimant with respect to

which that defendant is liable.” In other words, if a volunteer is found to be ten percent at fault, he or she cannot be assessed more than ten percent of the non-economic damages awarded by a jury.¹³⁰

2. Injuries to Beneficiaries

Some states immunize religious organizations from liability for the negligence of agents and employees committed against “beneficiaries” of the organization. This view ordinarily is based upon one of the following grounds:

- (1) the funds of religious organizations are held in trust for charitable purposes and may not be diverted to the payment of damages;
- (2) the misconduct of employees should not be imputed to a religious organization when their services are for the benefit of humanity and not for the economic gain of the organization that employs them;
- (3) a religious organization is engaged in work highly beneficial to the state and to humanity, and its funds should not be diverted from this important purpose to the payment of damages; or,
- (4) those accepting the benefits of a religious organization implicitly agree not to hold it liable for injuries that they may receive at the hands of its employees.¹³¹

3. State Laws Imposing “Caps” on Damages

Several states have legislated a maximum that charities can be forced to compensate plaintiffs in some discrimination cases.

(1) The Civil Rights Act of 1991

The federal Civil Rights Act of 1991 imposes limits on the amount of monetary damages that can be assessed against employers in discrimination lawsuits. Employers with more than 14 but fewer than 101 employees cannot be liable for more than \$50,000 to any one person; for employers with more than 100 but fewer than 201 employees, the maximum damages available to any one person is \$100,000; for

¹³⁰ *ibid.*: pp. 844-846.

¹³¹ *ibid.*: p. 847.

employers with more than 200 but fewer than 500 employees, the maximum damages available to any one person is \$200,000; and for employers with more than 500 employees the maximum damages available to any one person is \$300,000.¹³²

(2) Massachusetts

The state of Massachusetts has legislated a maximum compensation of \$20,000.

(3) South Carolina

The state of South Carolina has legislated a maximum compensation of \$200,000 for actual damages.

(4) Texas

The state of Texas has legislated payment levels which include a maximum of \$500,000 per person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

The Texas law does not apply to (1) “an act or omission that is intentional, willfully or wantonly negligent, or done with conscious indifference or reckless disregard for the safety of others”; or (2) any charitable organization that does not have liability insurance coverage in an amount of at least “\$500,000 for each person and \$1,000,000 for each single occurrence of bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.”¹³³

Release Forms

Many churches use “release forms,” which purport to release the church from legal responsibility for injuries inflicted by the negligence of its employees or workers. Besides being of dubious legal value, such forms primarily protect the church’s insurance company. If injuries are caused by the negligence of a church worker, then the liability insurer will pay for such damages up to the policy limits. If the church is not negligent, then it ordinarily will not be assessed any damages. A release form, even if deemed legally valid by a court, would have the effect of excusing the church’s liability insurer from paying damages to a victim of the church’s

¹³² *ibid.*: p. 851.

¹³³ *ibid.*: p. 855.

negligence. Release forms that purport to excuse a church or other organization from liability for injuries to a minor are the most likely to be invalidated by the courts, often on the ground that they violate public policy. However, the courts have been less reluctant to recognize release or “assumption of risk” forms signed by competent adults, but even these forms are viewed with disfavor and some courts will go to great lengths to invalidate them, especially if they seek to relieve an organization of liability for personal injuries as opposed to property damage.¹³⁴

Churches should not allow a minor child to participate in any church activity (such as camping, boating, swimming, hiking, or some sporting events) unless the child’s parents or legal guardians sign a form that (1) consents to their child participating in the specified activity; (2) certifies that the child is able to participate in the event (e.g., if the activity involves boating or swimming, the parents or guardians should certify that the child is able to swim); (3) lists any allergies or medical conditions that may be relevant to a physician in the event of an emergency; (4) lists any activities that the parents or guardians do not want the child to engage in; and (5) authorizes a designated individual to make emergency medical decisions for their child in the event that they cannot be reached. Ideally, the form should be signed by both parents or guardians (if there are two), and the signatures should be notarized. If only one parent or guardian signs, or the signatures are not notarized, the legal effectiveness of the form is diminished. Having persons sign as witnesses to a parent’s signature is not as good as a notary’s acknowledgment, but it is better than a signature without a witness. The form should require the parent or guardian to inform the church immediately of any change in the information presented, and it should state that it is valid until revoked by the person who signed it. The parent or guardian should sign both in his or her own capacity as parent or guardian, and in a representative capacity on behalf of the minor child.¹³⁵

INSURANCE

Church leaders assume that their insurance covers any and all claims that may come against the church. Church leaders need to be aware of the items listed below:

1. Coverage

Not all claims are covered by a church’s insurance policy. Church leaders need to be knowledgeable about what types of claims that their insurance policy will cover.

¹³⁴ *ibid.*: p. 857.

¹³⁵ *ibid.*: p. 857.

2. Exclusions

Church leaders must be knowledgeable of the exclusions in the church's insurance policy. Common exclusions include:

intentional or criminal misconduct, injuries occurring outside of the United States, employment-related claims, and injuries caused by exposure to hazardous substances. Some policies exclude claims arising out of incidents of sexual misconduct.¹³⁶

3. Duty to Cooperate

Most insurance policies impose a "duty to cooperate" on the insured. This means that a church must cooperate with its insurance company in any investigation, or in responding to reasonable requests for information. Church leaders should be aware of this requirement and understand that a failure to cooperate may result in the denial of insurance benefits. There are limits to the authority of an insurance company to investigate. However, churches should never decline an insurance company's request for information without the advice and consent of a local attorney.¹³⁷

4. Duty to Notify

Most insurance policies impose on the insured a duty to promptly notify the insurance company of any potential claim. Failure to comply with this condition can result in a loss of coverage. Here are some points to consider:

- Notifying your broker may not be enough. Many churches purchase their insurance through a local broker. Sometimes this person is a member of the congregation. Church leaders naturally assume that in the event of an accident or injury they can simply call this individual and everything will be "taken care of." This case illustrates that such a conclusion may not always be correct. A broker may not be deemed to be an "agent" of the insurance companies he or she represents, and accordingly when a church provides its insurance broker with notice of an accident or loss it is not necessarily notifying its insurance company.

¹³⁶ *ibid.*: p. 861.

¹³⁷ *ibid.*: p. 866.

- ❑ Written rather than oral notice. If your insurance policy requires written notice, then be sure you provide written rather than oral notice of a loss.
- ❑ A reasonable time. How soon does your church insurance policy require that notice be submitted to the insurance company following an accident or loss? Be sure you know, and that this requirement is followed whenever there is an accident, personal injury, or other kind of loss.¹³⁸

5. Coverage Limits

Church leaders need to be aware of the coverage limits of their insurance policy. Some limits can even be lowered based on the cause of loss or injury. Church leaders must understand that these limits can open their board members or directors up to personal lawsuits in order for the plaintiff to recover damages.

6. Liability for Maintaining Inadequate Insurance Coverage

A few churches have been sued for failing to maintain adequate insurance coverage. Such claims have been rejected by the courts.¹³⁹

7. Punitive Damages

Church insurance policies exclude punitive damages. This means that a jury award of punitive damages represents an uninsured risk. As a result, it is important for church leaders to understand the basis for punitive damages. Punitive damages are damages awarded by a jury “in addition to compensation for a loss sustained, in order to punish, and make an example of, the wrongdoer.” They are awarded when a defendant’s conduct is particularly reprehensible and outrageous. This does not necessarily mean intentional misconduct. Punitive damages often are associated with reckless conduct or conduct creating a high risk of harm.¹⁴⁰

8. What Claims are Covered

¹³⁸ *ibid.*; pp. 866-867.

¹³⁹ *ibid.*: p. 869.

¹⁴⁰ *ibid.*: p. 869.

If a church has changed insurance companies, it needs to keep the policy from the previous company. This may be necessary in order to determine which company is responsible to cover a claim.

9. Other Matters

- ❑ Retaining your policies. It is important for church leaders to keep church insurance policies permanently, since some claims (such as sexual misconduct) may arise years or even decades later, and a church may need to produce a copy of the insurance contract for the year in which the misconduct occurred in order to obtain coverage.¹⁴¹
- ❑ Reservation of rights letters. It is common for churches to receive a “reservation of rights” letter when they report a claim to their insurance company. Under such a reservation, an insurance company agrees to defend an insured, but reserves the right to deny any obligation to pay an adverse judgment as a result of an exclusion in the policy.¹⁴²
- ❑ Periodic insurance review. Churches should appoint an insurance committee consisting of persons with some knowledge of insurance who periodically review the church’s insurance coverage to ensure they are adequate.¹⁴³

Other Defenses

There are a variety of defenses that churches may employ when sued for personal injury.

1. Status of the Person Causing the Injury or Damage

Since a church is liable only for the injuries and damages caused by employees and volunteers, a church generally will not be liable for injuries inflicted by independent contractors.¹⁴⁴

2. Course of Employment

Since a church is liable only for the injuries and damages caused by employees acting in the course of their employment, a church generally will not be liable for injuries inflicted by employees outside of the course of their employment.¹⁴⁵

¹⁴¹ *ibid.*: p. 870.

¹⁴² *ibid.*: p. 870.

¹⁴³ *ibid.*: p. 870.

¹⁴⁴ *ibid.*: p. 870.

¹⁴⁵ *ibid.*: p. 871.

3. Arbitration

Churches may use arbitration to settle suits of personal injury. Each side chooses a representative and those representatives choose an arbitrator. This method is quicker, less expensive, and usually more fair.

Damages

Juries can award a plaintiff damages. These damages are usually monetary and fall in one of two categories: compensatory or punitive. Compensatory damages are awarded to compensate plaintiffs for the actual injuries or harm they have suffered.¹⁴⁶

Punitive Damages

Punitive damages are monetary damages awarded by a jury “in addition to compensation for a loss sustained, in order to punish, and make an example of, the wrongdoer.” They are awarded when a person’s conduct is reprehensible and outrageous. Most church insurance policies exclude punitive damages. This means that a jury award of punitive damages represents an uninsured risk.¹⁴⁷

Duplicate Verdicts

Juries generally cannot assess monetary damages against two or more organizations for the same wrong. If a jury determines that a personal injury victim has suffered damages of a specified amount, it cannot assess this amount separately against more than one defendant since doing so would result in duplicate verdicts.¹⁴⁸

Denominational Liability

Churches are not the only entities that may be sued in personal injury suits. The suits can extend to denominational agencies. These agencies may be sued for their own actions as well.

Court Decisions Recognizing Liability

Some courts have found denominational agencies liable for the acts of affiliated ministers and churches on the basis of a number of grounds, including negligence and agency.¹⁴⁹

¹⁴⁶ *ibid.*: p. 873.

¹⁴⁷ *ibid.*: p. 873.

¹⁴⁸ *ibid.*: p. 875.

¹⁴⁹ *ibid.*: p. 876.

Court Decisions Rejecting Liability

Most courts have refused to hold denominational agencies liable for the acts of affiliated ministers and churches, either because of first amendment considerations or because the relationship between the denominational agency and affiliated church or minister is too remote to support liability.¹⁵⁰

Defenses to Liability

There are a variety of defenses that denominational agencies can employ when sued in personal injury cases. These include:

1. Ecclesiastical Rather than Temporal Control

A number of courts have recognized that some denominations have authority to exercise only ecclesiastical control over affiliated clergy and churches, and that this form of control is not enough to warrant the imposition of legal liability upon the denomination for the activities of clergy and churches.¹⁵¹

2. Notice of Wrongful Conduct

In many cases victims of sexual misconduct involving clergy have argued that a denominational agency is legally responsible for the minister's actions because it was aware of, or should have been aware of, the minister's wrongful conduct. Some courts have ruled that denominations often have clearly prescribed internal rules for bringing charges against ministers who engage in inappropriate conduct, and that the only way for such denominations to be "on notice" of a minister's dangerous propensities is if a charge is filed and processed under the denomination's system of clergy discipline. Without a formal charge or complaint being brought, the denomination is not officially on notice and cannot be liable for the minister's subsequent acts.¹⁵²

3. Lack of an Actual Agency Relationship

For denominational agencies to be included in a lawsuit against a minister, the plaintiff must prove that the minister's actions were in the scope of his or her employment of the agency.

¹⁵⁰ *ibid.*: p. 877.

¹⁵¹ *ibid.*: p. 879.

¹⁵² *ibid.*: p. 882.

4. Lack of an “Apparent Agency” Relationship

Even if a church or minister is not an actual agent of a national or regional denominational agency, it is possible for the denomination to be liable for their activities on the basis of apparent agency. Most states recognize the theory of apparent agency. Under this theory, a person or organization can become the “agent” of another though no actual agency relationship in fact exists.¹⁵³

5. Lack of an Alter Ego Relationship

A few attempts have been made to establish denominational liability for the activities of affiliated churches on the basis of the alter ego theory....One authority states that the alter ego theory requires “...complete domination, not only of the finances, but of policy and business practice with respect to the transaction so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; and (2) such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of the statutory or other positive legal duty, or dishonest and unjust act in contravention of the plaintiff’s legal rights; and (3) the aforesaid control and breach of duty must proximately cause the injury or unjust loss.”¹⁵⁴

6. Parent-Subsidiary Relationship

Some plaintiffs have asserted that denominational agencies are legally responsible for the acts and obligations of affiliated churches, clergy, and lay workers on the basis of a “parent-subsidiary” relationship between the denomination and church. Such arguments will be unsuccessful in most cases because most if not all of the characteristics of a parent-subsidiary relationship are absent.¹⁵⁵

The following twelve factors need to be considered:

- (1) the parent corporation owns all or a majority of the stock of the subsidiary
- (2) the corporations have common directors or officers
- (3) the parent and the subsidiary have common business departments

¹⁵³ *ibid.*: p. 886.

¹⁵⁴ *ibid.*: p. 889.

¹⁵⁵ *ibid.*; p. 889.

- (4) the parent and the subsidiary file consolidated financial statements and tax returns
- (5) the parent corporation finances the subsidiary
- (6) the parent corporation caused the incorporation of the subsidiary
- (7) the subsidiary has grossly inadequate capital
- (8) the parent corporation pays the salaries or expenses or losses of the subsidiary
- (9) the subsidiary has substantially no business except with the parent corporation
- (10) the parent uses the subsidiary's property as its own
- (11) the daily operations of the two corporations are not kept separate
- (12) the subsidiary does not observe the basic corporate formalities, such as keeping separate books and records and holding shareholder and board meetings¹⁵⁶

7. First Amendment Prohibition of Civil Court Manipulation of Ecclesiastical Polity

The courts have recognized that the first amendment prohibits its intervention into ecclesiastical issues of the church. This applies to denominational agencies as well. Usually the courts recommend the formulation of denominational tribunal to settle ecclesiastical issues. Since intervention by the courts could result in the courts delving into ecclesiastical polity of the church.

8. "De Novo" Review for Violations of Constitutional Rights

The United States Supreme Court ruled in 1964 that the courts have a duty to "make an independent examination of the whole record" when constitutional rights are at stake, to be sure that there is no "forbidden intrusion" on the field of first amendment protections. The Court reiterated this principle in a 1984 ruling, in which it observed: The simple fact is that first amendment questions of "constitutional fact" compel this Court's de novo review....The requirement of the independent appellate review...is

¹⁵⁶ *ibid.*: pp. 889-890.

a rule of federal constitutional law. It emerged from the exigency of deciding concrete cases; it is law in its purest form under our common law heritage. It reflects a deeply held conviction that judges – and particularly members of this Court – must exercise such review in order to preserve the precious liberties established and ordained by the Constitution....Judges, as expositors of the Constitution, must independently decide whether the evidence in the record is sufficient to cross the constitutional threshold that bars the entry of any judgment that is not supported by clear and convincing proof....¹⁵⁷

9. The “Bar Association” Analogy

Ministers receive their credentials usually from the denominational agency. This is a similar practice to the bar association. Just as the bar association does not have control of the day-to-day activities of its attorneys, denominational agencies do not control the day-to-day activities of its ministers. Under such situations, the denominational agency can not be held legally liable for the actions of one of its ministers.

10. Joint and Several Liability

One of the most unfair aspects of our legal system is the principle of “joint and several liability.” Under this principle, which is recognized by most states, any defendant in a lawsuit may be liable for the entire amount of a plaintiff’s damages regardless of the degree of fault. This principle often is directed at churches and denominational agencies.¹⁵⁸

11. Policy Reasons for Limiting Vicarious Liability of Nonprofit Defendants

This principle has already been discussed earlier in this chapter.

Risk Management

Denominational agencies can **reduce the risk of liability** by developing a policy that includes the following points:

1. The Discipline of Ministers

Many denominational agencies ordain or license ministers, and reserve the authority to discipline ministers for violations of

¹⁵⁷ *ibid.*: p. 892.

¹⁵⁸ *ibid.*: p. 894.

prescribed standards. Deciding whether or not to discipline ministers, and restore them to pastoral ministry, can be a difficult question because imprudent decisions may expose a denominational agency to liability for future misdeeds. Here are some factors that denominational agencies should consider in deciding whether or not to restore a disciplined minister to pastoral ministry:

- ❑ **Type of misconduct.** The type of misconduct is an important consideration. Some kinds of misconduct are more severe than others.
- ❑ **Duration of misconduct.** The duration of a minister's misconduct is a relevant consideration. The longer the duration, the less likely rehabilitation will be effective.
- ❑ **Number of incidents.** The more separate incidents of misconduct, the less likely rehabilitation will be effective.
- ❑ **Number of victims.** The more victims, the less likely rehabilitation will be effective.
- ❑ **Subsequent misconduct.** Denominational leaders must recognize that the risk of liability increases significantly when a denomination disciplines and restores to pastoral ministry a minister who was previously disciplined for the same kind of misconduct.
- ❑ **How the misconduct was discovered.** Did the minister come forward and confess voluntarily? Or was the confession prompted by some external inducement, such as an awareness that the misconduct was about to be revealed.
- ❑ **When the incident occurred.** In some cases, the misconduct occurred many years ago and has not recurred. This is a relevant, but not conclusive, factor to consider.
- ❑ **Restitution.** If there is a "victim" to the minister's misconduct, has the minister apologized to the victim and made appropriate restitution?
- ❑ **Criminal nature of misconduct.** A decision to rehabilitate an employee should take into account the potential for criminal prosecution.

- ❑ **The strength of the evidence.** In some cases the evidence of misconduct is not conclusive. In general, the legal risk associated with rehabilitating or reinstating a minister increases if the evidence of guilt is weak and conflicting.
- ❑ **A counselor’s opinion.** In some cases, denominational agencies have conditioned the discipline of ministers on the receipt of an opinion by a licensed psychologist or counselor that the minister no longer poses a risk of repeating the same kind of misconduct.
- ❑ **Limited disclosure agreement.** A number of courts have stated that denominational agencies can avoid legal liability for a disciplined minister’s repeat misconduct by disclosing to local churches the minister’s prior behavior at the time he or she is employed.¹⁵⁹

2. Accepting Ministers from Other Organizations

Denominational leaders must scrutinize carefully any applicant for ministry that comes from another denomination. In some cases, ministers who are disciplined or dismissed in one denomination apply for ministry in another denomination. If such a minister later engages in the same type of misconduct for which he or she was previously disciplined or dismissed, the new denomination may be legally responsible for such misconduct on the basis of negligent selection.¹⁶⁰

The Legal Effect of a Group Exemption Ruling

The tax code permits denominational agencies to obtain a “group exemption” for affiliated churches and organizations that establishes their exemption from federal income tax. While such rulings require the denominational agency to exercise “control” over its affiliates, the IRS and the courts have conclude that this “control” is ecclesiastical in nature and as a result a group exemption ruling does not make a denominational agency liable for the obligation of its affiliates.¹⁶¹

Any attempt to use a group exemption ruling as evidence of denominational liability for the obligations of affiliated churches faces formidable obstacles, including the following:

¹⁵⁹ *ibid.*: p. 896.

¹⁶⁰ *ibid.*: p. 897.

¹⁶¹ *ibid.*: p. 897.

1. No court has recognized such a basis of liability. No court in the history of this country has found a denominational agency liable on the basis of a group exemption ruling.
2. One court has rejected this basis of liability. There has been only one reported case in which a group exemption ruling was cited as evidence in support of an ascending liability claim.
3. The IRS Tax Guide for Churches and “ecclesiastical” control. In 1994 the IRS issued a “Tax Guide For Churches.” The Tax Guide clarifies that “a church or other organization with a parent organization may wish to contact the parent to see if the parent has a group exemption letter.” The Tax Guide further explains: An organization has a parent if, for example, another organization manages, financially or ecclesiastically, the first organization. If the parent holds a group exemption letter, then the organization seeking exemption may already be recognized as exempt by the IRS. Under the group exemption process, one organization, the parent organization, becomes the holder of a group exemption ruling naming other affiliated churches as included within the ruling. Under these rules, a church is recognized as exempt if it is included in the annual update of the parent organization. If the church is included on such a list, it need take no further action in order to obtain such recognition. This language is significant, since the IRS concedes that the “control” that is needed to qualify for a group exemption may be ecclesiastical. Certainly, it could be said that many national and regional denominational agencies exercise some degree of “ecclesiastical” control over affiliated churches. But this kind of control certainly cannot support legal liability.¹⁶²
4. IRS bias in favor of hierarchical churches. “Congregational” associations and conventions of churches are forced to interpret the “control” language loosely because of the discrimination by the IRS against such organizations in favor of connectional, or hierarchical, church organizations. The current group exemption procedure, granting favored status only to connectional church organizations, is suspect under the Supreme Court’s interpretation of the first amendment’s non-establishment of religion clause.¹⁶³
5. Noncompliance with the group exemption requirements. Many denominational agencies that have obtained group exemptions have not fully complied with the requirements....Obviously,

¹⁶² *ibid.*: p. 899.

¹⁶³ *ibid.*: pp. 899-900.

these “requirements” do not mean much. As a result, little if anything can be made of the “general supervision or control” language.¹⁶⁴

Securities Law

Section 410(b) of the Uniform Securities Act (adopted in about 40 states) imposes civil liability on every officer or director of an organization that (a) offers or sells unregistered, nonexempt securities; (b) uses unlicensed agents in the offer or sale of its securities (unless the agents are specifically exempted from registration under state law); or (c) offers or sells securities by means of any untrue statement of a material fact or any omission of a material fact....Section 410(b) does provide that an officer or director of an organization that sells securities in violation of any of the three provisions discussed above is not liable if he “sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist.”¹⁶⁵

Wrongful Discharge of an Employee

The courts of a number of states have permitted discharged “at will” employees to sue their former employer on the basis of one or more legal theories, including: (a) wrongful discharge in violation of public policy (e.g., employee terminated for filing a workmen’s compensation claim, or for reporting illegal employer activities); (b) intentional infliction of emotional distress (e.g., discharge accompanied by extreme and outrageous conduct); (c) fraud (e.g., employee accepts job in reliance on employer misrepresentations); (d) defamation (e.g., malicious and false statements made by previous employer to prospective employers); (e) breach of contract terms (e.g., employer made oral representations, or written representations contained in a contract of employment or employee handbook, that were not kept). Directors may be personally liable to the extent that they participate in such activities.¹⁶⁶

Ratification

Churches, knowing or unknowing, can be held legally liable for a pastor’s, lay person’s or church employee’s actions through ratification.

Ratification is “the affirmance by a person of a prior act which did not bind him but which was done or professedly done on his account, whereby the act, as to some or all persons, is given effect as if originally authorized by

¹⁶⁴ *ibid.*: p. 900.

¹⁶⁵ *ibid.*: p. 340.

¹⁶⁶ *ibid.*: pp. 340-341.

him. Stated differently, a church can be liable for the unauthorized acts of an employee or volunteer if it ratifies those acts either expressly or by implication. In order to be liable for unauthorized acts on the basis of ratification, a church must have knowledge of all material facts surrounding the acts and voluntarily affirm them. A church may ratify contracts, promissory notes, deeds, and other legal documents that are signed without authorization, and it may ratify acts causing personal injuries. In many cases, a church ratifies an unauthorized act by accepting or retaining the benefits of the transaction.¹⁶⁷

B. INSURANCE

There can be a wide variety of injury claims that can be brought against churches and ministries. Large judgments against churches, their affiliate ministries, pastors, and church staff resulting in financial strain and/or ruin.

Therefore, every church needs to periodically review their insurance coverage and insurance needs in light of current ministries or new ministries.

There are several different types of insurance available to churches.

General Liability Insurance

A policy that provides an insured with a reimbursement amount, up to the policy limits, for money it is required to pay when the insured is liable to an injured person. Liability insurance is seen as a means of assuring that persons who are injured are compensated for those injuries.

Liability insurance covers most bodily injury and property damage claims. Be aware that most policies have what is called “exclusions” which may leave a church unprotected for some types of injuries or claims. Examples: Injury resulting from the use of a vehicle, injury resulting from providing professional counseling services, claims resulting from a board or committee action, civil rights claims, employment claims, insurer’s definition of “bodily injury” or “property damage”, and losses that are intentionally caused by an insured party.

Property Insurance

This type of insurance covers risks to the church property which may include tornadoes, earthquakes, fire, smoke, or storm damage. Richard Hammar suggests the following check list in his July 2002, *Church Treasurer Alert!*:

¹⁶⁷ *ibid.*: p. 814.

- Check to see if unique items such as stained glass windows, pipe organs, handbells, artwork, and sound equipment require special “endorsements.”
- Obtain appraisals of unique items to be sure they are adequately insured.
- Conduct periodic inventories of property to prove claims in the event of loss or destruction.
- Check to see if coverage is limited to the *market value* of damaged or destroyed property. If so, consider obtaining *replacement cost* coverage.
- Check on coverage for items of personal property owned by members or employees. Examples include expensive coats left in a coat room, or an employee’s own laptop computer.
- Check to see if boilers require a special endorsement.
- Check the exclusions under the policy. Some risks, such as earthquakes, mold, and sewer or drain backup, may be excluded and require special endorsements.
- If your church is located in one of 19,000 communities that participate in the National Flood Insurance Program, you can obtain flood insurance from insurers that participate in the National Flood Insurance Program (NFIP). Coverage amounts are often inadequate.
- Check to see if your policy contains a “coinsurance clause.” If so, you are required to insure your property for a specified percentage of its market value. If you don’t, you become a “coinsurer,” meaning that your policy will pay less than the stated limits in the event of a partial loss. These clauses make it essential for churches to be sure they have adequate coverage. This review should be done annually.

Claims Made vs. Occurrence Coverage Insurance

Liability insurance comes in two forms: claims made and occurrence coverage. Both have their advantages and disadvantages. Richard Hammar describes these in his August 2002 *Church Treasurer Alert!*:

Claims Made: Advantages

- Covers any lawsuit filed during the policy period, regardless of when the injury occurred
- Coverage limits are the current limits, not the limits in effect when the injury occurred
- Insurance premiums often are lower than for an occurrence policy

Claims Made: Disadvantages

- Must have carried “claims made” insurance continuously with the same insurer from the date of the injury to the date of the claim, or have purchased “prior acts coverage”
- “prior acts” coverage can be costly
- a brief lapse in insurance coverage for any reason can result in no “claims made” coverage
- coverage for prior claims is lost if a church switches from a claims made to an occurrence policy
- when a policy expires or is terminated, for any reason, coverage ceases (even for claims that are later made for injuries occurring during the policy period)
- claims for injuries occurring in more than one year may be filed during the same year, meaning that the policy’s “aggregate” coverage limit is more quickly reached (the aggregate limit is the total amount the insurer will pay out during that year for all covered claims)
- claims must not only be made during the policy period to be covered – they also must be reported to the insurer (a technicality that is sometimes overlooked)

Occurrence Coverage: Advantages

- covers any injury that occurs during the policy period regardless of when a lawsuit is filed
- no “prior acts” coverage needed if a church maintains a succession of “occurrence” policies

Occurrence Coverage: Disadvantages

- does not cover lawsuits filed during the policy period for injuries occurring prior to the policy period
- insurance premiums usually higher than for a “claims made” policy

Richard Hammar warns:

Church should not switch from a claims made to an occurrence policy (with the same or a different insurer), or switch claims made insurers, without legal counsel.

Professional Malpractice and Directors and Officers Insurance

These are policies that cover church staff personal, their spouses, board members and church officers. It may be for giving of counseling to persons or for the actions and decisions of boards or officers.

Fire Insurance

This type of insurance provides coverage for losses resulting from hostile fires or lightning. Check to make sure what exclusions are included in your policy. The insured's failure to use all reasonable means to save and preserve the property during and after a fire is key to a claim.

Automobile and Bus Insurance

Automobiles, Vans and Buses owned by the church needs to be adequately insured and update periodically. Your insurer will probably have some guidelines and want a list of volunteers or employees who will be driving these vehicles. It is very important to make sure that you have the adequate amounts of “bodily injury” and “property damage” insurance for each type of vehicle.

Workers' Compensation

Most states require churches to carry workers' compensation insurance for their employees. This generally covers injuries which occur to employees while working. Note that workers' compensation insurance generally does not cover injuries to volunteers.

Volunteer Policy

Check to see if any of your policies cover claims made by volunteers. If they are not included in your other policies, you must consider a separate volunteer Policy or endorsement. This may be filled by adding a subliminal medical provision to your general liability policy or purchase a separate accident policy altogether.

Umbrella policies

The will enable a church to cover any unforeseen insurance gaps for claims not covered by other policies.

Special Events Insurance

Many churches sponsor one time or special events yearly which may require additional insurance protection. Examples: car washes off church property, carnival, youth trip, excursions, hayrides, etc.. This type of insurance can protect these event from weather, accidents, violence, and human error (negligence).

Sexual Misconduct Rider

This would be to cover all church staff, employees and volunteers.

Theft

This type of coverage covers embezzlement and misappropriations of church funds by employees. It is usually a separate endorsement. It may be referred to as bonding.

Another area of common insurance coverage gaps that policies have concerning certain definitions and exclusions which may leave a church unprotected are:

Intentional Wrongdoing

This type is typically denied on the basis of specific coverage terms. Basic definition of coverage generally includes “damages for which an insured become legally responsible because of an accident” or “intentionally” responsible, “wanton or reckless conduct”. Most policies provide some sort of coverage where the church is liable for the intentional acts of its employees or volunteers based on the theory of negligent supervision, as long as the intentional acts were not committed under the direction or control of the church.

Some policies now may exclude all coverage for claims of physical or sexual abuse by church employees or volunteers.

Defamatory Statements

Usually a defamatory statement is made during a church conflict resolution process involving church members or staff. Because these defamatory statements did not cause either bodily injury or property damage it most likely will not be covered.

Corporal Punishment

This is an area where a teacher intentionally paddles a student or uses physical force, is not covered by a general liability policy. To have such a policy for the corporal punishment of a student by a teacher of the church or church school may provide protection.

Amount of coverage

It is difficult sometimes for church leaders to know if they have enough insurance coverage. Richard Hammar suggests the following guidelines in his July 2002, *Church Treasurer Alert!*:

- In general, the amount of coverage should be based on two primary considerations: (1) the nature and frequency of your activities, and (2) the net value of the church's assets. To illustrate, if your church has a youth program that has frequent meetings involving several minors, or your church provides counseling, or hosts community activities, then your liability risks are increased and you should be looking for higher insurance limits. Further, as a general rule, liability insurance should have limits in excess of the net value of the church's assets, so that the assets are protected in the event of litigation.
- Annually review all church insurance coverages to be sure they are adequate.
- Periodically obtain appraisals of church property (real property, personal property, and fixtures) to be sure that you have adequate coverage.
- Be sure that your church is insured for an amount in excess of what is required by a "coinsurance clause" in your insurance policy. A coinsurance clause is often difficult to understand, but the idea is that unless a church is insured for a specified amount (e.g., 80% of market value) then the church becomes a

“coinsurer” in the event of a partial loss, and is responsible for paying part of that loss. This is done by a reduction in the amount that the insurer has to pay. The purpose of such clauses is to persuade property owners to insure their property for an amount equal to or approaching its market value. Over time, a church’s failure to increase the amount of its property insurance to reflect the current value of the church property will reduce the insured amount to less than the coinsurance amount, and this can result in an unpleasant and unbudgeted expense when the insurer only pays a portion of a substantial partial loss.

THE POSTING OF LEGALLY REQUIRED POSTERS

A church is an employer just like a small business. However, sometimes they may just have one employee, the pastor.

As with any small business, churches may be required to post a variety of federal and state posters regarding minimum wage, equal employment opportunity, etc. To determine which posters a certain church must display, the church must determine if it is subject to the Fair Labor Standards Act and commerce requirements.

The Fair Labor Standards Act was passed in 1938 in order to regulate child labor, establish a minimum wage, establish a 40 hour work week, and establish a time and a half wage for overtime worked. Under this Act, an employee is defined as:

any individual employed by an employer including anyone who is “suffered or permitted to work.” To be an employee, an individual generally works with the expectation of some kind of compensation.

(The Church Guide to Employment Law, p. 69)

The Act defines a business or enterprise as:

the related activities performed...by any person or persons for a common business purpose. (CGEL, p. 67)

Churches usually do not fall into this category unless they operate a preschool, school, or daycare.

For the Fair Labor Standards Act to apply to a church, the church must prove that it is involved in commerce or in the production of goods for commerce. The Act defines an enterprise to be involved in commerce if it:

1. has employees engaged in commerce or in the production of goods for commerce, or that has employees handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person, and is an enterprise whose annual gross volume of sales made or business done is not less than \$500,000; or
2. is engaged in the operation of a...preschool, elementary or secondary school, or an institution or higher education (regardless of whether or not such...institution or school is public or private or operated for profit or not for profit). (CGEL, p. 68)

Churches that operate a preschool, school, or daycare would be subject to the Fair Labor Standards Act.

Churches are subject to nondiscrimination laws except discrimination based on religion. Under Title VII of the Civil Rights Act of 1964. Title VII:

specifically permits churches and religious organizations to discriminate on the basis of religion, and they do not have to rely on the bona fide occupational qualification to do so.
(CGEL, pp. 43-44)

Churches may meet a variety of commerce requirements if they are involved in:

- ❖ operation of a private school
- ❖ sale of products (such as literature or tapes) to persons or churches in other states
- ❖ purchase of products from out-of-state vendors
- ❖ persons from other states attend your church
- ❖ operation of a “web page” on the internet
- ❖ operation of a commercial or unrelated trade or business
- ❖ employees travel out-of-state
- ❖ employees make out-of-state telephone calls
- ❖ mail is sent out-of-state
- ❖ television or radio broadcasts

Based on which acts and commerce requirements a church falls subject to will determine which of the following federal posters a church is required by law to post.

1. Minimum wage

If you are subject to the federal Fair Labor Standards Act's minimum wage and overtime pay requirements, then you are required by law to "post and keep posted a notice explaining the Act...in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy."

If you operate a preschool or daycare or if you are engaged in commerce then you are subject to the federal minimum wage and overtime pay requirements.

Can obtain a free copy from the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Washington, D.C. 20210. Free download at www.dol.gov then to search A-Z index.

2. Equal Employment Opportunity

Every employer covered by federal nondiscrimination laws is required to post on its premises the poster "Equal Employment Opportunity Is the Law."

Federal nondiscrimination laws include Title VII of the Civil Rights Act of 1964 (which bans discrimination in employment on the basis of race, color, national origin, gender, or religion); the Age Discrimination in Employment Act (which bans discrimination in employment on the basis of the age or an employee or job applicant who is 40 years of age or older); and the Americans with Disabilities Act (which bans discrimination in employment on the basis of the disability). Churches that are engaged in interstate commerce, and that have at least 15 employees (20 in the case of the age discrimination law) are subject to these laws, and as a result must display a poster.

Can obtain a free copy by contacting the Equal Employment Opportunity Commission, Communications and Legislative Affairs, 1801 L Street NW – Room 9405, Washington, D.C. 20507. Or call 1-800-669-3362. Free download at www.dol.gov then to search A-Z index.

3. Occupational and Safety and Health Act (OSHA)

In 1970, Congress enacted the OSHA "to assure so far as possible every working man and woman in the nation safe and healthful

working conditions.” The Act achieves its aim primarily through imposing various duties upon employers. The Act defines “employer” as any person or organization “engaged in a business affecting commerce who has employees.”

Since religious organizations are not exempted by the Act, they are subject to it so long as they meet the commerce requirement.

Employers covered by OSHA are required to display a poster prepared by the US Department of Labor summarizing the major provisions of the Act, and telling employees how to file a complaint. The poster must be displayed in a conspicuous place where employees and job applicants can see it. Federal law requires that any reproductions or facsimiles shall be at least 8 ½ by 14 inches with 10 point type.

Can obtain free copy by contacting the U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, DC 20210. Or call your local OSHA office. Free download at www.osha.gov.

4. Employee Polygraph Protection Act

The federal Employee Polygraph Protection Act makes it unlawful for an employer engaged in interstate commerce (regardless of the number of employees) to require or even suggest that an employee or job applicant take a polygraph examination.

Since religious organizations are not exempted by the Act, they are subject to it so long as they meet the commerce requirement.

Free copy can be obtained from the nearest office of the U.S. Department of Labor, Wage and Hour Division. Or, you can write the U.S. Department of Labor, Employment Standards Administration, Wage & Hour Division, Washington, D.C. 20210. Free download at www.dol.gov then to search A-Z index.

5. Family and Medical Leave Act

Generally, all private employers employing 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year as well as public employers and private elementary and secondary schools are required to display this poster in a conspicuous place. The poster summarizes the major provisions of the FMLA and tells employees how to file a complaint.

Free copy can be obtained from the U.S. Dept. of Labor, Employment Standards Administration, Wage & Hour Division, 429 N. Pennsylvania Street, Room 403, Indianapolis, IN 46204-1873 or call 1-317-226-6801. Free download at www.dol.gov then to search A-Z index.

6. Notice to Workers with Disabilities/Special Minimum Wage

Every employer of workers with disabilities under special minimum wage certificates authorized by the Fair Labor Standards Act, the Mc-Namara-O'Hara Service Contract Act, and/or the Walsh-Healey Public Contracts Act shall display a poster explaining the conditions under which special minimum wages may be paid. The poster shall be displayed in a conspicuous place on the premises where employees and the parents or guardians of workers with disabilities can see it.

Free copy can be obtained from the U.S. Dept. of Labor, Employment Standards Administration, Wage & Hour Division, 429 N. Pennsylvania Street, Room 403, Indianapolis, IN 46204-1873 or call 1-317-226-6801. Free download at www.dol.gov then to search A-Z index.

Churches may be required to post various state posters. Below is a list of the state requirements for all 50 states and Puerto Rico. Many of these posters are available for free downloads either through the Secretary of States office or the state department of labor. Many of these posters are based on the number of employees. Each church is advised to contact their Secretary of State office or state department of labor to fine out which they must display.

Alabama

Unemployment Compensation
Notice to Employees to Report Injury
Child Labor Laws
Workers' Compensation

Alaska

Summary of Alaska Wage & Hour Act
Safety & Health (OSHA) w/Hazardous Substances
Sexual Harassment – Human Rights Law
Emergency Information
Unemployment Insurance
*Workers' Compensation

*The state agency responsible for this poster has chosen to control its distribution. Official versions of this poster are available only from the agency or its authorized agents.

Arizona

Safety & Health Protection (OSHA)
Exposure to Bodily Fluids
Discrimination in Employment (English/Spanish)
Constructive Discharge Notice
Unemployment Insurance (English/Spanish)
*Workers' Compensation

*The agency responsible for this poster has chosen to control its distribution. Official versions of this poster are available only from the agency or its authorized agent.

Arkansas

Employer & Employee – Wage & Hour Laws
Workers' Compensation
Unemployment Insurance

California

Safety & Health Protection (CAL OSHA)
Harassment or Discrimination
Pay Day Notice
Time Off for Voting
Workers' Compensation
Family Care & Medical Leave Act
Pregnancy Disability Leave Notice A
Access to Medical Records
California Minimum Wage
Unemployment & Disability Insurance
Emergency Information

Whistleblowers Protection Act
Industrial Welfare Commission Wage Orders

Colorado

Notice of Injury
Colorado Minimum Wage
Unemployment Insurance (English/Spanish)
Civil Rights Commission/Discrimination
Workers' Compensation (English/Spanish)
Notice of Pay Days

Connecticut

Discrimination in Employment
Workers' Compensation
Safety & Health Protection (OSHA)
Connecticut Minimum Wage
Sexual Harassment
Unemployment Insurance

Delaware

Payment of Wages
Minimum Wage
Employee Breaks
Unemployment Compensation
Discrimination
Workers' Compensation
Child Labor

District of Columbia

Minimum Wage
Unemployment Compensation
Workers' Compensation
Family & Medical Leave Act
D.C. Parental Leave Act
Non-discrimination
Minor Labor Law

Florida

Discrimination (English/Spanish)
Child Labor Law
Workers' Compensation & Anti-Fraud
Unemployment Compensation (English/Spanish)
*Equal Opportunity Is The Law

*Required by all employers who receive funding under the "Workforce Innovation Act of 1998" (WIA)

Georgia

Unemployment Insurance
Workers' Compensation
Equal Pay for Equal Work Act
Vacation
Worker Compensation Accident Report

Hawaii

Workers' Compensation
Safety & Health Protection (OSHA)
Unemployment Insurance
Minimum Wage

Idaho

Sexual Harassment
Discrimination (English/Spanish)
Minimum Wage Law
Unemployment Insurance Benefits (English/Spanish)
*Workers' Compensation

*The state agency responsible for this poster has chosen to control its distribution. Official versions of this poster are available only from the agency or its authorized agent.

Illinois

Illinois Department of Labor Notice to Employers And Employees
Workers' Compensation
Unemployment Insurance Benefits
Victims' Economic Security and Safety Act
Equal Pay Notice

Indiana

Indiana Minimum Wage
Safety & Health (IOSHA)
Workforce Development Act
Workers' Compensation (English/Spanish)
Equal Opportunity
Teen Work Hours

Iowa

Safety & Health Protection (OSHA)(English/Spanish)
Unemployment Insurance
Equal Employment Opportunity (English/Spanish)
Iowa Minimum Wage (English/Spanish)

Kansas

Equal Opportunity
Workers' Compensation (English/Spanish)
Unemployment Insurance
Child Labor (Required Only if Employing Children Under 18)

Kentucky

Equal Housing Opportunity
Kentucky Wage & Hours Laws
Wage Discrimination Because of Sex
Unemployment Insurance Benefits
Equal Opportunity is The Law
Safety & Health Protection (OSHA)
Workers' Compensation

Louisiana

Genetic Discrimination
Dept. of Motor Vehicles
Unemployment Insurance Benefits
Prohibition of Sickle Cell Discrimination (English/Spanish)
Minor Labor Law
Workers' Compensation
Equal Opportunity for All
Military Leave
Workers' Compensation Fraud

Maine

Occupational Safety and Health Regulations
Workers' Compensation (English/Spanish/French)
Child Labor Laws
Whistle Blowers Protection Act
Unemployment Compensation
Maine VDT Law
Sexual Discrimination
Minimum Wage
Regulation of Employment

Maryland

Workers' Compensation
Safety & Health Protection (OSHA)
Unemployment Insurance
Wage and Hour Fact Sheet
Discrimination
Health Insurance Coverage
Equal Pay for Equal Work
Employment of Minors Fact Sheet

Lie Detector Tests
Wage Payment & Collection

Massachusetts

Fair Employment Law
Workers' Compensation
Minimum Fair Wage Law
Unemployment Insurance
Sexual Harassment
Parental Leave

Michigan

Safety & Health Protection (OSHA)
Discrimination (English/Spanish)
Child Labor Laws
Right to Know Law
General Rules
Unemployment Benefits
Minimum Wage
Whistleblowers
Overtime Compensation Rules

Minnesota

Safety & Health Protection (OSHA)
Minimum Wage
Discrimination
Unemployment Benefits
Workers' Compensation

Mississippi

Equal Opportunity
Unemployment Insurance
Workers' Compensation

Missouri

Discrimination in Public Accommodations
Workers' Compensation
Discrimination in Employment
Unemployment Benefits

Montana

Discrimination
Minimum Wage
Safety & Health Protection (OSHA)
*Unemployment Insurance
*Workers' Compensation

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Nebraska

Contractors and Subcontractors
Minimum Wage
Emergency Phone Numbers
Discrimination
Safety & Health Protection (OSHA)

Nevada

Abstract Wage and Hour Laws
Safety & Health Protection (OSHA)
Discrimination In Housing and Public Accommodations
Emergency Phone Numbers
Occupational Disease
Unemployment Benefits
Lie Detector
*Workers' Compensation

*The state agency responsible for this poster has chosen to control it's distribution. Official versions of this poster are available only from the agency or it's authorized agent.

New Hampshire

The Workers' Right to Know
Discrimination
Protective Legislation Law
Whistleblowers
Minimum Wage
Unemployment Compensation
*Workers' Compensation

*The state agency responsible for this poster has chosen to control it's distribution. Official versions of this poster are available only from the agency or it's authorized agent.

New Jersey

Child Labor Law Abstract
Payment of Wages
Discrimination in Employment
Statutory Minimum Rate
Discrimination in Place of Public Accommodations
Unemployment Compensation
Family Leave Act

Schedule of Hours of Minors Under 18
Conscientious Employee Act
*Workers' Compensation

*The state agency responsible for this poster has chosen to control its distribution. Official versions of this poster are available only from the agency or its authorized agent.

New Mexico

Notice of Accident Forms (English/Spanish)
Job Health & Safety Protection (OSHA)
Workers' Compensation (English/Spanish)
Discrimination (English/Spanish)
Minimum Wage

New York

Discrimination (English/Spanish)
Employment of Minors
Unemployment Insurance
Minimum Wage (English/Spanish)
*Workers' Compensation
*Disability Benefits

*The state agency responsible for this poster has chosen to control its distribution. Official versions of this poster are available only from the agency or its authorized agent.

North Carolina

Safety & Health Protection (OSHA)
Unemployment Insurance
Minimum Wage
Workers' Compensation

North Dakota

Workers' Compensation
Minimum Wage
Unemployment Compensation Benefits

Ohio

Discrimination – Equal Employment Opportunity
Minor Labor Law
Minimum Wage
Unemployment Compensation
Employer's Identification Notice
*Workers' Compensation
**Self-insured (Workers' Compensation)

*The state agency responsible for this poster has chosen to control it's distribution. Official versions of this poster are available only from the agency or it's authorized agent.

**Employers that are Self-insured must call the Better Workers' Compensation 1-800-644-6292 to obtain a poster.

Oklahoma

Minimum Wage

Workers' Compensation

Discrimination

Child Labor Law

Oregon

Family Leave Act (English/Spanish)

Minimum Wage (English/Spanish)

*Unemployment Benefits

Notice to Agriculture Employees (English/Spanish)

Safety and Health Protection (OSHA) (English/Spanish)

*Workers' Compensation

*The state agency responsible for this poster has chosen to control it's distribution. Official versions of this poster are available only from the agency or it's authorized agent.

Pennsylvania

Employment Provisions

Fair Housing Practice

Public Accommodation Provisions

Equal Pay Law

Minimum Wage

Child Labor Law

Workers' Compensation

Unemployment Compensation

Puerto Rico

Federal Posters are all that's required

Rhode Island

Hazardous To Your Health

Minimum Wage

Workers' Compensation

Parent & Family Medical Leave Act

Equal Opportunity

Unemployment Insurance and Temporary Disability Insurance

South Carolina

Employment Discrimination
Safety & Health Protection (OSHA)
Unemployment Insurance
Workers' Compensation
Payment of Wages, Child Labor Law

South Dakota

South Dakota requires a posting regarding workplace safety. Additional posters listed are recommended.

Facts About Unemployment Insurance Benefits
Workplace Safety – Required
Questions About Worker's Compensation
Sexual Harassment

Tennessee

Safety & Health Protection (OSHA) (English/Spanish)
Unemployment Insurance
Child Labor Law
Workers' Compensation

Texas

Texas has two different required posters. Which poster you need depends on whether or not you have workers compensation insurance.

FOR EMPLOYERS THAT HAVE WORKERS' COMPENSATION INSURANCE:

Workers' Compensation Notice (English/Spanish)
Texas Pay Day Law
*Child Labor
*Equal Employment

FOR EMPLOYERS THAT DO NOT HAVE WORKERS' COMPENSATION INSURANCE:

Notice to employees that employer does not have Workers' Compensation Insurance (English/Spanish)
Texas Pay Day Law
*Equal Employment
*Equal Opportunity Complaints

*Recommended

Utah

Safety & Health Protection (OSHA)
Workers' Compensation
Unemployment Insurance

Vermont

Workers' Compensation
Parental, Family, and Short Term Family Leave
Sexual Harassment
Safety & Health Protection (OSHA)
Employers Reinstatement Liability
Minimum Wage
Child Labor Law (Children over Sixteen and under Eighteen years of age.)
Wage orders for: hotel, restaurant, mercantile(retail)
*Unemployment Insurance
Minors work schedule

*The state agency responsible for this poster has chosen to control it's distribution. Official versions of this poster are available only from the agency or it's authorized agent.

Virginia

Safety & Health Protection
Workers' Compensation
Unemployment Insurance Benefits
Discrimination

Washington

Washington has two different required posters. Which poster you need depends on whether or not you have workers' compensation insurance or are self insured.

FOR EMPLOYERS THAT HAVE WORKERS' COMPENSATION INSURANCE

Discrimination in Employment (English/Spanish)
Family Leave Provisions
Minimum Wage (English/Spanish)
Rights As an Agricultural Worker (English/Spanish)
Rights as Non-Agriculture Worker
Workers' Compensation Insurance
Unemployment Insurance (English/Spanish)
Safety & Health Protection (OSHA)

FOR EMPLOYERS THAT ARE SELF INSURED

Discrimination in Employment (English/Spanish)
Family Leave Provisions
Minimum Wage (English/Spanish)
Rights As an Agricultural Worker (English/Spanish)
Rights as Non-Agriculture Worker
Notice that employer is self insured
Unemployment Insurance (English/Spanish)
Safety & Health Protection (OSHA)

West Virginia

Wage Payment & Collection Act
Unemployment Benefits
Workers' Compensation
Minimum Wage
Discrimination

Wisconsin

Business Closing/Mass Layoff Law
Fair Employment Law
Minimum Wage
Unemployment Benefits
Family & Medical Leave Act
Retaliation Protection for Health Care Workers
Hours and Times Minors May Work
Honesty Testing Devices
Cessation of Health Care Benefits

Wyoming

Minimum Wage
Safety & Health Protection (OSHA)
Unemployment Insurance
Discrimination
Workers' Compensation

Where posters state both English and Spanish, it means that the poster is available in both languages but you are not necessarily required to post both languages. Also the majority of states call for Safety & Health Protection posters, these are state specific, which are different from the federal posting. To obtain these posters, check the state's OSHA website.

UNINCORPORATED vs. INCORPORATED

The organizational document for a **nonprofit incorporation** is known as the articles of incorporation. Incorporation takes an affirmative action on the part of the ministry. Typically, state law requires nothing more than that the ministry file articles of incorporation with the office of the secretary of the state. The proper form for filing may be obtained from the secretary of state's office at little or no charge.

Also, be aware the IRS requires certain provisions in your articles of incorporation which may not be required by your state. Therefore, in addition to

the information required by the state, your articles of incorporation must include the following: 501 (c)(3) language in purpose statement, private inurement clause, political activities clause, racial nondiscrimination clause, dissolution clause, and the general clause regarding exempt activities.

Incorporation protects the members of the ministry from personal liability in the event of a lawsuit. Individuals who make up a corporation are protected from personal liability. This is the main reason why churches incorporate.

This is because a corporation is viewed under the law as an entity which has a legal identity separate and distinct from its members. The congregation can be sued in its own right as an individual. While individual members may be sued personally for any tort which they personally commit, they will generally not be held liable for the actions of another member of the corporation (ministry). A tort is any injury to another's person or property through either negligence or an intentional act.

A church which chooses to remain unincorporated is known as an **unincorporated association**. Instead of articles of incorporation, an unincorporated organization should prepare articles of association. The articles of association may mirror the articles of incorporation, but will not be filed with the state. They will remain an internal ministry document. The same tax-exempt provisions discussed above are still required for unincorporated associations.

In some states laws have been passed to provide protection to, and restrictions on, unincorporated associations. As each state has its own laws regarding unincorporated associations, we strongly encourage you to research the law for your state to determine the liabilities and protections you will face.

Whether your ministry is incorporated or not, you must obtain a federal employer identification number (EIN). The EIN is a means of identification. It does not confer any status. The EIN identifies your organization as unique among all the other organizations throughout the United States.

The EIN is a nine-digit number written with two digits, a hyphen, and seven more digits. Example: 12-3456789. Because the EIN has the same number of digits as a social security number, a common error made by beginning organizations is the use the SSN of the organizer or treasurer to open a bank account for the organization.

The EIN is obtained by filing Form SS-4, Application for Employer Identification Number. This form may be obtained by calling 1-800-TAX-FORM (1-800-829-3673). The form is free. All sub ministries of the organization should use the same EIN.

EMPLOYMENT DISCRIMINATION

Employment Discrimination laws seek to prevent discrimination based on race, sex, religion, national origin, physical disability, and age by employers. There is also a growing body of law preventing or occasionally justifying employment discrimination based on sexual orientation. Discriminatory practices include bias in hiring, promotion, job assignment, termination, compensation, and various types of harassment. The main body of employment discrimination laws is composed of federal and state statutes.

Title VII prohibits discriminatory conduct ranging from hiring to termination and everything in between. Under Title VII it is illegal for an employer to *“fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin”* 42 U.S.C. 2000e-2(a)(1).

Usually the question of whether your ministry is covered by Title VII, will not be clear cut. Your ministry may also be subject to state law which prohibits similar types of discrimination. Therefore, it is best for you to attempt to comply with Title VII, rather than risk a lawsuit. Most ministries do not want a reputation for discriminating on the basis of race, sex, color or national origin, regardless of whether they are subject to Title VII.

EMPLOYMENT PRACTICES

Lawsuits alleging wrongful employment practices are the fastest-growing area of civil litigation today. Unfortunately, many churches and related ministries are unaware of the legal risks they face as employers. Hiring, disciplining, compensating, or terminating employees can expose your ministry to expensive litigation if the employment issue is not handled correctly.

Mistaken assumptions about employment law can also leave religious organizations vulnerable to employment-related lawsuits.

WORKMAN’S COMPENSATION

Most states require churches and related ministries to have workers' compensation insurance for their employees, including clergy.

Workman’s Compensation policies provide benefits mandated by law in the state where your ministry operations occur or where your employees reside. Policy covers employees only, and the benefits are provided only in relation to a work-related injury or disease as specified in the state law. The premium is based on your payroll estimates for different classes of employees.

Workers' Compensation laws are designed to ensure that employees who are injured or disabled on the job are provided with fixed monetary awards, eliminating the need for litigation. These laws also provide benefits for dependents of those workers who are killed because of work-related accidents or illnesses. Some laws also protect employers and fellow workers by limiting the amount an injured employee can recover from an employer and by eliminating the liability of co-workers in most accidents. State Workers Compensation statutes establish this framework for most employment.

The policy may also include employer's liability insurance that protects you up to the coverage limit in the event you are sued in civil court as the result of an injury to your employee arising out of the employee's job-related injury or illness.

Note: Many state workers' compensation statutes contain punitive provisions directed toward employers who fail to purchase this coverage to protect employees.

SECURITIES LAW VIOLATIONS

Churches often use the sale of bonds, notes, and certificates as fund-raisers, especially in capital improvements or building campaigns. Before such sales take place, church leaders need to be well-versed in securities law and regulations.

In order to protect the public from fraud and deception, various securities laws have been established on both the federal and state level. These laws impose the following conditions:

- 1. registration of proposed securities with the federal or state government in advance of sale**
- 2. filing of sales and advertising literature with the federal or state government**
- 3. registration of agents and broker-dealers who will be selling the securities**
- 4. prohibition of fraudulent practices**
(*Risk Management Handbook for Churches and Schools*, p. 376)

Some states exempt religious organizations from registering proposed securities. The church needs to contact its state's securities commission office for registration requirements.

Though the church may not be required to register the proposed securities, those selling the proposed securities must be registered with the state securities commission.

Churches must understand that they are subject to the provisions of the Uniform Securities Act. This Act states for religious organizations:

In connection with an offer or sell, sale, offer to purchase, or purchase, of a security, a person may not, directly or indirectly:

1. employ a device, scheme, or artifice to defraud;
 2. make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading, in the light of the circumstances under which they are made; or
 3. engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon a person.
- (*RMHCS*, p. 379)

The antifraud provisions prohibit a wide variety of activities, including the following:

- ❖ making false or misleading statements about church securities
 - ❖ failing to disclose material risks associated with securities
 - ❖ manipulating the church's financial records in order to facilitate the sale of securities
 - ❖ failing to establish a debt service or sinking fund reserve out of which church securities will be retired
 - ❖ making false predictions
 - ❖ recommending the sale of securities to investors without regard to their financial condition
 - ❖ inducing transactions that are excessive in view of an investor's financial resources
 - ❖ borrowing money from an investor
 - ❖ commingling investors' funds with the personal funds of another, such as a salesman
 - ❖ deliberately failing to follow an investor's instructions; making unfounded guarantees
 - ❖ misrepresenting to investors the true status of their funds
 - ❖ representing that funds of investors are insured or "secure" when in fact they are not
 - ❖ representing that investments are as safe as if they had been in a bank, when this is not the case
 - ❖ representing that securities have been approved of or recommended by the state securities commission or that the commission has passed in any way on the merits or qualifications of the securities or of any agent or salesman
- (*RMHCS*, pp. 379-380)

If churches violate any of the securities laws, they may face any of the following from the state or federal level:

- ❖ investigations
 - ❖ hearings
 - ❖ subpoenas
 - ❖ injunctions
 - ❖ criminal actions
 - ❖ cancellations of sales
 - ❖ suits for monetary damages by aggrieved investors
 - ❖ monetary fines
 - ❖ revocation of an exemption, or registration, of securities
- (*RMHCS*, p. 381)

No church should consider the sale of securities without taking the following precautions: (*RMHCS*, pp. 384-385)

1. **Legal counsel.** The most important precautions that church leaders can take is to retain an attorney who specializes in securities law, and who has experience in working with nonprofit organizations. Such a person can be invaluable in helping a church to avoid inadvertent violation of state and federal securities law.
2. **State registration requirements.** Determine whether or not your state requires church-issued securities, and persons who offer or sell such securities, to be registered. Your attorney will know the answer to this question, and will assist you in complying with any registration requirements that may apply. Many church leaders erroneously assume that churches are “exempted” from securities regulation. Nothing could be further from the truth. Church securities are not exempt from registration in some states, and many states do not exempt clergy or church board members who offer or sell church securities from the “salesperson” registration requirements.
3. **Be familiar with the concept of securities fraud.** One of the most important precautions that church leaders can take is to be familiar with the definition of securities fraud. Churches are not exempt in any state from the prohibition of fraud in the offer or sale of securities. This fact, coupled with the expansive definition of “fraud” in state securities laws, can quickly lead to inadvertent liability.
4. **Consider other forms of fundraising.** Other means of raising funds should be seriously considered. Churches that issue securities to raise funds because they do not qualify for conventional financing often find themselves in violation of securities law.

RESOURCES CITED

Web Sites: www.churchservicesdivision.com

Bloss, Julie L. The Church Guide to Employment Law. Matthews: North Carolina: Christian Ministry Resources, 1993.

Cobble, James F. Risk Management Handbook for Churches and Schools. Matthews, North Carolina: Christian Ministry Resources, 2001.

Brotherhood Mutual Insurance Company
6400 Brotherhood Way
Fort Wayne, IN 46825
1-219-482-8668
www.brotherhoodmutual.com

Christian Law Association
Church & Law Seminar: Maximizing Your Ministry & Minimizing Your Legal Risk
P.O. Box 4010, Seminole, Florida 33775-4010.
1-727-399-8300
www.ChristainLaw.org

GuideOne Insurance
1111Ashworth Road
West Des Moines, IA 50265
1-800-247-4176
www.guideone.com

The Management Assistance Program for Nonprofits
2233 University Avenue West, Suite 360
St. Paul, MN 55114
1-651-647-1216

Block B3

The Church and the IRS

Breach of a Fiduciary Duty

In this section, the fiduciary duty of the church will be considered. A few courts have concluded that the following relationships are fiduciary in nature: a pastor and a counselee, a lay church counselor and a counselee, and volunteer youth workers and minors.¹⁶⁸

Court Decisions Recognizing Fiduciary Duty Claims

A few courts have found churches and denominational agencies liable on the basis of a breach of a fiduciary duty for the sexual misconduct of a minister. In some cases, the church or agency is found to be vicariously liable for the minister's breach of a fiduciary duty, but in others the church or agency is found to have breached a fiduciary duty that it had with the victim.¹⁶⁹

Court Decisions Rejecting Fiduciary Duty Claims

Several courts have refused to hold churches and denominational agencies liable on the basis of a breach of a fiduciary duty for the sexual misconduct of a minister. In some cases, this result is based on first amendment consideration.¹⁷⁰

UNINCORPORATED VS. INCORPORATED

Churches have organized themselves in a variety of ways. However, they can be divided into two categories: corporations and unincorporated associations. This section will discuss these two categories as well as administrative requirements for churches.

Unincorporated Association

This category covers churches who have not applied for non-profit incorporation with their secretary of state. The term unincorporated association is defined as any group "whose members share a common purpose, and...who function under a common name under circumstances where fairness requires the group be recognized as a legal entity."¹⁷¹

¹⁶⁸ Richard R. Hammar, *Pastor, Church & Law, Third Edition* (Matthews, NC: Christian Ministry Resources, 2000): p. 810.

¹⁶⁹ *ibid.*: p. 810.

¹⁷⁰ *ibid.*: p. 811.

¹⁷¹ *ibid.*: p. 261.

One court has observed: A church or religious society may exist for all the purposes for which it was organized independently of any incorporation of the body...and, it is a matter of common knowledge that many do exist and are never incorporated. For the promotion of religion and charity, they may subserve all the purposes of their organization, and generally, need no incorporation except incidentally to further these objects.¹⁷²

Characteristics

By nature, unincorporated associations have no legal existence. This fact has, until recently, created several consequences. First, an association could not own or transfer property in its own name; second, an association could not enter into contracts or other legal obligations; and third, an association could not sue or be sued.¹⁷³

Under these limitations, churches could not sue their members nor could members sue the church. This meant that an individual, injured at the church because of negligence on the part of the church, could not recover any damages.

This tradition was challenged by the Indiana Supreme Court in 1999 when it ruled that a woman could sue her unincorporated church for damages as a result of an injury that occurred during a church activity.

Some other states have followed Indiana's lead by removing some if not all of the limitations accessed to unincorporated churches.

As a result, while most states still prohibit an association from owning or transferring title to property in its own name, many states permit an association to hold or transfer title to property in the name of "trustees" acting on behalf of the association. Some states permit unincorporated associations to sue and be sued in the association name. Other states permit some members of an association to bring suit as representatives of the entire membership. Some courts, under limited circumstances, permit an association to bring suit in its own name as representative of its members. One court has held that a church association may bring suit on behalf of its members when "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. Many states permit associations to enter into contracts.¹⁷⁴

Unless state law provides otherwise, unincorporated associations remain incapable of suing or being sued, holding or transferring title to property, and entering into contracts and other legal obligations. In those states where some or

¹⁷² *ibid.*: pp. 261-262.

¹⁷³ *ibid.*: p. 262.

¹⁷⁴ *ibid.*: p. 263.

all of the traditional legal disabilities persist, an association generally may act only through its membership.¹⁷⁵

Personal Liability of Members

By nature, members of an unincorporated association are personally liable for acts made by other members in the course of association activities. This tradition has been upheld by some courts and dismissed by others. In support of this tradition, one court ruled:

The members of an unincorporated association are engaged in a joint enterprise, and the negligence of each member in the prosecution of that enterprise is imputable to each and every other member, so that the member who has suffered damages to his person, property, or reputation through the tortious conduct of another member of the association may not recover from the association for such damage although he may recover individually from the member actually guilty of the tort.¹⁷⁶

Some states have adopted the Uniform Nonprofit Unincorporated Association Act. It is important for an unincorporated association to know whether or not their state has adopted this act since:

this will have a direct bearing on the liability of leaders and members alike for (1) contracts executed by other members on behalf of the church, and (2) personal injuries inflicted by other members in the course of church activities.¹⁷⁷

If a church thinks that it is an incorporated church, it should contact the secretary of state to make sure it is in good standing.

Calling the office of the secretary of state is important even if you think that your church is incorporated, since the corporate status of many churches has “lapsed” through failure to file annual reports with the state. In many states, church corporations must file relatively simple annual reports with the state. In a surprisingly large number of cases, churches do not file these reports. In some states, the failure to file these reports will cause the church’s corporate status to lapse. As a result, it is a prudent practice for churches to confirm each year with the office of their secretary of state that they are in fact a corporation in good standing.¹⁷⁸

¹⁷⁵ *ibid.*: p. 263.

¹⁷⁶ *ibid.*: p. 265.

¹⁷⁷ Richard R. Hammar, “Unincorporated churches.” *Church Law & Tax Report*, Vol. XV, No. 1 (January/February, 2001): p. 31.

¹⁷⁸ Hammar, *Pastor, Church & Law, Third Edition*, p. 267.

As we have already established in previous chapters, the IRS can be confusing with its terminology and is unclear in many definitions. Here, the IRS includes unincorporated associations in its definition of corporations.

The inclusion of unincorporated associations within the definition of the term corporation is a well-established principle of federal tax law. Section 7701(a)(3) of the Internal Revenue Code defines corporation to include associations, and the federal courts for many years have held that associations possessing at least three of the four principal corporate characteristics of centralized control, continuity, limited personal liability, and transferability of beneficial interests are to be treated as corporations.¹⁷⁹

Creation and Administration

When two or more people come together voluntarily for a particular purpose and share a common name, they constituted an unincorporated association. This type of association usually creates some type of rules for internal management. These rules can be called bylaws, constitution, charter, or articles of association. For this paper, the term bylaws will be used.

The bylaws of an unincorporated association typically contain provisions dealing with meetings; election, qualification, and tenure of officers and trustees; qualification and acceptance of members; the acquisition and transfer of property; the status of property upon the dissolution of the association; and the rights and duties of members among themselves and with the association.¹⁸⁰

The bylaws of an unincorporated association constitute a contract between the association and its members, and that the rights and duties of members, as between themselves and in their relation to the association in all matters affecting its internal government and the management of its affairs, are measured by the terms of such bylaws. By becoming a member an individual agrees to be bound by the association's bylaws, and to have his rights and duties determined by them.¹⁸¹

Before turning attention to incorporated churches, ministers and unincorporated associations should understand what the Uniform Unincorporated Nonprofit Association Act (1996) offers to them. The purpose of the Act was described as follows:

At common law an unincorporated association, whether nonprofit or for-profit, was not a separate legal entity. It was an aggregate of individuals....This approach obviously created problems. A gift of property to an unincorporated association failed because no legal

¹⁷⁹ *ibid.*: p. 267.

¹⁸⁰ *ibid.*: p. 268.

¹⁸¹ *ibid.*: p. 268.

entity existed to receive it....Proceedings by or against an unincorporated association presented similar problems. If it were not a legal entity, each of the members needed to be joined as party plaintiffs or defendants....Unincorporated associations, not being legal entities, could not be liable in tort, contract, or otherwise for conduct taken in their names. On the other hand, their members could be....The unincorporated nonprofit association is now governed by a hodge-podge of common law and state statutes governing some of their legal aspects. No state appears to have addressed the issues in a comprehensive, integrated, and internally consistent manner. This Act deals with a limited number of the major issues relating to unincorporated nonprofit associations in an integrated and consistent manner.¹⁸²

One of the most important features of the Act is its treatment of the personal liability of members. The Act provides that members of an unincorporated association are not liable for the contracts of the association or for the wrongs of other members (or of the association itself), assuming that they did not participate personally. The key provision specifies: "A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities in contract and tort....A person is not liable for a breach of a nonprofit association's contract merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered to be a member by the nonprofit association. A person is not liable for a tortious act or omission for which a nonprofit association is liable merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association. A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is a person considered as a member by the nonprofit association."¹⁸³

The Act also clarifies that individual members can "assert a claim against the nonprofit association." In other words, members of an unincorporated church are not barred from suing the church for injuries they sustain as a result of the church's negligence.¹⁸⁴

Corporations

The majority of churches choose to incorporate because many of the legal limitations accessed to unincorporated associations are removed. This means

¹⁸² *ibid.*: p. 269.

¹⁸³ *ibid.*: p. 269.

¹⁸⁴ *ibid.*: p. 269.

that the churches are able to sue or be sued, can enter into contracts, and can own property.

The majority of churches are formed in membership corporations. Membership corporations are formed by and controlled by church members. Some churches are structured under a trustee corporation. This corporation is controlled by the trustees of the church. Very few churches, mainly hierarchical, are allowed to structure under a corporation sole. In this case, one individual is in control of the corporation.

There are two states that do not permit churches to incorporate. West Virginia and Virginia deny incorporation status to churches. There are denominations that believe that churches should not incorporate because it makes them subservient to the state. These groups do not have a clear understanding of the term, corporation.

The term corporation has been defined “as an association of persons to whom the sovereign has offered a franchise to become an artificial, juridical person, with a name of its own, under which they can act and contract, sue and be sued, and who have...accepted the offer and effected an organization in substantial conformity with its terms.”¹⁸⁵

Under this definition, incorporated churches are not subservient to the state. They are merely artificial entities to the states. When a church incorporates, it is mainly creating an entity that has legal status to hold and administer the properties and assets of the church.

In many cases, the minister will keep the church from incorporating solely on his personal theological beliefs. In such a case, he/she would be wiser to allow the church membership to vote whether to incorporate. The minister’s personal theology against incorporation could cause the church many legal headaches. Therefore, he/she should be open to bending to the desires of his/her congregation.

The Incorporation Process

The process for applying for incorporation for churches varies from state to state. Most states have adopted one or more of the following procedures:

1. Model Nonprofit Corporation Act

The Model Nonprofit Corporation Act, which has been adopted in whole or in part by several states, provides a uniform method of incorporation for several kinds of nonprofit organizations, including religious, scientific, educational, charitable, cultural, and benevolent organizations. The

¹⁸⁵ *ibid.*: p. 270.

procedure consists of the following steps: (1) preparation of duplicate articles of incorporation setting forth the corporation's name, period of duration, address of registered office within the state, name and address of a registered agent, purposes, and names and addresses of the initial board of directors and incorporators; (2) notarized signature of the duplicate articles of incorporation by the incorporators; and (3) submission of the prescribed filing fee and duplicate articles of incorporation to the secretary of state....After the certificate of incorporation has been issued, the Act specifies that an organizational meeting of the board of directors shall be held at the call of a majority of the incorporators for the purpose of adopting the initial bylaws of the corporation and for such other purposes as may come before the meeting. The incorporators and directors can be the same persons in most states. Many states require at least three directors.¹⁸⁶

The Act requires all nonprofit corporations to file an annual report with the secretary of state's office.¹⁸⁷

The Act itself imposes a nominal fine (\$50) on corporations that fail to comply with the reporting requirements.¹⁸⁸

The Revised Model Nonprofit Corporation Act was adopted by the American Bar Association's Subcommittee on the Model Nonprofit Corporations Law of the Business Law Section in 1987. It has not been adopted by many states yet, but should be over the next few years.

One of the important features of the revised Act is the division of nonprofit corporations into three classifications – (1) public benefit corporations, (2) mutual benefit corporations, and (3) religious corporations.¹⁸⁹

Other new features of the revised Act include the following:

- 1. Members.** The definition of "members" is clarified. A corporation is required to compile a listing of eligible voters in advance of each annual or special membership meeting, and this list must be available for inspection. However, the Act specifies that "the articles or bylaws of a religious corporation may limit or abolish the rights of a member...to inspect and copy any corporate records."
- 2. Religious doctrine.** The revised Act specifies that "if religious doctrine governing the affairs of a religious corporation is inconsistent with the provisions of this Act on the same subject, the religious doctrine shall

¹⁸⁶ *ibid.*: pp. 271-272.

¹⁸⁷ *ibid.*: p. 273.

¹⁸⁸ *ibid.*: p. 273.

¹⁸⁹ *ibid.*: p. 274.

control to the extent required by the Constitution of the United States or the constitution of this state or both.

3. **Duration.** There is a presumption of perpetual duration unless the articles of incorporation specifically provide otherwise.
4. **Emergency actions of board.** The board of directors is empowered to act in an “emergency” though a quorum of the board is not present.
5. **Personal liability.** The Act specifies that “a member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.”
6. **Removal of members.** Detailed procedures apply to the suspension or expulsion of members, but these procedures do not apply to religious corporations (they apply only to public benefit corporations and mutual benefit corporations).
7. **Delegates.** A corporation “may provide in its articles or bylaws for delegates having some or all of the authority of members.
8. **Court-ordered meetings.** Civil courts are empowered to call meetings of a corporation upon the application of any member if the corporation fails to conduct an annual or special meeting within a prescribed number of days after a specified meeting. A court also may determine those persons who constitute members for purposes of any such meeting, and may “enter other orders necessary to accomplish the purpose or purposes of the meeting.”
9. **Action of members without a meeting.** Unless prohibited by the corporate charter or bylaws, members are permitted to act without a meeting if 80 percent or more of the membership agrees to a proposed action in a signed writing. Similarly, members may act by “written ballot” without calling a meeting if such action is not prohibited by the corporate charter or bylaws.
10. **Notice of meetings.** The Act specifies that “unless one-third or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of members are those matters that are described in the meeting notice.
11. **At least three directors.** The board of directors must consist of at least three directors.

- 12. Removal of directors.** The Act specifies a procedure for removing directors from office, but permits religious corporations to provide otherwise in their charters or bylaws.
- 13. Duties of board members.** The Act imposes specific “standards of conduct” upon each officer and director of a nonprofit corporation. These include the performance of an officer’s or director’s official duties “in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director [or officer] reasonably believes to be in the best interests of the corporation.”
- 14. Indemnification.** The Act contains detailed indemnification rules.
- 15. Inspection of records.** The Act gives each member the right to inspect (and copy) corporate records “at a reasonable time and location” if a member “gives the corporation written demand at least five business days before the date on which the member wishes to inspect and copy.” Corporate records include the articles of incorporation, bylaws, board resolutions, minutes of membership meetings, all written communications to members within the preceding three years, a list of the names and addresses of directors and officers, and the current annual report submitted to the secretary of state. Some limitations apply. Further, the Act provides that “the articles or bylaws of a religious corporation may limit or abolish the right of a member under this section to inspect and copy any corporate record.
- 16. Membership list.** The Act specifies that “except as provided in the articles or bylaws of a religious corporation, a corporation upon written demand from a member shall furnish that member its latest annual financial statements....¹⁹⁰

Not all churches have decided to incorporate under the Model Nonprofit Corporation Act or the Revised Model Nonprofit Corporation Act. The decision not to incorporate under these two Acts is usually based on one or more of the following thoughts.

First, churches do not want to be bothered with the annual reporting requirements. Although these requirements normally are not burdensome, they must be rigidly followed if a church is to avoid fines, and in some states, the loss of its corporate status. Second, many churches regard the Model Nonprofit Corporation Act as too restrictive since it regulates virtually every aspect of corporate organization and administration. The Act does specify that most of its provisions are applicable only if a corporation has not provided otherwise in its articles of incorporation or bylaws. However, churches often are unwittingly controlled by the Act

¹⁹⁰ *ibid.*: pp. 274-275.

through their failure to adopt articles or bylaws dealing with particular aspects of organization and administration that are addressed in the Act. Some churches of course consider this to be an advantage, for it means that there will be authoritative direction on most questions of church administration. Third, the Act was based largely on the Model Corporation Act for business corporations, and therefore fails to adequately recognize the substantial differences between nonprofit and for-profit enterprises. Fourth, some clergy maintain that churches should not incorporate as “nonprofit” organizations since this would suggest that they are “unprofitable” or of no social or spiritual benefit.¹⁹¹

Clergy and churches need to understand that there is a difference between nonprofit and tax-exempt.

Nonprofit corporations generally are defined to include any corporation whose income is not distributable to its members, directors, or officers.¹⁹²

Exemption from tax generally is available only to those organizations that have applied for and received recognition of tax-exempt status.¹⁹³

Unless a nonprofit corporation applies for and receives recognition of tax-exempt status or is expressly recognized by law to be exempt from tax without the necessity of making formal application, it will not be considered tax-exempt.¹⁹⁴

Churches may apply for and receive recognition as a tax-exempt organization without being incorporated. However, the church will carry higher credibility in the tax-exempt application process if it has already proven itself to be a bona fide church or religious organization through the incorporation process.

2. Special Statutes

There are states that have adopted laws that allow incorporation of general nonprofit or special religious corporations. These laws are open mainly to churches from specific religious denominations or religions.

3. Court-Approved Corporation

There are states that allow churches to incorporate by simply taking a copy of their articles of incorporation or articles of agreement to a local state court for approval.

¹⁹¹ *ibid.*: p. 276.

¹⁹² *ibid.*: p. 276.

¹⁹³ *ibid.*: p. 276.

¹⁹⁴ *ibid.*: p. 276.

4. Religious Corporation Laws

A church may incorporate under a general religious corporation statute by adopting articles setting forth the church's name, address, purposes, and the names and addresses of church officers and directors, and filing the articles with the county recorder, a court, or the secretary of state.¹⁹⁵

5. "De Facto" Corporations

Even if a church fails to comply with one or more technical requirements of incorporation, it will be considered a de facto corporation if the following three requirements are satisfied: (1) a special act or general law under which a corporation may lawfully exist, (2) a bona fide attempt to organize under the law and colorable compliance with the statutory requirements, and (3) actual use or exercise of corporate powers in pursuance of such law or attempted organization.¹⁹⁶

Once the de facto status of a corporation is established, it may be attacked only by the state in a *quo warranto* proceeding.¹⁹⁷

Charters, Constitutions, Bylaws, and Resolutions

The terms charters, constitutions, bylaws, resolutions, and practice define the governmental structure of a church. A contract is developed between the church and its members in the church's articles of incorporation or bylaws. Each term will be discussed in greater detail below.

1. Charters and Articles of Incorporation

The application for incorporation that is filed with the secretary of state generally is called the articles of incorporation or articles of agreement. This document, when approved and certified by the appropriate government official, is commonly referred to as the corporate charter.¹⁹⁸

Church charters typically set forth the name, address, period of duration, and purposes of the corporation; the doctrinal tenets of the church; and the names and addresses of the incorporators and directors.¹⁹⁹

The income tax regulations require that the assets of a church pass to another tax-exempt organization upon its dissolution. The IRS has stated

¹⁹⁵ *ibid.*: p. 277.

¹⁹⁶ *ibid.*: pp. 277-278.

¹⁹⁷ *ibid.*: p. 278.

¹⁹⁸ *ibid.*: p. 278.

¹⁹⁹ *ibid.*: p. 278.

that the following paragraph will satisfy this requirement if contained in a church corporation's articles of incorporation: Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes with the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.²⁰⁰

If the church does not designate a specific tax-exempt organization to which its assets are to be given if it should dissolve, the judge ruling on the dissolution has the right to give the assets to whatever nonprofit organization he/she wishes. This means that he/she can grant the assets to a non-religious tax-exempt organization. Churches should be aware that they have the right to name the organization, in the dissolution clause, which it wants its assets to be awarded to.

A dissolution clause in the articles of incorporation is required by the Internal Revenue Manual and IRS Publication 557. The IRS also suggests that the following two paragraphs be placed in a church corporation's articles of incorporation:

Said corporation is organized exclusively for charitable, religious, and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in [these articles]. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statement) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation

²⁰⁰ *ibid.*: pp. 278-279.

exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code, or the corresponding provision of any future federal tax code, or (b) by a corporation's contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.²⁰¹

2. Constitutions and Bylaws

How the internal government of a church is to be operated does not appear in the articles of incorporation or church charter. This appears in either the church constitution or bylaws. These two terms are interchangeable, however, they do have distinguishing properties:

bylaws referring generally to the rules of internal government adopted by the corporation, and constitution referring to the supreme law of a corporation. The term constitution refers to a body of rules that is paramount to the bylaws.²⁰²

The best practice would be to set forth the corporation's purposes and beliefs in the corporate charter, and to have a single body of rules for internal government identified as bylaws.²⁰³

At a minimum, church bylaws should cover the following matters: (1) qualifications, selection, and expulsion of members; (2) time and place of annual business meetings; (3) the calling of special business meetings; (4) notice for annual and special meetings; (5) quorums; (6) voting rights; (7) selection, tenure, and removal of officers and directors; (8) filling of vacancies; (9) responsibility of directors and officers; (10) method of amending bylaws; and (11) purchase and conveyance of property. Other matters that should be considered for inclusion with church bylaws include (12) adoption of a specific body of parliamentary procedure; (13) a clause requiring disputes between church members, or between a member and the church itself, to be resolved through mediation or arbitration; (14) a clause specifying how contracts and other legal documents are to be approved and signed; (15) signature authority on checks; (16) "bonding" of officers and employees who handle church funds; (17) an annual audit by independent certified public accountants; (18) an indemnification clause; (19) specification of the church's fiscal year; and (20) "staggered voting" of directors (a portion of the board is elected each year – to ensure year-to-year continuity of leadership).²⁰⁴

²⁰¹ *ibid.*: pp. 279-280.

²⁰² *ibid.*: p. 281.

²⁰³ *ibid.*: p. 281.

²⁰⁴ *ibid.*: p. 281.

The members of the church have the power to enact and amend the bylaws. When church leaders are composing their bylaws they need to be aware that many times the language used in the bylaws is unclear. Time must be given to writing clear, non-confusing statements. The time given to this will benefit future church leadership and members when discussing church polity.

3. Resolutions

A resolution is an informal and temporary enactment for disposing of a particular item of business, whereas bylaws are rules of general applicability.²⁰⁵

4. Reconciling Conflicting Language

The general rule is that provisions in a corporate charter take precedence over conflicting provisions in a corporation's constitutions, bylaws, or resolutions.²⁰⁶

If the constitution is separate and distinct from the bylaws and is of superior force and effect either by expressly so providing or by reason of a more difficult amendment procedure, then provisions in a corporation's constitution take precedence over conflicting provisions in the bylaws....Resolutions of course are inferior to, and they may not contradict, provisions in a corporation's charter, constitution, and bylaws.²⁰⁷

Church Records

Each church should maintain the following records: (1) correct and complete books and records of account, (2) minutes of the proceedings of its members, (3) minutes of the proceedings of its board of directors, (4) resolutions of its board of directors, (5) minutes of the proceedings of committees, and (6) a current list of voting members. These documents, in addition to the corporate charter, constitution, bylaws, certificate of incorporation, and business correspondence, constitute the records of a church corporation. The Model Nonprofit Corporation Act, under which many churches are incorporated, states: Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this State a record giving the names and addresses of its members entitled to vote. All books and

²⁰⁵ *ibid.*: p. 283.

²⁰⁶ *ibid.*: p. 283.

²⁰⁷ *ibid.*: p. 285.

records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.²⁰⁸

The “**Revised Model Nonprofit Corporation Act**,” specifies:

- (a) A corporation shall keep as permanent records minutes of all meetings of its members and board of directors, a record of all actions taken by the members or directors without a meeting, and a record of all actions taken by committees of the board of directors....
- (b) A corporation shall maintain appropriate accounting records.
- (c) A corporation or its agent shall maintain a record of its members in a form that permits preparation of a list of the name and address of all members, in alphabetical order by class, showing the number of votes each member is entitled to cast.
- (d) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (e) A corporation shall keep a copy of the following records at its principal office:
 - (1) its articles or restated articles of incorporation and all amendments to them currently in effect;
 - (2) its bylaws or restated bylaws and all amendments to them currently in effect;
 - (3) resolutions adopted by its board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members or any class or category of members;
 - (4) the minutes of all meetings of members and records of all actions approved by the members for the past three years;
 - (5) all written communications to members generally furnished within the past three years, including the financial statements furnished for the past three years under section 16.20;
 - (6) a list of the names and business or home addresses of its current directors and officers; and
 - (7) its most recent annual report delivered to the secretary of state...²⁰⁹

Churches incorporated under statutes other than the Model Nonprofit Corporation Act (or the revised Act) and unincorporated churches often are under no legal obligation to maintain records.²¹⁰

Inspection

Most church members believe that they have the right to inspect church records at anytime. This is not generally a true assumption. In order for this to be true,

²⁰⁸ *ibid.*: p. 286.

²⁰⁹ *ibid.*: p. 288.

²¹⁰ *ibid.*: p. 288.

the church's bylaws or the state's nonprofit corporation law must grant permission for church members to inspect the church's records. A recent New York court ruling could possibly make it easier for church members to have access to church records. The court's ruling provides the following clarifications on inspection rulings:

1. Most state nonprofit corporation laws give members a legal right to inspect specified corporate books and records at a reasonable time and for a "proper purpose." This court also recognized that members of nonprofit corporate records, meaning that the right exists whether or not granted by the applicable nonprofit corporation law. This is perhaps the first time that a court has reached this conclusion.
2. The court provided a broad interpretation of a "proper purpose." The definition of this term is critical since it will determine whether or not members have a legal right to inspect specified documents. The court concluded that a request to inspect corporate documents that is based on members' desire to investigate and correct alleged misconduct by officers and directors is a proper purpose. It also concluded that a purpose may be proper even though it serves some personal interest of the member or members requesting the documents. The court provided a useful definition of a proper purpose as one that is "germane to the members' status in the corporation" including the right to "communicate with fellow members regarding amended bylaws and the right to investigate management conduct."
3. The court was unwilling to let the charity respond to document requests by providing summaries of the requested documents. On the other hand, it noted that a charity need not "expand" or provide additional details to committee and board minutes that were not in the original minutes. "As long as the minutes bear the signature of the secretary of the meeting as evidence of their accuracy and completeness, this satisfies the obligation" under the statute to turn over records. This case suggests that a request by members to see those minutes will not require the church to provide details that was not in the original minutes.²¹¹

1. Nonprofit Corporation Law

Section 25 of the Model Nonprofit Corporation Act, gives members of an incorporated church the right to inspect corporate records for any proper purpose at any reasonable time. The Revised Model Nonprofit Corporation Act gives members broad authority to inspect corporate records, but specifies that "the articles or bylaws of a religious corporation

²¹¹ Richard R. Hammar, "Church records." Church Law & Tax Report, Vol. XV, No. 2 (March/April): pp. 21-22.

may limit or abolish the right of a member...to inspect and copy any corporate records.²¹²

The courts are divided as to whether a church incorporated under the Model Nonprofit Corporation Act has the right to deny its members the right to inspect its records. The only thing that church leaders can be assured of is that nonmembers do not possess any right to inspect their records.

Some church members and nonmembers have tried to use the Privacy Act and Freedom of Information Act as supports in claiming rights to inspect church records. Neither of these Acts apply to religious organizations. Therefore, the Acts do not provide the members or nonmembers with a legal right to inspect a church's records.

2. Church Charter or Bylaws

A right of inspection may be given by the bylaws or charter of a church corporation or association.²¹³

3. State Securities Law

Churches that raise funds by issuing securities (i.e., bonds or promissory notes) may be required by state securities laws to allow investors – whether members or not – to inspect the financial statements of the church.²¹⁴

4. Subpoena

Rule 34 of the Federal Rules of Civil Procedure specifies that any party to a lawsuit may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents...which are in the possession, custody or control of the party upon whom the request is served; or (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection.....²¹⁵

Rule 45(b) of the Federal Rules of Civil Procedure states that a subpoena may command the person to whom it is directed “to produce the books, papers, documents, or tangible things designated therein...” Rule 45 also stipulates that a subpoena may be quashed or modified if it is “unreasonable and oppressive.”²¹⁶

²¹² Hammar, *Pastor, Church & Law*, Third Edition, p. 289.

²¹³ *ibid.*: p. 292.

²¹⁴ *ibid.*: p. 292.

²¹⁵ *ibid.*: p. 293.

²¹⁶ *ibid.*: p. 293.

Since church records are not inherently privileged, they are not immune from production or inspection. Although most states consider confidential communications to be privileged when they are made to clergy acting in their professional capacity as a spiritual adviser, several courts have held that the privilege does not apply to church records.²¹⁷

“Accountings” of Church Funds

The courts are divided as to whether church’s can be demanded to present an accounting of their funds. This demand may come from members or a government agency or officer. Churches can not be assured the court will rule in their favor not to have to produce an accounting of its church funds.

Public Inspection of Tax-Exemption Applications

Generally, “exempt organizations” (including churches and religious denominations) must make available a copy of the following materials in response to a request from a member of the public: (1) the exemption application form (Form 1023) submitted to the IRS; (2) any supporting documents submitted with the exemption application, including legal briefs or a response to questions from the IRS; and (3) any letter or document issued by the IRS with respect to the exemption application (such as a favorable determination letter or a list of questions from the IRS about the application).²¹⁸

An exempt organization is not required to provide a photocopy of its exemption application to a requester, but is required to have on hand a copy available for inspection.²¹⁹

An organization that fails to comply with a request for inspection may be assessed a penalty of \$10 per day up to a maximum of \$5,000. A willful failure to comply may result in a penalty of \$1,000. The IRS notice also provides that “if an organization filed its application before July 15, 1987, it is required to make available a copy of its application only if it had a copy of the application on July 15, 1987.”²²⁰

If an exempt organization maintains one or more “regional or district offices,” the exemption application (and related material) “shall be made available at each district or regional office as well as at the principal office.” This rule will be relevant to many religious denominations. Churches and religious denominations should be aware of these new requirements, since some undoubtedly will be receiving requests for inspection.²²¹

²¹⁷ *ibid.*: p. 293.

²¹⁸ *ibid.*: p. 297.

²¹⁹ *ibid.*: p. 297.

²²⁰ *ibid.*: p. 297.

²²¹ *ibid.*: pp. 297-298.

Government Inspection of Donor and Membership Lists

It is clear that governmental actions that may have the effect of curtailing the freedom of association are subject to the closest scrutiny. Yet the courts have made it clear that the right to associate is not absolute; a “significant interference” with the right may be tolerated if the government (1) avoids unnecessary interference, (2) demonstrates a sufficiently important interest, and (3) employs the least intrusive means of achieving its interests.²²²

The Church Audit Procedures Act

Section 7602 of the Internal Revenue Code gives the IRS broad authority to examine or subpoena the books and records of any person or organization for the purposes of (1) ascertaining the correctness of any federal tax return, (2) making a return where none has been filed, (3) determining the liability of any person or organization for any federal tax, or (4) collecting any federal tax. This authority has been held to apply to churches.²²³

As part of the Tax Reform Act of 1969, Congress amended section 511 of the Internal Revenue Code to extend the federal tax on the unrelated business income of tax-exempt organizations to churches and religious denominations. In general, unrelated business income constitutes income from a regularly carried on trade or business not substantially related to the exempt purposes of a tax-exempt organization.²²⁴

The Tax Reform Act of 1969 also added section 7605(c) to the Internal Revenue Code: No examination of the books of account of a church or convention or association of churches shall be made to determine whether such organization may be engaged in the carrying on of an unrelated trade or business or may be otherwise engaged in activities which may be subject to [the tax on unrelated business income] unless the Secretary (such officer being no lower than a principal internal revenue officer for an internal revenue region) [1] believes that such organization may be so engaged and [2] so notifies the organization in advance of the examination. No examination of the religious activities of such an organization shall be made except to the extent necessary to determine whether such organization is a church or a convention or association of churches, and no examination of the books of account of such an organization shall be made other than to the extent necessary to determine the amount of tax imposed by this title.²²⁵

The first sentence of section 7605(c) shielded the books of account of churches and denominations from any IRS examination for the purpose of determining any

²²² *ibid.*: p. 298.

²²³ *ibid.*: p. 300.

²²⁴ *ibid.*: p. 301.

²²⁵ *ibid.*: p. 301.

unrelated business income tax liability unless the IRS (1) had some basis for believing that such an organization was engaged in an unrelated trade or business, and (2) notified the organization in advance of the examination.²²⁶

The second sentence of that section specifically recognized the authority of the IRS to examine (1) the religious activities of a church or denomination to the extent necessary to determine if it were in fact entitled to tax-exempt status, and (2) the books of account of a church or denomination to the extent necessary “to determine the amount of tax imposed” under any internal revenue law (including income, employment, and excise taxes).²²⁷

Section 7605(c) was criticized for its failure to provide adequate guidelines and for its insensitivity to the unique protections afforded churches by the first amendment’s free exercise of religion clause. Such criticism led to the repeal of section 7605(c) in the Tax Reform Act of 1984 and the enactment of the Church Audit Procedures Act as section 7611 of the Internal Revenue Code. Section 7611 imposes detailed limitations on IRS examinations of churches for tax years beginning in 1985 or thereafter. The limitations can be summarized as follows:

1. **Church tax inquiries.** The IRS may begin a church tax inquiry (defined as any inquiry to determine whether a church is entitled to tax-exempt status as a church or is engaged in an unrelated trade or business) only if (a) an appropriate high-level Treasury official (defined as a regional IRS commissioner or higher official) reasonably believes on the basis of written evidence that the church is not exempt (by reason of its status as a church), may be carrying on an unrelated trade or business, or is otherwise engaged in activities subject to taxation; and (b) the IRS sends the church written inquiry notice containing an explanation of the following: (1) the specific concerns which gave rise to the inquiry, (2) the general subject matter of the inquiry, and (3) the provisions of the Internal Revenue Code that authorize the inquiry and the applicable administrative and constitutional provisions, including the right to an informal conference with the IRS before any examination of church records, and the First Amendment principle of separation of church and state.
2. **Church tax examinations.** The IRS may begin a church tax examination of the church records or religious activities of a church only under the following conditions: (a) the requirements of a church tax inquiry have been met, and (b) an examination notice is sent by the IRS to the church at least fifteen days after the day on which the inquiry notice was sent, and at least fifteen days before the beginning of such an examination, containing the following information: (1) a copy of the inquiry notice, (2) a specific description of the church records and religious activities which the IRS seeks to examine, (3) an offer to conduct an informal conference with

²²⁶ *ibid.*: p. 301.

²²⁷ *ibid.*: p. 301.

the church to discuss and possibly resolve the concerns giving rise to the examination, and (4) a copy of all documents collected or prepared by the IRS for use in the examination and the disclosure of which is required by the Freedom of Information Act.

- 3. Church records.** Church records (defined as all corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors) may be examined only to the extent necessary to determine the liability for and amount of any income, employment, or excise tax.
- 4. Religious activities.** Religious activities may be examined only to the extent necessary to determine whether an organization claiming to be a church is in fact a church.
- 5. Deadline for completing church tax inquiries.** Church tax inquiries not followed by an examination notice must be completed not later than ninety days after the inquiry notice date. Church tax inquiries and church tax examinations must be completed not later than two years after the examination notice date.
- 6. Written opinion of IRS legal counsel.** The IRS can make a determination based on a church tax inquiry or church tax examination that an organization is not a church that is exempt from federal income taxation or that is qualified to receive tax-deductible contributions, or that otherwise owes any income, employment, or excise tax (including the unrelated business income tax), only if the appropriate regional legal counsel of the IRS determines in writing that there has been substantial compliance with the limitations imposed under section 7611 and approves in writing of such revocation of exemption or assessment of tax.
- 7. Statute of limitations.** Church tax examinations involving tax-exempt status or the liability for any tax other than the unrelated business income tax may be begun only for any one or more of the three most recent taxable years ending before the examination notice date. For examinations involving unrelated business taxable income, or if a church is proven not to be exempt for any of the preceding three years, the IRS may examine relevant records and assess tax as part of the same audit for a total of six years preceding the examination notice date. For examinations involving issues other than revocation of exempt status or unrelated business taxable income (such as examinations pertaining to employment taxes), no limitation period applies if no return has been filed.
- 8. Limitations on repeat inquiries and examinations.** If any church tax inquiry or church tax examination is completed and does not result in a revocation of exemption or assessment of taxes, then no other church tax

inquiry or church tax examination may begin with respect to such church during the five-year period beginning on the examination notice date (or the inquiry notice date if no examination notice was sent) unless such inquiry or examination is (a) approved in writing by the Assistant Commissioner of Employee Plans and Exempt Organizations of the IRS, or (b) does not involve the same or similar issues involved in the prior inquiry or examination. The five-year period is suspended if the two-year limitation on the completion of an examination is suspended.

- 9. Exceptions.** The limitations upon church tax inquiries and church tax examinations do not apply to
- a. inquiries or examinations pertaining to organizations other than churches
 - b. any case involving a knowing failure to file a tax return or a willful attempt to defeat or evade taxes
 - c. criminal investigations
 - d. the tax liability of a contributor to a church, or inquiries regarding assignment of income to a church or a vow of poverty by an individual followed by a transfer of property
 - e. routine IRS inquiries, including
 - (1) the filing or failure to file any tax return or information return by the church;
 - (2) compliance with income tax or FICA tax withholding;
 - (3) supplemental information needed to complete the mechanical processing of any incomplete or incorrect return filed by a church;
 - (4) information necessary to process applications for exempt status, letter ruling requests, or employment tax exempt requests; or
 - (5) confirmation that a specific business is or is not owned by a church.

- 10. Remedy of IRS violations.** If the IRS has not complied substantially with (a) the notice requirements, (b) the requirement that an appropriate high-level Treasury official approve the commencement of a church tax inquiry, or (c) the requirement of informing the church of its right to an informal conference, the church's exclusive remedy is a stay of the inquiry or examination until such requirements are satisfied²²⁸

The courts have held that the IRS summons or subpoena directed at church records must satisfy the following conditions to be enforceable:

1. It is issued in good faith. Good faith in this context means that (a) the investigation will be conducted pursuant to a legitimate purpose, (b) the inquiry is necessary to that purpose, (c) the information sought is not already within the IRS' possession, and (d) the proper administrative steps have been followed.

²²⁸ *ibid.*: pp. 302-304.

2. It does not violate the church's first amendment right to freely exercise its religion. An IRS subpoena will not violate a church's first amendment rights unless it substantially burdens a legitimate and sincerely held religious belief, and is not supported by a compelling governmental interest that cannot be accomplished by less restrictive means. This is a very difficult test to satisfy, not only since few churches can successfully demonstrate that enforcement of an IRS summons or subpoena substantially burdens an actual religious tenet, but also because the courts have ruled that maintenance of the integrity of the government's fiscal policies constitutes a compelling governmental interest that overrides religious beliefs to the contrary.
3. It does not create an impermissible entanglement of church and state.²²⁹

Federal law provides that if the IRS wants to retroactively revoke the tax-exempt status of a church, then it must show either that the church "omitted or misstated a material fact" in its original exemption application, or that the church has been "operated in a manner materially different from that originally represented."²³⁰

Reporting Requirements

Under state and federal law, churches may be required to file various reports. The common ones are discussed below.

State Law

1. Annual Corporate Report

This report calls for the name of the corporation, the address of its registered office in the state of incorporation and the name of its registered agent at such address, a brief statement of the nature of the affairs that the corporation is actually conducting, and the names and addresses of the current directors and officers.... Failure to file the annual reports may result in a small monetary fine, or in some states to loss of corporate status.²³¹

2. New Hire Reporting

Churches are required to report information about "new hires" to a designated state agency pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act, which was enacted by Congress in 1996.²³²

3. Other State Reports

²²⁹ *ibid.*: p. 304.

²³⁰ *ibid.*: p. 305.

²³¹ *ibid.*: p. 307.

²³² *ibid.*: p. 308.

Each church is encouraged to check with their specific secretary of state and state department of revenue for any additional reporting requirements.

Federal Law

1. Application for Recognition of Tax-Exempt Status

Churches, their integrated auxiliaries, and conventions or associations of churches are exempted by law from payment of federal income tax and therefore they are not required to file an application with the IRS.²³³

A church may obtain recognition of exemption in either of two ways: (1) by filing a Form 1023 with the IRS, or (2) by being a member of a convention or association of churches that has obtained a “group-exemption ruling” from the IRS. If a church independently applies for and receives IRS recognition of exemption, it must notify the IRS of any material changes in its sources of support, purposes, character, or methods of operation. Churches that are included in the group exemption ruling of a convention or association of churches must annually notify their convention or association of any changes in their purposes, character, or methods of operation.²³⁴

2. Annual Information Returns

Section 6033 of the Internal Revenue Code requires most tax-exempt organizations to file an annual information return with the IRS. The annual information return is IRS Form 990. This form sets forth an exempt organization’s gross income, expenses, disbursements for exempt purposes, assets and liabilities, net worth, contributions received (including the names and addresses of substantial contributors), and compensation paid to certain employees. Section 6033 provides a “mandatory exemption” for (1) “churches, their integrated auxiliaries, and conventions and associations of churches”; (2) certain religious and charitable organizations whose annual gross receipts normally do not exceed \$5,000; and (3) the “exclusively religious activities of any religious order.” Form 990 itself specifies that the following organizations are exempt from the annual information return requirements: (1) “a church, an interchurch organization of local units of a church, a convention or association of churches, an integrated auxiliary of the church (such as a men’s or women’s organization, religious school, mission society, or youth group)”; (2) “a school below college level affiliated with a church or operated by a religious order”; (3) “a mission society sponsored by or affiliated with one or more churches or denominations, if more than one-half of the society’s activities are conducted in, or directed at, persons in foreign countries”; (4) “an exclusively religious activity of any religious order”;

²³³ *ibid.*: p. 309.

²³⁴ *ibid.*: p. 309.

(5) “an organization whose annual gross receipts are normally \$25,000 or less.”²³⁵

3. Tax on Unrelated Business Income

A church that has \$1,000 or more in gross income from an unrelated trade or business must file an IRS Form 990-T. In computing unrelated business taxable income, churches are entitled to deduct all reasonable and necessary expenses directly associated with the unrelated business.²³⁶

4. Employment Taxes

Every employer, including organizations exempt from federal income tax, that pays taxable wages to employees is responsible for withholding, depositing, paying, and reporting federal income tax, social security and Medicare tax, and federal unemployment tax unless specifically exempted by law. Churches are exempted from paying federal and state unemployment taxes on their employees.²³⁷

5. Information Returns

Churches must issue annual “information returns” to (1) all employees who are paid wages, and (2) any self-employed person to whom the church paid annual compensation of at least \$600. These information returns are referred to as the W-2 and 1099-MISC forms, respectively. In addition, churches are required to issue a 1099-INT form to each person who was paid \$600 or more in interest income during any one year (a \$10 rule applies to certain forms of interest payments).²³⁸

6. Annual Certification of Racial Nondiscrimination

Any church that operates, supervises, or controls a “private school” must submit a Form 5578 each year to the IRS certifying that it operates its school in a racially nondiscriminatory manner. The term private school is defined in the instructions to Form 5578 to include “an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes primary, secondary, preparatory, or high schools, and colleges and universities, whether operated as a separate legal entity or as an activity of a church....The term also includes preschools....”²³⁹

²³⁵ *ibid.*: pp. 309-310.

²³⁶ *ibid.*: p. 310.

²³⁷ *ibid.*: p. 310.

²³⁸ *ibid.*: p. 311.

²³⁹ *ibid.*: p. 311.

7. Returns Regarding Dissolution or Termination

Section 6043 of the Internal Revenue Code requires a corporation to file a return (Form 966) within 30 days after the adoption of any resolution or plan concerning the dissolution of the corporation. Churches, their integrated auxiliaries, and conventions and associations of churches, however, are exempted by section 6043 from this reporting requirement.²⁴⁰

8. EEOC Reports

The Equal Employment Opportunity Commission (EEOC), an agency created by Congress to enforce Title VII of the Civil Rights Act of 1964, requires all employers, including religious organizations, having 100 or more employees to submit annually an Employer Information Report. This report is prepared on Standard Form 100, which is also known as Employer Information Report EEO-1.²⁴¹

Church Names

Churches, like other businesses, have the right to have their name protected from confusion with another name. The courts will normally support a church's claim that another church's name is identical or confusingly similar.

The courts have consistently protected the names of nonprofit corporations as well on the basis of one or more of the following theories: (1) the applicable nonprofit corporation statute contains a provision protecting the preexisting names of nonprofit corporations in much the same way as business corporation statutes protect the names of business corporations; (2) extension of the name protection provided by business corporation statutes to nonprofit corporations when the state nonprofit law does not specifically provide such protection; (3) the common law of unfair competition; and (4) trademark protection.²⁴²

In states having a name protection statute protecting the names of religious corporations, a church's name generally will be protected against later use of the same or a confusingly similar name in either of two ways: (1) the state official charged with the duty of reviewing applications for incorporation can reject the application of an organization whose name is either identical or deceptively similar to the name of an existing corporation; or (2) if the state official chooses to recognize the corporate status of an organization whose name is either identical or deceptively similar to that of an existing corporation, the offended corporation may sue to stop further use of the name.²⁴³

²⁴⁰ *ibid.*: p. 311.

²⁴¹ *ibid.*: p. 311.

²⁴² *ibid.*: p. 312.

²⁴³ *ibid.*: pp. 312-313.

Unfair competition is a civil wrong created to protect existing organizations from the deceptive or unfair practices of competitors....unfair competition means the use of a name that is either identical with or confusingly similar to that of a preexisting organization.²⁴⁴

To successfully establish that the name chosen by another organization constitutes unfair competition, a church must demonstrate

1. Prior use of the name.
2. Subsequent use of the same or a confusingly similar name by another religious organization.
3. The church with prior use of the name will be injuriously affected by continued use of the same or a confusingly similar name by the other religious organization. It has been held that anything that diverts members or donations from one church to another causes injury. Thus, injury generally will be established by the unauthorized use of a name identical or confusingly similar to that of preexisting corporation.
4. The church with prior use of the name did not delay for an unreasonable time in seeking to enjoin further use of the same or a confusingly similar name by the other religious organization.²⁴⁵

In deciding whether or not there is a likelihood of confusion, a court should consider the following factors: (1) the strength of the denomination's name; (2) the similarity of the parties' goods or services; (3) similarity of the two names; (4) evidence that persons actually have been confused by the similarity of names; (5) marketing methods used; (6) the likely degree of care the public would take in differentiating between the names; (7) the intent of the local church in using the similar name; and (8) likelihood of "expansion of product lines" (i.e., will the local church benefit at the expense of the denomination).²⁴⁶

Trademark is defined by the federal Trademark Act as "any word, symbol, or device, or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured and sold by others."²⁴⁷

There are two ways of determining whether a proposed name conflicts with a preexisting name that is entitled to protection. First, a commercial search service can be retained which, for a fee, will render an opinion on the availability of a

²⁴⁴ *ibid.*: p. 313.

²⁴⁵ *ibid.*: p. 313.

²⁴⁶ *ibid.*: p. 314.

²⁴⁷ *ibid.*: p. 315.

specified name. Second, an application for registration can be filed with the Patent and Trademark Office in Washington, D.C.²⁴⁸

An application for trademark registration is a relatively simple procedure consisting of the following elements:

1. Preparation of a written application stating the applicant's name, address, state of incorporation or organization; the goods or services in connection with which the name or mark is used; the class of goods or services according to the official international classification system; the date of the first use of the name or mark on or in connection with the goods or services; the date of the first use of the name or mark as a trademark "in commerce"; the mode or manner in which the mark is used on or in connection with the goods.
2. A drawing of the mark, unless the mark consists solely of a name – in which case the name may be typed in capital letters on a piece of paper.
3. Five specimens of the goods bearing the name or mark. No specimens are required for names or marks associated with services.
4. The required filing fee.²⁴⁹

Officers, Directors, and Trustees

Whether a church is incorporated or not, it needs people to lead it. If the church is incorporated, the state incorporation law usually dictates the minimum number of directors the church must have. If the church is unincorporated, they usually elect a president, vice-president, secretary, and treasurer to serve as officers of the church.

Whether the governmental structure is set up with directors or officers, each structure is set up through election or appointment. The officers or directors carry a certain amount of authority. The limits of this authority will be discussed below.

Election or Appointment

Officers or directors are normally elected by a majority vote of the organization's membership. However, statements in the bylaws or state law may claim a specific percentage of the voting members, or some other qualification for the election.

²⁴⁸ *ibid.*: p. 315.

²⁴⁹ *ibid.*: pp. 315-316.

Many times vacancies will need to be filled on board of directors or in the officers' positions. The bylaws should state how these vacancies will be filled. Usually the bylaws allow the board of directors to fill the position themselves. If this is not the case, some boards may let the position remain vacant until the next annual business meetings or until a special business meeting can be called.

A minister is not entitled to serve as president of a church or even as a director or trustee unless specifically authorized in the church's charter or bylaws.²⁵⁰

Authority

1. Officers

The legal authority of a corporate officer may derive from four sources: express, implied, inherent, and apparent authority. The most basic kind of authority possessed by a church officer consists of express authority deriving from those powers and prerogatives conferred by statute, charter, bylaw, or resolution.²⁵¹

Article V of the Model Nonprofit Corporation Bylaws lists the powers of corporate officers as follows:

President: The President shall be the principal executive officer of the corporation and shall in general supervise and control all of the business affairs of the corporation. He shall preside at all meetings of the Board of Directors. He may sign, with the Secretary or any other proper officer of the corporation authorized by the Board of Directors, any deeds, mortgages, bonds, contracts, or other instruments which the Board has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws or by statute to some other officer or agent of the corporation; and in general shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Vice President: In the absence of the President or in the event of his inability or refusal to act, the Vice President (or, in the event that there be more than one Vice President, the Vice Presidents in the order of their election) shall perform the duties of the President, and when so acting, shall have all powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Treasurer: If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety

²⁵⁰ *ibid.*: p. 317.

²⁵¹ *ibid.*: p. 321.

or sureties as the Board of Directors shall determine. He shall have charge and custody of and be responsible for all funds and securities of the corporation; receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of...these bylaws; and in general perform all the duties incident to the office of Treasurer and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Secretary: The Secretary shall keep the minutes of the meetings of the Board of Directors in one or more books provided for that purpose; see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; be custodian of the corporate records and of the seal of the corporation and see that the seal of the corporation is affixed to all documents, the execution of which on behalf of the corporation under its seal is duly authorized in accordance with the provisions of these bylaws...and in general perform all duties incidental to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.²⁵²

Officers occasionally possess apparent authority, that is authority that has not actually been granted by the corporation but which the corporation through its actions and representations leads others to believe has been granted. The doctrine of apparent authority rests on the principle of estoppel, which forbids persons or organizations to give an officer or agent an appearance of authority that does not in fact exist and to benefit from such misleading conduct to the detriment of one who has relied on it.²⁵³

Transactions entered into by church officers acting without authority are invalid.²⁵⁴

Corporations can “ratify” the unauthorized acts of their officers and directors by consenting to them. Ratification generally is held to consist of three elements: acceptance by the corporation of the benefits of the officer’s action, full knowledge of the facts, and circumstances of affirmative conduct indicating an intention to adopt and approve the unauthorized action....Ratifications generally are considered to be irrevocable. Only that body possessing the power to perform or authorize an officer’s unauthorized action has the power to ratify it.²⁵⁵

²⁵² *ibid.*: p. 321.

²⁵³ *ibid.*: p. 322.

²⁵⁴ *ibid.*: p. 322.

²⁵⁵ *ibid.*: p. 322.

Section 8.45 of the Revised Model Nonprofit Corporation Act specifies: Any contract or other instrument in writing executed or entered into between a corporation and any other person is not invalidated as to the corporation by any lack of authority of the signing officers in the absence of actual knowledge on the part of the other person that the signing officers had no authority to execute the contract or other instrument if it is signed by any two officers in category 1 [i.e., the presiding officer of the board and the president] or by one officer in category 1 [see above] and one officer in category 2 [i.e., a vice president, the secretary, treasurer and executive director.]²⁵⁶

2. Directors and Trustees

The authority of directors and trustees is very similar to that of officers. Directors' authority is based in express provisions such as the bylaws, church charter, or state law.

There is one significant difference between officers and directors with respect to authority – while one or two corporate officers often have authority to act on behalf of the corporation in certain matters, directors never have authority, acting individually or in small groups to bind the corporation. Directors can only act as a board, not as individuals.²⁵⁷

Most state laws confer general managerial authority upon the directors or trustees of incorporated churches. The boards of unincorporated churches generally derive little or no authority from state law.²⁵⁸

The Revised Model Nonprofit Corporation Act confers upon the board of directors limited “emergency powers” (pertaining to the amendment of bylaws, selection of successors to incapacitated officers, relocation of the corporation’s principal office, and notice and quorum requirements).²⁵⁹

Meetings

The authority of a board of directors is only effective when actions binding the church are done as a board at a legal meeting time.

Neither a minority nor a majority of the board has the authority to meet privately and take action binding upon the corporation. The reason for this rule has been stated as follows: “The law believes that the greatest wisdom results from conference and exchange of individual views, and it is for this reason that the law

²⁵⁶ *ibid.*: p. 323.

²⁵⁷ *ibid.*: p. 323-324.

²⁵⁸ *ibid.*: p. 324.

²⁵⁹ *ibid.*: p. 324.

requires the united wisdom of a majority of the several members of the board in determining the business of the corporation.²⁶⁰

The corporate bylaws ordinarily specify that regular meetings of the directors or trustees shall occur at specified times and at a specified location. The designation in the bylaws of the time and place for regular meetings of the board generally will be considered sufficient notice of such meetings. In addition, special meetings may be convened by those officers or directors who are authorized by the bylaws to do so. The bylaws ordinarily require that notice of a special meeting be communicated to all directors at a prescribed interval before the meeting. The notice also must be in the form prescribed by the bylaws.²⁶¹

Before business can occur at a board of directors meeting, it must be established what number will constitute a quorum. If a quorum is not present, matters can not be acted upon.

A quorum refers to that number or percentage of the total authorized number of directors that must be present in order for the board to transact business.²⁶²

Removal

A corporation possesses the inherent power to remove an officer, director, or trustee for good cause.²⁶³

In the context of church corporations, good cause ordinarily will consist of material doctrinal deviation, conduct deemed unacceptable behavior by established church custom and practice, incompetency, or incapacity. The church membership itself, and not the board, generally has the authority to remove directors or trustees for cause. Officers elected by the board ordinarily may be removed by the board.²⁶⁴

A church has no authority to remove an officer or director without cause prior to the expiration of a stated term of office unless a bylaw or statute specifically grants such authority. But officers or directors elected for an unspecified term generally may be removed at any time with or without cause by the body that elected them. And, when the term of an officer or director expires, a church congregation can fill the vacancy without proving that good cause exists for not reelecting the individual.²⁶⁵

²⁶⁰ *ibid.*: p. 326.

²⁶¹ *ibid.*: p. 326.

²⁶² *ibid.*: p. 326.

²⁶³ *ibid.*: p. 327.

²⁶⁴ *ibid.*: p. 327.

²⁶⁵ *ibid.*: p. 327.

Section 18 of the Model Nonprofit Corporation Act states that a director may be removed by any procedure set forth in the corporation's articles of incorporation, and section 24 specifies that an officer may be removed by the persons authorized to elect or appoint such officer whenever in their judgment it serves the best interests of the corporation.²⁶⁶

It is the general rule that provisions in statutes, charters, or bylaws calling for an officer or director to serve for a prescribed term and until his or her successor is chosen do not prevent an officer or director from resigning. A resignation is complete upon its receipt by the corporation even though the corporate charter states that the office is to be held until a successor is elected and qualified.²⁶⁷

Officers, Directors, and Trustees – Personal Liability

The positions of director, officer, or trustee can carry with it the possibility of legal liability. The various legal actions that can be taken against directors, officers, and trustees are discussed below.

As a general rule, directors are not responsible for actions taken by the board prior to their election to the board (unless they vote to ratify a previous action). Similarly, directors ordinarily are not liable for actions taken by the board after their resignation. Again, they will continue to be liable for actions that they took prior to their resignation.²⁶⁸

A number of state laws permit nonprofit corporations to amend their bylaws to indemnify directors for any costs incurred in connection with the defense of any lawsuit arising out of their status as directors.²⁶⁹

Tort Liability

A "tort" is a civil wrong, other than a breach of contract, for which the law provides a remedy. Common examples include negligence (e.g., careless operation of a church-owned vehicle), defamation, fraud, copyright infringement, and wrongful termination of employees.²⁷⁰

Directors in some cases may be personally liable if they (a) knowingly permit an unsafe condition to exist on church property that results in death or injury; (b) cause injury as a result of the negligent operation of a vehicle in the course of church business; (c) negligently fail to adequately supervise church activities resulting in death or injury; (d) terminate an employee for an impermissible or insufficient reason; (e) utter a defamatory remark about another individual; (f)

²⁶⁶ *ibid.*: p. 327.

²⁶⁷ *ibid.*: p. 328.

²⁶⁸ *ibid.*: p. 330.

²⁶⁹ *ibid.*: p. 330.

²⁷⁰ *ibid.*: p. 330.

authorize an act that infringes upon the exclusive rights of a copyright owner; (g) engage in fraudulent acts; (h) knowingly draw checks against insufficient funds; or (l) knowingly make false representations as to the financial condition of the church to third parties who, in reliance on such representations, extend credit to the church and suffer a loss.²⁷¹

Contract Liability

Church board members may be personally liable on contracts that they sign in either of two ways. First, a board member may be personally liable on a contract that he signs without authority. Second, a board member may be personally liable on a contract that he is authorized to sign but which he signs in his own name without any reference to the church or to his representational capacity.²⁷²

Breach of the Fiduciary Duty of Care

The board members of business corporations are under duty to perform their duties “in good faith, in a manner they reasonably believe to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.” This duty commonly is referred to as the “prudent person rule” or the “duty of due care.”²⁷³

Directors, officers, and trustees of church corporations are also responsible to show this same level of care. Currently lawsuits for breach of duty of care against church directors, officers, and trustees are few but the numbers are growing. Directors, officers, and trustees of churches can lower the risk of this type of liability by:

- (a) attending all of the meetings of the board and of any committees on which they serve;
- (b) thoroughly reviewing all interim and annual financial statements and reports, and seeking clarification of any irregularities or inconsistencies;
- (c) affirmatively investigating and rectifying any other problems or improprieties;
- (d) thoroughly reviewing the corporate charter, constitution, and bylaws;
- (e) dissenting from any board action with which they have any misgivings, and insisting that their objection be recorded in the minutes of the meeting; and
- (f) resigning from the board if and when they are unable to fulfill these duties.²⁷⁴

²⁷¹ *ibid.*: p. 330.

²⁷² *ibid.*: p. 330.

²⁷³ *ibid.*: p. 331.

²⁷⁴ *ibid.*: pp. 332-333.

Breach of the Fiduciary Duty of Loyalty

This duty generally requires that any transaction between the board and one of its directors be (a) fully disclosed, (b) approved by the board without the vote of the interested director, and (c) fair and reasonable to the corporation. In most cases, a director breaches the duty of loyalty only through some secret or undisclosed interest in a transaction with the corporation.²⁷⁵

Violation of Trust Terms

Church officers and directors may be legally accountable for violating the terms or restrictions of properties and funds held in trust by the church.²⁷⁶

This ruling can apply to how the church officers and directors handle designated funds that come into the church. When there is a financial crunch or the designated project has been abandoned, it is very tempting for the church officers and directors divert these designated funds to other areas.

Church board members may be liable for diverting designated gifts to other purposes only if someone has the legal right to enforce the original designation. Some courts have ruled that the donor has such a right, but others have not. Even if a donor cannot enforce a designated gift, this does not make it unenforceable. In most states the following persons are authorized to enforce a designated gift: (1) the state attorney general; (2) a donor who reserves a right to enforce a designated gift in a written instrument; or (3) a trustee of a written trust that contains the designated gift.²⁷⁷

Since designated gifts generally can be enforced by someone (even if not the donor), church board members may be legally responsible for diverting designated gifts to other purposes. As a result, it is essential for church leaders to consult with a local attorney before using a donor's designated funds for some other purpose. To reduce the risk of personal liability, church leaders should consider the following precautions if they decide to use designated gifts for other purposes:

Donors can be identified. If donors can be identified, they should be asked if they want their contributions returned or retained by the church and used for some other purpose. Ideally, donors should communicate their decision in writing to avoid any misunderstandings. Churches must provide donors with this option in order to avoid violating their legal duty to use designated funds only for the purposes specified. Of course, churches should advise these donors that they may need to file amended tax returns if they claimed a charitable contribution deduction for their contributions in a prior year.

²⁷⁵ *ibid.*: p. 334.

²⁷⁶ *ibid.*: p. 334.

²⁷⁷ *ibid.*: p. 335.

Donors cannot be identified. A church may not be able to identify all donors who contributed to the building fund. This is often true of donors who contributed small amounts, or donors who made anonymous cash offerings to the building fund. In some cases, designated contributions were made many years before the church abandoned its building plans, and there are no records that identify donors. Under these circumstances the church has a variety of options. One option would be to address the matter in a meeting of church members. Inform the membership of the amount of designated contributions in the church building fund that cannot be associated with individual donors, and ask the church members to take an official action with regard to the disposition of the building fund. In most cases, the church membership will authorize the transfer of the funds to the general fund. Not that this procedure is appropriate only for that portion of the building fund that cannot be traced to specific donors. If donors can be identified, then use the procedure described below.

Some donors can be identified, and some cannot. In most cases, some of the building fund can be traced to specific donors, but some of it cannot. Both of the procedures summarized above would have to be used.

Uniform Management of Institutional Funds Act (UMIFA). This Act is designed to provide the boards and trustees of charitable organizations (including churches) with guidance in handling institutional funds. The Act defines an institutional fund as a fund that is “not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.” An official interpretation of the Act, adopted by its drafters, further clarifies that an endowment fund is an institutional fund...which is held in perpetuity or for a term and which is not wholly expendable by the institutional. Implicit in the definition is the continued maintenance of all or a specified portion of the original gift....If a governing board has the power to spend all of a fund but, in its discretion, decides to invest the fund and spend only the yield or appreciation therefrom, the fund does not become an endowment fund under this definition....According to these provisions, the Act would not apply to church building funds (or other designated funds) that exist for a specific project requiring the expenditure of the entire fund. However, some churches have established perpetual endowment funds that will meet the Act’s definition of an institutional fund. These churches should be familiar with the key provisions of the Act. An introductory note to the Act states: It is established law that the donor may place restrictions on his largesse which the donee institution must honor. Too often, the restrictions on use or investment become outmoded or wasteful or unworkable. There is a need of review of obsolete restrictions and a way of modifying or adjusting them. The Act authorizes the governing board to obtain the acquiescence of the donor to a release of restrictions and, in the absence of the donor, to petition the appropriate court for relief in appropriate cases.²⁷⁸

²⁷⁸ *ibid.*: pp. 335-336.

The Act contains the following relevant provisions:

S7. (a) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(b) If written consent of the donor cannot be obtained by reason of his death, disability, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to the [appropriate] court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The [attorney general] shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection may not change an endowment fund to a fund that is not an endowment fund.

(c) A release under this section may not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(d) This section does not limit the application of the doctrine of *cy pres*.²⁷⁹

An official comment to this section of the Act contains the following additional guidance:

One of the difficult problems of fund management involves gifts restricted to uses which cannot be feasibly administered or to investments which are no longer available or productive. There should be an expeditious way to make necessary adjustments when the restrictions no longer serve the original purpose.... This section permits a release of limitations that imperil efficient administration of a fund or prevent sound investment management if the governing board can secure the approval of the donor or the appropriate court. Although the donor has no property interest in a fund after the gift, nonetheless if it is the donor's limitation that controls the governing board and he or she agrees that the restriction need not apply, the board should be free of the burden.... If the donor is unable to consent or cannot be identified, the appropriate court may upon application of a governing board release a limitation which is shown to be obsolete, inappropriate or impracticable.²⁸⁰

The “cy pres” doctrine. Note that Section 7(c) of the Uniform Management of Institutional Funds Act (quoted above) specifies that the Act does not limit the application of the *cy pres* doctrine. This is a potentially significant provision. The “*cy pres*” doctrine (which has been adopted by most states) generally specifies that if property is given in trust to be applied to a particular charitable purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the donor manifested a more general intention to devote the property to charitable purposes, the trust will not fail but the court will direct the application of the property to some

²⁷⁹ *ibid.*: p. 337.

²⁸⁰ *ibid.*: p. 337.

charitable purpose which falls within the general charitable intention of the donor.²⁸¹

Willful Failure to Withhold Taxes

The officers and directors of a church or other nonprofit organization can be personally liable for the amount of payroll taxes that are not withheld or paid over to the government.²⁸²

Section 6672 of the Internal Revenue Code, specifies that “any person required to collect...and pay over any [FICA or income] tax who willfully fails to collect such tax...or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.”²⁸³

The court observed that a person is liable for the full amount of taxes under section 6672 if “(1) he or she was under a duty to collect, account for, and pay over the taxes (i.e., a ‘responsible person’), and (2) the failure to pay the taxes was ‘willful.’”²⁸⁴

Exceeding the Authority of the Board

If the board of directors operates outside the authority granted by the church charter or bylaws, it exceeds its authority. This occurs if the board tries to amend the bylaws without the knowledge of the corporation membership.

Loans to Directors

The Model Nonprofit Corporation Act, as well as various other laws under which some churches are incorporated, prohibit the board from making loans (out of corporate funds) to either directors or officers. Directors who vote in favor of such loans can be liable for them in the event that the loan is unauthorized or otherwise impermissible. Church boards must check the state law under which they are incorporated before considering any loans to a minister.²⁸⁵

Immunity Statutes

Church officers and directors may be protected from legal liability in states that have enacted limited liability statutes. These limited liability statutes are referred to as immunity statutes.

²⁸¹ *ibid.*: p. 338.

²⁸² *ibid.*: p. 341.

²⁸³ *ibid.*: p. 341.

²⁸⁴ *ibid.*: p. 341.

²⁸⁵ *ibid.*: p. 342.

The most common type of statute immunizes uncompensated directors and officers from legal liability for their ordinary negligence committed within the scope of their official duties. These statutes generally provide no protection for “willful and wanton” conduct or “gross negligence.”²⁸⁶

“Compensation” ordinarily is defined to exclude reimbursement of travel expenses incurred while serving as a director or officer. Churches that compensate their directors and officers over and above the reimbursement of travel expenses should reconsider such a policy if they are located in a state that grants limited immunity to uncompensated officers and directors.²⁸⁷

Churches should consider adopting an appropriate resolution clarifying that a minister’s annual compensation package is for ministerial duties rendered to the church, and not for any duties on the church board. Like any other church officer or director, the minister serves without compensation. Such a provision, if adopted, might qualify the minister for protection under the legal immunity law.²⁸⁸

Statutes immunizing the directors and officers of nonprofit organization from liability do not prevent the organization itself from being sued on the basis of the negligence of an officer or director. The immunity statutes only protect the officers or directors themselves. Many of the immunity statutes apply only to the directors and officers of organizations exempt from federal income tax under section 501(c) of the Internal Revenue Code. Some of them appear to apply only to incorporated organizations.²⁸⁹

When discussing the issue of liability, church leaders need to have an understanding of gross negligence and what can result from a lawsuit involving gross negligence. There are three reasons to have an understanding:

- 1. Punitive damages.** Courts can award “punitive damages” for conduct that amounts to gross negligence. Punitive damages are damages awarded by a jury “in addition to compensation for a loss sustained, in order to punish, and make an example of, the wrongdoer.” They are awarded when a person’s conduct is particularly reprehensible and outrageous. This does not necessarily mean intentional misconduct....Church leaders must understand that reckless inattention to risks can lead to punitive damages, and that such damages may not be covered by the church’s liability insurance policy. It is critical to note that many church insurance policies exclude punitive damages. This means that a jury award of punitive damages represents a potentially uninsured risk. Accordingly, it is critical for church leaders to understand the basis for punitive damages, and to avoid behavior which might be viewed as grossly negligent.

²⁸⁶ *ibid.*: p. 342.

²⁸⁷ *ibid.*: p. 343.

²⁸⁸ *ibid.*: p. 343.

²⁸⁹ *ibid.*: p. 343.

2. **Loss of limited immunity under state law.** State and federal laws provide uncompensated officers and directors of nonprofit corporations (including churches) with immunity from legal liability for their ordinary negligence. This is an important protection. However, such laws do not protect officers and directors from liability for their gross negligence.
3. **Personal liability.** Church leaders who are guilty of gross negligence are more likely to be sued personally than if their behavior is merely negligent. Indifference by church leaders to information that clearly demonstrates improper behavior by a staff member or volunteer worker can be viewed by a court as gross negligence, and this will make it more likely that the church leaders will be sued personally.²⁹⁰

Churches officers and directors also need to have an understanding of the Volunteer Protection Act.

In 1997 Congress enacted the Volunteer Protection Act (42 U.S.C. 14501) based on the following findings: (1) the willingness of volunteers to offer their services is deterred by the potential for liability actions against them; (2) as a result, many nonprofit organizations have been adversely affected by the withdrawal of volunteers from boards of directors and service in other capacities; and (3) due to high liability costs and unwarranted litigation costs, volunteers and nonprofit organizations face higher costs in purchasing insurance, through interstate insurance markets, to cover their activities. The Act clarifies that it “preempts the laws of any state to the extent that such laws are inconsistent with this [Act] except that this [Act] shall not preempt any state law that provides additional protection from liability relating to volunteers or to any category of volunteers in the performance of services for a nonprofit organization or governmental entity.”²⁹¹

Here is summary of the Act’s main provisions:

- No volunteer of a nonprofit organization shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if – (1) the volunteer was acting within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity at the time of the act or omission; (2) if appropriate or required, the volunteer was properly licensed, certified, or authorized by the appropriate authorities for the activities or practice in the state in which the harm occurred, where the activities were or practice was undertaken within the scope of the volunteer’s responsibilities in the nonprofit organization or governmental entity; (3) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed by the

²⁹⁰ *ibid.*: p. 344.

²⁹¹ *ibid.*: p. 346.

volunteer; and (4) the harm was not caused by the volunteer operating a motor vehicle, vessel, aircraft, or other vehicle for which the state requires the operator or the owner of the vehicle, craft, or vessel to possess an operator's license or obtain insurance.

- The Act provides no protection to nonprofit organizations themselves.
- Punitive damages may not be awarded against a volunteer unless the victim proves by clear and convincing evidence that the harm was caused by the volunteer's willful or "criminal misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed."²⁹²

Directors and Officers Insurance

Church officers and directors wondered if it is worth the expense to the church to carry liability insurance on the church officers and directors. The Volunteer Protection Act listed above is not an absolute protection for litigation especially if the church officers and directors receive compensation above travel expenses. The immunity laws do not protect the church officers and directors if they are charged with gross negligence. Therefore, it is important for the church to carry liability insurance to cover the exceptions. The insurance coverage can help cover legal costs as well.²⁹³

Members

Since the bylaws and church's charter give a great deal of authority to the corporation membership, who makes up the membership must be determined.

In congregational churches, the members typically elect and depose directors and ministers, authorize the purchase and sale of property, adopt and amend the charter or bylaws, and approve budgets. Church members in hierarchical churches typically possess some or all of these powers.²⁹⁴

Selection and Qualifications

The selection and qualifications of church membership is usually detailed in the church's charter and bylaws.

It is well-settled that (1) the right to determine the qualifications for membership belongs to the church, (2) a determination as to who are "members in good standing" is an ecclesiastical question relating to the government and discipline of a church, and (3) a church's decision about either matter is binding on the courts.²⁹⁵

²⁹² *ibid.*: p. 346.

²⁹³ *ibid.*: p. 347.

²⁹⁴ *ibid.*: p. 347.

²⁹⁵ *ibid.*: p. 348.

Disputes over church membership arise occasionally. Some of these disputes have been taken before the courts. The courts are divided as to whether they have the responsibility to intervene in church membership disputes.

The United States Supreme Court has stated the general rule of judicial nonintervention in the ecclesiastical affairs of churches, including membership determination, as follows: But it is a very different thing where a subject matter of dispute, strictly and purely ecclesiastical in its character – a matter over which the civil courts exercise no jurisdiction – a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them – becomes the subject of its action. It may be said here, also, that no jurisdiction has been conferred on the tribunal to try the particular case before it, or that, in its judgment, it exceeds the powers conferred upon it, or that the laws of the church do not authorize the particular form of proceeding adopted; and, in a sense often used in the courts, all of those may be said to be questions of jurisdiction. But it is easy to see that if the civil courts are to inquire into all these matters, the whole subject of the doctrinal theology, the usages and customs, the written laws, and fundamental organization of every religious denomination may, and must, be examined into with fundamental organization of every religious denomination may, and must, be examined into with minuteness and care, for they would become, in almost every case, the criteria by which the validity of the ecclesiastical decree would be determined in the civil court.²⁹⁶

There are a few courts that have agreed to review cases involving church membership. However, there are specific issues that must be involved in the case before the court will agree to review the case. These issues include:

1. if the church determination was the product of fraud or collusion;
2. if civil, contract, or property rights of members are affected; or
3. if a legitimate dispute occurs over the meaning of the criteria for membership.²⁹⁷

Authority

The church's charter and bylaws usually spells out the scope of the church members' authority. Usually the church's charter and bylaws will simply state that the majority vote is binding. However, the governmental documents can call for set qualifications for eligibility to vote as well as a specific percentage (i.e., to vote the member must be 16 years of age and the action must pass with at least two-thirds vote).

²⁹⁶ *ibid.*: p. 348.

²⁹⁷ *ibid.*: p. 349.

Many courts will recognize the decision of the majority, especially in cases involving church property.

Prior to 1969 the courts commonly ruled that church property was held in trust for the use and benefit of those members adhering to the original tenets of the church, and thus a majority of the members could not abandon the tenets of the church and retain the right to use the church's property so long as a single member adhered to the original doctrines of the church. This rule was abolished by the United States Supreme Court in 1969.²⁹⁸

Members – Discipline and Dismissal

In some denominations, there are procedures for discipline and dismissal of church members. The question has been raised many times as to whether the courts have any authority to review and rule on such cases. The courts are basically split on their decision about intervention.

Judicial Nonintervention

In 1871, the United States Supreme Court laid the groundwork for nonintervention into church disciplining of members. The case was *Watson v. Jones*.

The Court began its landmark opinion by acknowledging that “religious organizations come before us in the same attitude as other voluntary associations for benevolent or charitable purposes, and their right of property, or of contract, are equally under the protection of the law, and the actions of their members subject to its restraints.” Though recognizing in principle the authority of civil courts to address the “rights of property, or of contract” of ecclesiastical organizations or officers, the Court proceeded to severely limit this authority. Most importantly, the Court held that “whenever the question of discipline, or of faith, of ecclesiastical rule, custom, or law have been decided by the highest church judicatory to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them....”²⁹⁹

A year after this decision, the Supreme Court again emphasized its standing on nonintervention into cases involving the discipline and dismissal of church members. The Court also provided that cases of discipline and dismissal should be handled by the highest tribunal of the church denomination. In 1976, the United States Supreme Court ruled that the first and fourteenth amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and

²⁹⁸ *ibid.*: p. 352.

²⁹⁹ *ibid.*: p. 353.

direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.³⁰⁰

The Supreme Court further noted, in the same decision, that we have concluded that whether or not there is room for “marginal civil court review” under the narrow rubrics of “fraud” or “collusion” when church tribunals act in bad faith for secular purposes, no “arbitrariness” exception – in the sense of an inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations – is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law. For civil courts to analyze whether the ecclesiastical actions of a church judicatory are in that sense “arbitrary” must inherently entail inquiry into the procedures that canon or ecclesiastical law supposedly require the church adjudicatory to follow, or else into the substantive criteria by which they are supposedly to decide the ecclesiastical question. But this is exactly the inquiry that the first amendment prohibits....³⁰¹

Throughout this paper, the terms hierarchical and congregational have been used to refer to church structures. It is important that these terms be defined.

One legal authority defines “hierarchical” and “congregational” churches as follows: At least three kinds of internal structure, or “polity,” may be discerned: congregational, presbyterial, and episcopal. In the congregational form each local congregation is self-governing. The presbyterial polities are representative, authority being exercised by laymen and ministers organized in an ascending succession of judicatories – presbytery over the session of the local church, synod over the presbytery, and general assembly over all. In the episcopal form power reposes in clerical superiors, such as bishops. Roughly, presbyterial and episcopal polities may be considered hierarchical, as opposed to congregational polities, in which the autonomy of the local congregation is the central principle.³⁰²

Most courts will hold to the nonintervention policy regarding the discipline or dismissal of church members. It does not matter if the church is hierarchical or congregational in structure. The courts will, however, review cases where fraud or collusion can be proven.

“Marginal” Civil Court Review

A few courts will review cases of discipline and dismissal of church members. The most common cases are listed below.

³⁰⁰ *ibid.*: p. 353.

³⁰¹ *ibid.*: p. 354.

³⁰² *ibid.*: p. 354.

1. Interference With Civil, Contract, or Property Rights

If the case of discipline or dismissal of a church member, involves the violation of the member's civil, contract, or property rights, the courts will review the case.

Courts have concluded that (1) the expulsion of a member from a church can constitute a serious emotional deprivation which, when compared to some losses of property or contract rights, can be far more damaging to an individual; (2) the loss of the opportunity to worship in familiar surroundings is a valuable right that deserves the protection of the law; and (3) except in cases involving religious doctrine, there is no reason for treating religious organizations differently from other nonprofit organizations, whose membership expulsions are routinely reviewed by the courts.³⁰³

2. Authority of Expelling Body

The courts will review cases of church discipline and dismissal of members if it can be proven that the body that made the decision of discipline or dismissal did not have the proper authority to do so. Many times the decision for discipline or dismissal is made by groups in the church who do not have such authority granted them in the church's charter or bylaws. Under such circumstances, most courts will intervene.

3. Compliance With Church Charter and Bylaws

As mentioned earlier, the courts emphasize that there should be nonintervention on the part of the courts in ecclesiastical issues that involve a hierarchical church structure. This extends to issues of discipline or dismissal clause in the church's charter or bylaws.

Even though a few courts have reviewed cases of church discipline or dismissal, they are few. They are usually cases involving a congregational church structure as opposed to hierarchical, since the courts demand that the highest tribunal in a hierarchical structure settle such issues.

4. Expulsion Based on Fraud or Collusion

Some courts have intervened in internal church controversies regarding membership determination on the basis of fraud or collusion. There are three points to emphasize, however, First, the Supreme Court has expressly refrained from ruling on the viability of civil court review based on fraud or collusion. Second, the higher burden of proof normally required to establish fraud (i.e., clear and convincing evidence) may apply. And third, in 1976 the Supreme Court interpreted "fraud" or "collusion" to imply church actions that

³⁰³ *ibid.*: p. 359.

are committed “in bad faith for secular purposes.” Certainly, it is highly unlikely that any aggrieved member could prove facts satisfying this definition, particularly if the “clear and convincing evidence” standard applies.³⁰⁴

5. Interpretation of Contested Terminology

Some church charter’s and bylaws contain unusual or vague rules for membership. A few courts have been willing to review cases of membership based on these unusual or vague rules. Generally, however, the courts will hold to nonintervention since investigation into the rules may involve the ecclesiastical polity of the church.

Preconditions to Civil Court Review

The courts will not review church membership expulsions unless the expelled members have exhausted all available procedures within their church for obtaining review of their expulsion.³⁰⁵

Remedies for Improper Discipline or Dismissal

1. Decisions Refusing to Recognize a Legal Remedy

If the courts refuse to intervene into cases of church discipline or dismissal, there is no path for remedy for the disciplined or dismissed member.

2. Decisions Recognizing a Legal Remedy

The courts, that have reviewed membership cases under the “marginal civil court review”, have opened a path of legal remedy for disciplined or dismissed members. In the cases that these have reviewed, it has been proven that the member did not waive their constitutional right to withdraw from the church. If the member had waived this right, he/she would fall under the authority of the church governmental documents and the courts would withdraw their intervention.

Based on an Oklahoma Supreme Court ruling, the following issues need to be considered by church leaders regarding church discipline and dismissal:

1. Discipline of church members is constitutionally protected. The discipline of church members (i.e., persons who have not withdrawn from membership) is a constitutionally protected right of churches. If discipline of church members is a possibility in your church, then you should adopt a disciplinary procedure that is based upon and refers to scriptural references. The procedure should specify the grounds for discipline, and

³⁰⁴ *ibid.*: pp. 362-363.

³⁰⁵ *ibid.*: p. 364.

describe the process that will be conducted. Avoid references to loaded phrases such as “due process,” which have no legal relevance in the context of church law and only create confusion.

2. No constitutional protection after a member resigns. Discipline of persons who have effectively withdrawn their church membership is not a constitutionally protected activity, and church that engage in such conduct can be sued under existing theories of tort law.
3. Church members have a constitutional right to resign. The court concluded that the constitutional right of a church member to withdraw from church membership is protected by the first amendment guaranty of religious freedom unless a member has waived that right. An effective waiver requires the voluntary relinquishment of a known right. In other words, a member can waive the right to resign by a voluntary and intentional act, but not through inadvertence or ignorance. A church wishing to restrict the right of disciplined members to withdraw must obtain a voluntary and knowing waiver by present and prospective members of their constitutional right to withdraw. How can this be done? One approach would be for a church to adopt a provision in its bylaws preventing members from withdrawing if they are currently being disciplined by the church. Obviously, the disciplinary procedure must be carefully specified in the church bylaws so there is not doubt whether the disciplinary process has been initiated with respect to a member. Most courts have held that members are “on notice” of all of the provisions in the church bylaws, and consent to be bound by them when they become members. As a result, the act of becoming a member of a church with such a provision in its bylaws may well constitute an effective waiver of a member’s right to withdraw (if the disciplinary process has begun). Such a conclusion is not free from doubt, however. To be as safe as possible, a church could explain to present and prospective members the provision in the bylaws limiting their right to withdraw, and explaining to them that by becoming members they will be waiving their right to withdraw from membership if they are under discipline by the church.
4. Passive discipline. The Oklahoma court concluded that a church retains the right to engage in “passive” discipline of former members.
5. Communications of matters of “common interest” to members. The court acknowledged that church members have a right to know about matters in which they have a “common interest,” and that this right permits some disclosures to church members concerning the discipline or misconduct of current members. Statements by church leaders to church members concerning the discipline of current members are conditionally privileged – meaning that the disciplined member cannot successfully sue the church for making such disclosures unless the church acted maliciously (i.e., it

either know that the disclosures were false or made them with reckless disregard as to their truthfulness). It must be emphasized that this privilege only protects disclosures made to church members about church members. Disclosures made to a congregation during a worship service in which non-members are present would not be protected. And, statements about former members are not protected (presumably, non-members would need to be removed from the sanctuary before statements regarding church discipline could be made). The court observed, “Communicating unproven allegations of a present or prospective member’s misconduct to the other members of a religious association is privileged occasion because the members have a valid interest in and concern for the behavior of their fellow members and officers.” Obviously, the safest course of action for a church board that has disciplined a member is to refrain from disclosing any information to the congregation. If the board decides that the congregation should be informed, then a general statement that the individual is “no longer a member” is the safest approach. If the board would like to share more details with the church, then it should do so at a congregational meeting or service only after all non-members have been removed. Members present should be instructed to retain the information presented in the strictest confidence. Churches following the disciplinary procedure outlined in Matthew 18 ultimately may wish to let the church membership make the final determination regarding the guilt or innocence of an accused member (and any penalty to be imposed). If so, the church must be careful to remove all non-members from such a meeting, and to apprise the membership of the confidentiality of the information that is disclosed. It would be appropriate for the congregation to adopt a resolution at such a meeting committing itself to maintaining all confidences shared during the meeting.

6. Discipline of clergy. Churches have greater protection in making statements about current or former clergy, since the congregation continues to have “a common interest in being informed about the questionable conduct of one among them who expresses the desire to continue ministering to them or to one of the neighboring assemblies.” Accordingly, disciplined clergy may find it more difficult to sue their church or denomination.
7. Arbitration. Churches wishing to reduce the risk of litigation by disciplined members (or any other members) should consider, in addition to the observations made above, the adoption of a binding arbitration policy. Such a policy, if adopted by the church membership at a congregational meeting as an amendment to the church’s bylaws, can force church members to resolve their disputes (with the church, pastor, board, or other members) within the church consistently with the pattern suggested by the apostle Paul in 1 Corinthians 6:1-8.³⁰⁶

³⁰⁶ *ibid.*: pp. 370-372.

There are a variety of remedies that a person may employ if they have been improperly expelled from their church.

First, they may be able to obtain judicial review of the expulsion if they reside in a jurisdiction that permits marginal civil court review of church membership determinations. If a court agrees to review the expulsion and finds that it was deficient on the basis of one of the grounds discussed in this section, it may declare the expulsion void and reinstate the expelled member. Second, wrongfully expelled members may be able to recover monetary damages. Third, they may petition a court for an injunction prohibiting a church from interfering with their rights or privileges as members. Fourth, they may seek a declaratory judgment setting forth their rights. Fifth, in some cases they may sue their church or certain of its members for defamation.³⁰⁷

Defamation generally is defined to include the following elements: (1) a public statement, whether oral or in writing; (2) reference to another; (3) that is false; and (4) which injures the reputation of the other. Truth is generally held to be an absolute defense to a defamation action. Thus if the allegedly defamatory statements were true, an expelled member will not be able to sue for defamation even if his reputation has been injured.³⁰⁸

Members – Personal Liability

Traditionally, individual members of a corporation can not be held personally liable for the actions of other individuals of the corporation. This is not the case if the individual ratified or affirmed the action. Individual members can be held personally liable for their own misconduct.

Meetings of Members

The church's charter and bylaws normally will describe when and where meetings of the members shall take place. Procedures for special called meetings should also be described in the church's charter and bylaws.

Actions taken at irregularly called meetings generally are considered invalid unless subsequently ratified or affirmed at a duly convened meeting.³⁰⁹

Church bylaws commonly call for annual general meetings of the church membership, and for such special meetings as the congregation or board of directors considers appropriate.³¹⁰

³⁰⁷ *ibid.*: p. 373.

³⁰⁸ *ibid.*: p. 373.

³⁰⁹ *ibid.*: p. 374.

³¹⁰ *ibid.*: p. 374.

The pastor of the church, or the senior pastor of a church having more than one pastor on its staff, is legally authorized to preside at membership meetings if authorized by (1) the church charter or bylaws, (2) established church custom, (3) applicable state nonprofit corporation law, or (4) the doctrine of inherent authority.³¹¹

Although a church is free to determine the order of business to be followed at general or special meetings, the following order is commonly followed:

1. reading and approval of minutes
2. reports of officers, boards, and standing committees
3. reports of special committees
4. special orders
5. unfinished business and general orders
6. new business³¹²

Procedural Requirements

The church's charter or bylaws should include detailed procedures for convening and conducting church membership meetings. If should procedures are not listed, the state nonprofit corporation law can be employed. The procedural requirements of a church can cause great confusion and controversy among the membership.

1. Notice

The church membership ordinarily must be notified of the date, time, and place of both annual and special membership meetings. This "notice" requirement usually is found in the church's bylaws, but it also may appear in the corporate charter or in the body of parliamentary procedure adopted by the church.³¹³

Section 7.05 of the Revised Model Nonprofit Corporation Act, which has been adopted by a few states, specifies that "[a] corporation shall give notice consistent with its bylaws of meetings of members in a fair and reasonable manner." The Act goes on to specify that notice is "fair and reasonable" if (1) the corporation notifies its members of the place, date, and time of each annual, regular, and special meeting of members no fewer than 10 (or if notice is mailed by other than first class or registered mail, 30) nor more than 60 days before the meeting date; (2) notice of an annual or regular meeting must include a statement of purpose only with respect to any of the following matters – director conflict of interest, indemnification of officers or agents, amendment of the articles of

³¹¹ *ibid.*: p. 374.

³¹² *ibid.*: pp. 374-375.

³¹³ *ibid.*: pp. 376.

incorporation, amendment of the bylaws, mergers, some sales of corporate assets, dissolution by directors or members; and (3) notice of a special business meeting must include “a description of the matters for which the meeting is called.”³¹⁴

Unincorporated churches that have no bylaws or written regulations are bound by their established customs regarding notice of church membership meetings. However, some courts have held that notice requirements established by custom can be disregarded if the notice actually given is more likely to provide notice to all church members than the form of notice prescribed by custom.³¹⁵

A church must comply with the manner and method of giving notice prescribed in its charter or bylaws, in applicable state nonprofit corporation law, or by established church custom. Failure to follow applicable notice requirements may render any action taken at the improperly called meeting invalid.³¹⁶

Actions taken at church membership meetings have been declared void under the following circumstances: (1) notice of a special meeting was read publicly by a church secretary instead of by a church trustee as required by the applicable state nonprofit corporation law; (2) a pastor publicly notified his congregation during a worship service that a special meeting would be convened immediately following the service, though the church’s bylaws stipulated that notice of special meetings had to be mailed to members at a prescribed time in advance of a meeting; (3) a pastor convened a special meeting following a Sunday morning service without any notice other than an oral announcement during the service, despite an applicable provision in state nonprofit corporation law requiring written notice to be posted in a conspicuous place near the main entrance of the church for at least seven days before the meeting; (4) a small number of members present at a Wednesday evening church service publicly called a special meeting of the church membership for the following Saturday, in violation of an established church custom requiring notice to be read publicly during at least two Sunday morning services prior to such a meeting; and (5) a church’s attempted removal of its trustees at a special business meeting was “null and void” since the church had not fulfilled the legal notice requirements imposed by state law for calling a special business meeting.³¹⁷

2. Quorum

³¹⁴ *ibid.*: p. 376.

³¹⁵ *ibid.*: p. 376.

³¹⁶ *ibid.*: p. 376.

³¹⁷ *ibid.*: p. 377.

Churches should and often do prescribe in their charter or bylaws the number of members that must be present at general or special membership meetings in order for business to be transacted. This minimum number is generally referred to as a quorum.³¹⁸

Section 16 of the Model Nonprofit Corporation Act provides that the bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum.³¹⁹

Established church custom will control in the case of unincorporated churches having no bylaws or written regulations.³²⁰

Ordinarily, so long as a quorum is present, a majority of members has the authority to act on behalf of the entire membership provided the meeting was properly called and a greater number or percentage of votes is not mandated by church charter or bylaws.³²¹

If a church has no bylaw provision or established custom concerning quorums, it is unnecessary to demonstrate that a majority or any other percentage of the total membership attended a particular meeting in order to validate the action taken at the meeting.³²²

3. Voting

Unless otherwise restricted by charter, bylaw, statute, or custom, every member of a church congregation is entitled to vote at a membership meeting, and a majority of those members present at a duly called meeting at which a quorum is present can take action on behalf of the church. Section 15 of the Model Nonprofit Corporation Act defines the voting rights of members as follows: The right of the members...to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member...shall be entitled to one vote on each matter submitted to a vote of the members.³²³

³¹⁸ *ibid.*: p. 378.

³¹⁹ *ibid.*: p. 378.

³²⁰ *ibid.*: p. 378.

³²¹ *ibid.*: p. 378.

³²² *ibid.*: p. 379.

³²³ *ibid.*: p. 379.

Section 15 of the Model Nonprofit Corporation Act recognizes proxy voting: A member entitled to vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy....³²⁴

Proxy voting refers to voting by means of a substitute.³²⁵

Votes can be cast orally, by show of hands, or by secret ballot. The method used is governed by the church's charter or bylaws.³²⁶

Absentee voting is not ordinarily permitted unless expressly sanctioned by charter, bylaw, custom, or statute.³²⁷

Minutes

The church secretary should prepare written minutes of every church membership meeting, being careful to note (1) the date of the meeting, (2) the number of members present, (3) the progression of every action from motion to final action, (4) some statement that each adopted action was approved by the necessary number of votes (a tally of the votes for and against a particular action should be inserted in the minutes if the vote is close or the action is of an extraordinary nature), and (5) a verbatim transcript of each approved action. Minutes should be signed by the church secretary, but this is not a legal requirement.³²⁸

Parliamentary Procedure

An organization may adopt any procedure that it desires for the conduct of membership meetings. *Robert's Rules of Order, Newly Revised*, or any other body of parliamentary procedure is not applicable unless specifically adopted. Churches can and should select a specific body of parliamentary procedure by an appropriate clause in the church charter or bylaws.³²⁹

There are three important considerations for churches to note regarding parliamentary procedure. First, churches should not assume that *Robert's Rules of Order, Newly Revised*, is the only system of parliamentary procedure. It is not. On the contrary, there are dozens of alternative systems of parliamentary procedure, some of which are excellent (some would say superior) alternatives.

³²⁴ *ibid.*: p. 380.

³²⁵ *ibid.*: p. 380.

³²⁶ *ibid.*: p. 383.

³²⁷ *ibid.*: p. 384.

³²⁸ *ibid.*: p. 384.

³²⁹ *ibid.*: p. 384.

Second, many churches adopted the original *Robert's Rules of Order*, or one of the earlier revisions. The original text was published in 1876, and it has been revised on seven occasions. The current revision was released in 1981. Obviously, churches that select "Robert's Rules" should be sure to identify this system of parliamentary procedure as "the most recent revision of *Robert's Rules of Order*." Otherwise, they may have to resort to obsolete rules to resolve parliamentary questions. Third, no system of parliamentary procedure should serve as a substitute for specific provisions in a church's bylaws. In other words, the fact that a church wanting to prohibit absentee voting has adopted *Robert's Rules of Order, Newly Revised*, should not serve as substitute for a bylaw provision prohibiting absentee voting.³³⁰

Effect of Procedural Irregularities

If the procedure dictated by the church's charter or bylaws are not followed properly, the actions made by the membership will be invalidated. The courts will uphold the invalidation of the action.

Judicial Supervision of Church Elections

Courts can supervise church elections. The purpose is to oversee that the procedure requirements are met. If the election process involves ecclesiastical issues or delving into church polity issues, the court will refuse to intervene.

Who May Attend

The following considerations will determine to what extent a church can exclude nonmembers from attending church membership meetings:

First, the charter, constitution, and bylaws of the church should be consulted to determine if they address the question. Ordinarily, they do not.

Second, determine what body of parliamentary procedure has been adopted by the church. Many systems of parliamentary procedure permit nonmembers to be excluded from a membership meeting. One authority states the rule as follows: Nonmembers, on the other hand – or a particular nonmember or group of nonmembers – can be excluded any time from part or all of a meeting of a society, or from all of its meetings. Such exclusion can be effected by a ruling of the chair in cases of disorder, or by the adoption of a rule on the subject, or by an appropriate motion as the need arises – a motion of the latter nature being a question of privilege.

Third, many states and the federal government have enacted public meeting laws which generally provide that meetings of specified government agencies, commissions, and boards, at which official acts are taken, must be open to the public. Such laws, often called sunshine acts, ordinarily do not apply to private,

³³⁰ *ibid.*: p. 385.

nonprofit organizations, and they certainly do not apply to entities, such as churches, receiving no tax revenues and having no regulatory authority or relationship with any governmental body. The fact that a church is incorporated will not subject it to the provisions of public meeting laws.³³¹

Powers of a Local Church

Courts have been asked at various times to review if an action exceeds the powers of a church. State nonprofit law helps to define the extent of an incorporated church's power. Some states have developed statutes specifying extent of powers for unincorporated churches. If such statutes do not exist, the unincorporated church has no power.

Section 5 of the Model Nonprofit Corporation Act states that a corporation has the authority: (1) to exist perpetually; (2) to sue and be sued; (3) to acquire or dispose of property; (4) to lend money to its employees other than its officers and directors; (5) to make contracts, incur liabilities, borrow money, and issue notes and bonds; (6) to lend money; (7) to elect or appoint officers and directors; (8) to adopt bylaws not inconsistent with the articles of incorporation; (9) to indemnify directors or officers against expenses incurred in connection with lawsuits arising because of the performance of their duties (but there is no indemnification if the director or officer is found to have been guilty of negligence or other misconduct); (10) to establish pension plans; (11) to cease its corporate activities; and (12) to have and exercise all powers necessary or convenient to accomplish any of the purposes for which the corporation is organized.³³²

In determining whether a church corporation possesses the authority to take particular action, the following analysis should be employed:

1. Review the statute under which the church was incorporated to determine if the power was expressly granted.
2. Review the church's charter to see if the power was expressly granted.
3. If the proposed church action is not expressly authorized by either statute or the church's charter, determine whether the church possesses implied authority to perform the act. Generally, a church possesses implied authority to take any action reasonably necessary to carry out the powers expressly granted by charter or state corporation law.
4. A corporation is never authorized to perform an act that is prohibited by law or public policy.³³³

³³¹ *ibid.*: p. 389.

³³² *ibid.*: p. 390.

³³³ *ibid.*: p. 391.

The courts generally have held that a corporation's bylaws cannot confer powers upon the corporation that are not granted by statute or charter, although the bylaws may regulate the manner in which a corporation's powers are exercised.³³⁴

Since most church corporations are incorporated under statutes expressly limiting them to nonprofit or religious purposes, churches generally have no authority to engage in substantial commercial enterprises for profit. An act performed by a church corporation in excess of its express and implied powers is referred to as *ultra vires*. Considerable confusion surrounds the legal status of *ultra vires* actions. A majority of states permit *ultra vires* acts of a corporation to be challenged in only the following three situations:

1. A proceeding by a member or director against the corporation seeking an injunction prohibiting the corporation from doing an unauthorized act.
2. A proceeding by the corporation against the officers or directors of the corporation for exceeding their authority.
3. A proceeding by the state to dissolve the corporation or to enjoin the corporation from performing unauthorized acts.³³⁵

Merger and Consolidation

In a merger, one corporation absorbs the other and remains in existence while the other is dissolved, whereas in a consolidation a new corporation is created and the consolidating corporations are extinguished.³³⁶

Most religious and nonprofit corporation laws grant churches the power to merge or consolidate. Such laws typically prescribe the following procedure:

1. Board resolutions. The board of directors of each church desiring to merge to consolidate adopts a resolution approving of the proposed plan and submits it to a vote of members having voting rights at a general or special meeting.
2. Notice. Written notice of the proposed plan is given to each member eligible to vote.
3. Approval. The proposed plan is adopted if at least two-thirds of the votes cast approve of the plan.

³³⁴ *ibid.*: p. 391.

³³⁵ *ibid.*: pp. 391-392.

³³⁶ *ibid.*: p. 392.

4. Articles of merger or consolidation. Upon approval of the plan by the voting members, each corporation executes either articles of merger or articles of consolidation on a form prescribed by the secretary of state. This document sets forth the plan of merger or consolidation, the date of the meeting at which the plan was approved, and a statement that a quorum was present and that the plan received at least two-thirds voter approval. The articles of merger or articles of consolidation are filed with the secretary of state.³³⁷

The legal effect of a merger or consolidation generally is determined by state corporation law and the terms of the merger or consolidation agreement. State corporation law typically stipulates that all the properties of a church corporation that merges with another congregation belong to the surviving corporation. Similarly, the properties of two consolidating churches belong to the new corporation resulting from the consolidation. The surviving corporation in the case of a merger or the new corporation in the case of a consolidation is responsible for all the liabilities and obligations of each of the corporations so merged or consolidated. Thus, neither the rights of creditors nor any liens upon the property of such corporations is affected by a merger or consolidation.³³⁸

Dissolution

The dissolution of incorporated churches generally is regulated by state corporation law since the state alone has the authority to dissolve those organizations it has created. Corporate dissolutions may be either voluntary or involuntary. A voluntary corporate dissolution is accomplished by the corporation itself. Most state religious and nonprofit corporation laws contain a specific procedure for voluntary dissolution, which generally consists of the following elements:

1. Board resolution. The board of directors adopts a resolution recommending that the corporation be dissolved and directing that the question of dissolution be submitted to the church membership.
2. Notice to members. All voting members are notified in writing that the question of dissolution will be discussed at a special or general meeting of the members.
3. Approval. A resolution to dissolve the corporation is adopted if it receives at least two-thirds voter approval.
4. Notice to creditors. Notice of the dissolution is mailed to all creditors of the former corporation.

³³⁷ *ibid.*: p. 393.

³³⁸ *ibid.*: p. 393.

5. Payment of debts. All corporate liabilities are paid. Any assets remaining after payment of liabilities are transferred to the organization or organizations, if any, prescribed in the dissolved corporation's charter or in the controlling rules of a church hierarchy, if any, with which the church is affiliated. If neither the charter nor controlling rules of a religious hierarchy specifies how corporate assets are to be distributed following dissolution, the assets are conveyed to one or more organizations engaged in activities substantially similar to those of the dissolving corporation.
6. Articles of dissolution prepared. The articles of dissolution are executed. The articles set forth the name of the corporation, the date of the meeting of members at which the resolution to dissolve was adopted, and an acknowledgment that a quorum was present, that the resolution was adopted by at least two-thirds of the members present at such meeting, that all debts of the corporation have been paid, and that all remaining assets of the corporation have been transferred to the organization engaged in activities substantially similar to those of the dissolving corporation.
7. Articles of dissolution filed. The articles of dissolution are filed with the secretary of state. If the articles of dissolution conform to all legal requirements, the secretary of state issues to a representative of the dissolved corporation a certificate of dissolution, which is recorded with the office of the recorder of deeds of the county in which the church had been located.³³⁹

It is important to recognize that the IRS maintains that every incorporated church must contain a provision in its charter ensuring that in the event of a dissolution the assets of the church will pass to a tax-exempt organization. The IRS has stated that the following provision will suffice: Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.³⁴⁰

If a church, in the regular course of its affairs, is unable to pay its debts and obligations as they come due, the nonprofit corporation laws of many states

³³⁹ *ibid.*: p. 394.

³⁴⁰ *ibid.*: pp. 394-395.

permit an incorporated church to be involuntarily dissolved by a creditor whose claims are unsatisfied.³⁴¹

Unincorporated churches having no affiliation with a religious hierarchy are mere voluntary associations of persons and may dissolve on their own initiative by a vote of the membership, by abandonment of the church, or by withdrawal of all members from the church, assuming that all applicable provisions in the church's bylaws or other internal rules are followed.³⁴²

Record Keeping

Most all churches have boxes and boxes of old records and reports packed away in offices, attics, and basements. Many of these can be discarded and reduce the risk of providing fuel for a fire. Richard Hammar makes the following recommendations on keeping records in his March 2005 *Church Treasurer Alert!*:

Form 945 - 4 years after filing return
(annual return of withheld federal income tax)

Form W-9 - 4 years from filing deadline of the contractor's tax return
(request for taxpayer identification number)

Form 8283 – 4 years from the filing deadline of donor's tax return
(noncash charitable contribution)

Offering envelopes – 4 years from filing deadline of the donor's tax return
(some churches issue donors a periodic summary of contributions that includes a statement advising donors to question any discrepancies quickly since all documentation (including offering envelopes) the church relied on in preparing the summary will be disposed of within a specified period of time (e.g., six months) Such a statement relieves the church of the responsibility of warehousing offering envelopes and other supporting documentation for long periods of time.)

Contribution statements – 4 years from the filing deadline of the donor's tax return.

Written acknowledgements of charitable contributions – 4 years from the filing deadline of the donor's tax return.

Written acknowledgements for short-term missions trips participants - 4 years from the filing deadline of the donor's tax return.

³⁴¹ *ibid.*: p. 396.

³⁴² *ibid.*: p. 396.

Accountable reimbursement policy – permanently

Accountable reimbursement policy receipts – 4 years from the filing deadline of the employee's tax return.

Exception:

- The regulations require employers to maintain receipts and other records used by employees to substantiate their reimbursed business expenses
- The IRS has indicated that it may relax this requirement, but it has not done so
- If an employer does not maintain these records, its employees will have to substantiate expenses if audited

All records associated with nonaccountable expenses reimbursements – 4 years from filing deadline of the employee's tax return.

Housing allowance – 4 years from the filing deadline of the pastor's tax return.

Cafeteria Plan – permanently.

Estimated housing expense form – 4 years from the filing deadline of the pastor's tax return.

Safety net housing allowance – permanently.
(continuing resolution designating a specified percent of the salary of any staff pastor as a housing allowance if no allowance has otherwise been declared)

Job descriptions of staff pastors – 4 years from the filing deadline of the pastor's tax return.

Form 8274 – permanently.
(certification by churches requesting exemption from FICA taxes)

Property tax exemption applications and certificates – consult local law offices.

Sales tax exemption applications and certificates – consult local law offices.

Tax-sheltered annuity salary reduction agreements – 4 years from filing deadline of the employee's tax return.

Form 990-T – 4 years from the filing deadline of the tax return.
(exempt organization's unrelated business income tax return)

Retirement gifts – 4 years from the filing deadline of the employee's tax return.

Special occasion gifts – 4 years from filing deadline of the employee’s tax return.

Health plans – permanently.

Documents defining compensation – 4 years from the filing deadline of the employee’s tax return.

Correspondence received from the IRS or state and local tax agencies – permanently.

Articles of Incorporation – permanently.

Bylaws – permanently.

Certificate of Incorporation – permanently.

Certificate of Good Standing – permanently.

Minutes of membership meetings – permanently.
(summaries of actions taken at regular and special membership meetings)

Minutes of board meetings – permanently.
(summaries of actions taken at regular and special board meetings)

Annual Corporate Reports – permanently.
(an annual report that in many states must be filed annually with the Secretary of State by any corporation incorporated under the general nonprofit corporation law)

Form W-2 – 4 years after filing the return.
(wage and tax statement)

Form W-4 – 4 years after filing the return.
(withholding allowance certificate)

Form 941 – 4 years after filing the return.
(employer’s quarterly tax return)

Form 1023 – permanently.
(application for recognition of exemption)

Form 1099-MISC – 4 years after filing the return.
(miscellaneous income)

Form 5578 – 4 years after filing the return.

(annual certification of racial nondiscrimination)
(used by private schools if church-affiliated to certify compliance with federal nondiscrimination requirements (due by the 15th day of the 5th month following the close of each fiscal year))

Block B4

Ministerial Transition Issues

Pastoral Transitions

“Organizing in the Interim”

For many congregations when the pastor leaves, new duties will fall to people who have little experience. Below are examples of questions that must be answered and responsibilities that must be filled:

1. The congregation must know who is governing the church and who is in charge of that board or committee.
2. The congregation wants to know who is on the pulpit committee and why they were chosen. Many pulpit committees are required by their bylaws to be ratified by the congregation. It is important to go by the church’s bylaws at this time. **Bylaw changes and revisions should not be done in the interim. The new pastor should be a part of the bylaw revisions or replacement.**
3. Who will plan worship?
4. Where can congregants go for spiritual counsel?
5. Who will handle specific ministry responsibilities? (Marriage, funerals, hospital and shut-in calling, emergencies, etc.)

Committee chairs should be asked to maintain regular meeting schedules, and as much as possible, congregational life should go on as normal. An Interim Pastor should be sought and brought on within a month of the former pastor’s departure.

“The Task and Role of the Interim”

The interim pastor is a specialist as differentiated from a supply pastor. The interim is one who comes and picks up a number of the pastoral responsibilities while the pulpit committee proceeds with the search for the permanent pastor.

There are a number of important roles that the interim can play in the life of the congregation:

- He/she helps the people in the congregation deal with their grief. Pastoral change creates in many a strong sense of loss that should be addressed. The interim should be conversant with the stages of grief, so as symptoms arise, they are recognized and addressed appropriately.
- The interim can help the congregation learn how to better say hello and goodbye. Welcoming and loving the next pastor is critical. There will be some who, because of their attachment to the last pastor, will choose not to allow themselves to get close to a pastor again because they do not want to get hurt. This attitude will stunt their growth and their ability to trust the new leader. Understanding that the work of the church is not about the pastor but the Kingdom and God's call will enable the congregation to move on when a beloved pastor is gone.
- There are often turf-wars that spring up when the pastor leaves. The interim is key in keeping unity and mending fences that were broken or torn down either during or after the last pastorate.
- Interim pastors can be a bit of a snoop. There are sometimes funds, equipment, or materials that the last pastor knew about that he/she did not communicate about with anyone else. Finding needed materials will sometimes fall to the interim.
- The interim will be called upon to carry pastoral responsibilities. Such things as visiting the sick, caring for the dying, committee appointments and meetings, managing worship, supporting congregational programming, oversight of Christian education, etc. **The interim should not sponsor major new congregational programs or directions.** The establishing and leading of such programs is for the new Pastor.³⁴³

Interim pastors should stay out of the work of the search committee. If the committee needs direction, a pastoral advisor from a nearby Church of God is a good idea. The interim can make sure that the search committee is regularly communicating with the congregation. Regular reports and updates on the committee's progress will ease some tension in the congregation's life.

Interim work rarely lasts longer than 12-18 months. It is a good idea to evaluate every 3 to 6 months how the leaders and the interim feel about their relationship, with an opportunity for either party to bow out gracefully. Realize that job anxiety usually begins to rise in the interim; the closer the congregation gets to calling their new pastor. Communication with the interim can help this anxiety and also warn the interim that they should begin looking for their next assignment.

¹ Loren B. Mead, Critical Moment of Ministry: A Change of Pastors, (The Alban Institute, Washington D.C. 1999), pp.60-61.

One of the cardinal rules for interims from the beginning is that the interim will under no conditions be the candidate for the permanent position. If an interim is unwilling to accept this condition, then they should not be used as an interim.

It is amazing how quickly a bond is made between pastor and people, and this happens with the interim. The interim must stand strong on this principle. It is common for the congregation to be anxious, as the time gets longer in waiting for God's direction. The interim's job is to keep a cool head and reassure the congregation that the process of searching will come to a positive end. We certainly should ask why this principle is so important?

1. By virtue of working within the church, the interim pastor gains an unfair advantage over other candidates who will not have the same visibility. The goal of the search committee is to find the individual who best fits the profile of the church. They might be tempted to adapt the profile to match the style of the interim pastor.
2. The interim pastor has a unique opportunity to lead in ways that might not be received from a permanent pastor. Interim pastors often observe relationships and attitudes that are not conducive to church health. Because they are in a temporary position they can address issues without fear of losing their job...they know they are losing their job.
3. An interim pastor will always have those who are for him/her and those who are against him/her. Whether or not he/she is chosen as the new pastor, some in the church will be upset, resulting in unnecessary conflict. Also, if he/she is not chosen, his/her feeling about not being selected could hinder the remainder of his/her ministry until the new pastor arrives.³⁴⁴

An interim is of critical importance in churches that have experienced conflict with their last pastor. The interim with the help of the state or regional office can help the church to heal and begin to look to its future. An interim is also very important to the congregation that is seeking a new pastor after a long tenured pastor. To hire a new pastor too soon is to make the new pastor as unintentional interim. He/she will be compared to the last pastor and usually they do not measure up. Finally, a congregation with multiple staff persons needs an interim to help administrate the "team." This also protects the associate pastors from becoming the "dumping ground" for duties that the pastor would normally carry. An interim can also protect the associate who might wish to be pastor, by allowing that individual the opportunity to candidate on equal footing with others pursuing the position.

³⁴⁴ Joseph L. Umidi, Confirming the Pastoral Call: A Guide to Matching Candidates and Congregations, (Kregel, Grand Rapids, MI., 2000), p.30.

The interim is also called to help the congregation to celebrate victories during the search process and when it is concluded. “The final task of the interim pastor is to ‘dance at the wedding’ when the new pastor is installed.”³⁴⁵ To help the church celebrate their new leader is one of the high moments in the ministry of the interim.

There are a growing number of “Intentional Interims” around the country. These are persons who have studied and prepared to do interim work. Churches can check with their state or district to see if they have any professionally trained interims. An intentional interim can particularly help churches that have been through some specific trauma. Training for intentional interims can be received through the Interim Ministry Network described in the attached bibliography.

“Congregational Survey”

The congregational survey is an important tool in the pastoral search process. The survey helps the pulpit committee in several ways.

1. The congregational survey gives the members of the congregation an opportunity to express their opinion about the church and what they would like in a new pastor.
2. The congregational survey provides a way for the congregation at large to be heard.
3. The congregational survey helps the pulpit committee to better understand the congregation.
4. The congregational survey helps the pulpit committee evaluate candidates in light of congregational needs and desires.
5. The congregational survey helps the Area Administrator “weed out” candidates that would not fit a specific congregation.

The congregational survey is a tool that must be evaluated with a critical eye. A congregation may well know what it wants but not be aware of what it needs. Therefore, the survey should have questions that pertain to the needs of the congregation as well as the wants.

The congregational survey should cover several critical areas of church life:

1. Opinions on the congregation’s strengths and weaknesses.
2. Information on the one filling out the survey
 - a. Age
 - b. Occupation

³⁴⁵ Mead, p. 63.

- c. Length of time in the church
 - d. Yearly income
 - e. Gender and Marital Status
 - f. Education
 - g. Involvement in the life of the church
 - h. Distance to church from where they live
3. Expectations of a pastor
 4. Hopes for the future of the church
 5. Preferable age and experience of the next pastor

The pulpit committee would be wise to put together information that would help a candidate understand their congregation.

1. A list of the church's core values.
2. A brief history of the church including pastoral tenures, splits or major disruptions, greatest victories, etc.
3. Factors that contributed to the growth or decline of the congregation.
4. Demographic composition of the congregation and community.
5. Attendance trends in the last decade.
6. Leadership styles of the last 2 or 3 pastors and the style with which the congregation is most comfortable.

Sample Congregational Survey

A. Personal Demographics

1. Age (circle): 18 or under 19-31 32-50 51-71 over 71
2. Years you have attended this church (circle): 2 years or less 3-5 years
6-10 years 11-20 years over 20 years
3. Years you have been a Christian (circle): 2 years or less 3-5 years
6-19 years 11-20 years over 20 years
4. Years you have had a church job or responsibility (circle): 2 years or less
3-5 years 6-10 years 11-20 years over 20 years
5. You are (circle): Single Married
6. You are (circle): Male Female
7. What best describes your occupation? (circle): agriculture business
clerical construction education
food service government health care
homemaker manufacturing professional
retired student
8. Highest level of education you have achieved. (circle):
grade school high school some college
college graduate masters doctorate

B. Community Perceptions

(5-excellent; 4-good; 3-fair; 2-disappointing; 1-poor)

1. _____ Do visitors perceive the church as friendly?
2. _____ How would you rate the church's reputation in the community?
3. _____ How would you rate the church's involvement in the community?
4. _____ How would the poor and disadvantaged be welcomed here?

C. Rating of Ministries

(5-excellent; 4-good; 3-fair; 2-disappointing; 1-poor)

1. _____ How would you rate the churches evangelistic ministries?
2. _____ How would you rate the development of leaders?

3. _____ How would you rate the Men's ministry?
4. _____ How would you rate the Women's ministry?
5. _____ How would you rate the Children's ministry?
6. _____ How would you rate the Youth ministry?
7. _____ How would you rate the Single's ministry?
8. _____ How would you rate the Mission's ministry?
9. _____ How would you rate the Small Group ministry?
10. _____ How would you rate the Christian Education ministry?
11. _____ How would you rate the Prayer ministry?
12. _____ How would you rate your ministry to the poor and disadvantaged?

D. Ministry preferences and needs.

(4-very important; 3-important; 2-somewhat important; 1-unimportant)

1. _____ Focus of corporate worship on saving the lost.
2. _____ Focus of corporate worship on worship and praise.
3. _____ Focus of corporate worship on biblical teaching.
4. _____ Evangelism happens on Sunday.
5. _____ Evangelism happens through daily relationships.
6. _____ Evangelism happens through planned visitation program.
7. _____ Sunday School.
8. _____ Sunday Evening Services.
9. _____ Mid week services.
10. _____ Small groups.
11. _____ Ministries for Marriage and Families.
12. _____ Ministry outreach to our local community.

13. _____ Ministry outreach through national and world missions.
14. _____ Teaching the Bible.
15. _____ Developing mature believers.
16. _____ Social concerns.

E. Church Governance

(4-very important; 3-important; 2-somewhat important; 1-unimportant)

1. _____ The church should be led by elders.
2. _____ The church must have strong pastoral leadership.
3. _____ The church should be congregationally governed.
4. _____ How the congregation is presently governed is _____.

F. Mission and Vision

(4-strongly agree; 3-agree; 2-somewhat important; 1-unimportant)

1. _____ The church exists to reach the lost for Christ.
2. _____ The church exists to disciple believers.
3. _____ The church exists to meet the needs of the community.
4. _____ The church exists to proclaim the message of unity.
5. _____ The church exists to proclaim the message of holiness.
6. _____ The primary focus of the church should be lost people.
7. _____ The primary focus of the church should be its members.
8. _____ The primary focus of the church should be social concerns.
9. _____ The primary ministry of the church should be evangelism.
10. _____ The primary ministry of the church should be education.
11. _____ The primary ministry of the church should be discipleship.
12. _____ The primary ministry of the church should be helping the needy.

13. _____ The church should grow larger and larger.
14. _____ The church should be active in planting another congregation.
15. _____ The church should actively support foreign missions.
16. _____ The church should actively support national missions.
17. _____ The church should actively support state/regional cooperative ministries.
18. _____ The church should actively support local cooperative ministries.

G. Pastoral Leadership Style (circle your preference)

1. **Autocratic.** Leader makes the decisions and announces it.
2. **Collaborative.** Leader defines the goal, suggests guidelines, and seeks input and fine-tuning from group; with group making the decision.
3. **Democratic.** Group encouraged to make decisions within agreed upon guidelines with minimum of leaders influence.
4. **Directive.** Leader presents idea or goal and suggest tentative decision; group asked to make suggestions to improve acceptability; group affirms leader's decision.
5. **Laissez-faire.** Group does whatever it wants to – no policies or procedures agreed upon; everyone left alone; emphasis upon volunteerism.
6. **Persuasive.** Leader presents ideas and goals and invites questions to establish understanding with group; leader then makes necessary modifications and “sells” the idea to the group for approval.

H. What are this congregation's greatest strengths ...

I. What are this congregation's greatest weaknesses ...

J. Pastor Profile. (circle your preference)

1. Age: 20-30 years old 30-40 years old 40-50 years old 50 or older

2. Gender: Male Female Either

3. Education: High School College Graduate School

4. Experience: None 1-5 years 5-15 years 15 or more

5. Marital: Married Single Does not matter

“The Call”

When a pastor has finished the candidating process and the church has voted to call the pastor, the next phase of pastoral transitions begins. Usually, a pastor has left the community before the congregational vote takes place. Therefore, the pastor should receive a phone call immediately following the vote to tell him/her the results.

Very often the pastoral candidate will want some time to reflect on the strength of the vote and to pray before giving their response to the call (Only if the vote was to call the candidate). A note here to pastoral candidates ... if you know that you will not accept a call from the church, tell the pulpit committee chair before a vote is taken. This procedure will save the congregation from a major letdown.

“The Preparation”

When the candidate accepts the call, a number of issues the must be determined.

1. When will the pastor begin his/her service?
2. How will moving arrangements be dealt with? (The church should bear the financial responsibility.)
3. A plan to inform the entire church and community about the new pastor's coming. Doing good publicity is important; it will generate enthusiasm in the congregation and in the community. People who are searching for a church home often look to a church with a new pastor. One of the significant ways to introduce the pastor to the community is through an installation service. The Installation service is discussed below.
4. Putting together a list of significant dates in the church for the new pastor, i.e. business meeting; school start, end, and vacation dates, ministerial meeting times, board and committee meeting schedules, and other significant events that the pastor should put into his/her calendar.
5. The pulpit committee should meet to decide how to help acclimate the new pastor to the new community. Maps, meals, introductions to community leaders, any ideas that will help the pastor and his/her family quickly assimilate into the church and community at large.
6. If the church has a parsonage, it would be good to allow the pastoral family to decorate the parsonage themselves. If the pastor must purchase a home, getting them in touch with a good realtor and coaching them on good areas to live or avoid can be very helpful.

The pastor and church will experience a positive start when the pastoral family is welcomed warmly and actively assimilated into the community.

“The Installation”

The Installation service provides a wonderful opportunity to introduce your new pastor to the community. The service should be well advertised. Personal invitations should be sent to dignitaries of the community (Mayor, Town Council, County Commissioners, etc.). Invitations should also be sent to all pastors in the area. Be sure to inform and invite other Church of God congregations in the area.

The planning of the Installation service is a joint effort between the pastor, the search committee, and the district office. Most state or regional offices have sample worship folders and guidelines for installation. To obtain samples contact your state or regional office. Often the new pastor has a person who is special to him/her, and would like them to participate. The church should underwrite the cost of bringing that person to the installation. The state or regional office likes to have someone there to welcome the new pastor, be sure to speak with someone in that office early on to be sure that a specific date is available.

The installation is a gathering of pastors, churches, and dignitaries. It is important to plan this service at a time that all can attend. Sunday afternoon is the most regularly used time. In planning a time, be sure to give travel time for those who are a significant distance away. Typically, churches will also plan a light snack afterwards, giving the pastor an opportunity to meet many of the guests for the first time.

Installation is often the last duty of the pulpit committee. In some churches the pulpit committee stays together for another year meeting with the pastor on a regular basis to make sure that the transition is smooth, and any difficulties are ironed out. A few churches choose to make the pulpit committee the pastor-parish committee for the tenure of the pastor. In each case, the church' bylaws and the church's governing board must be consulted.

Establishing a Pastoral Compensation Strategy

Topics:

- The Biblical basis of adequate compensation for pastoral staff
- Establishing a base salary for the Senior Pastor
- Supplementing the base salary
- Benefits
- Reimbursements

Purpose: The purpose of this document is to provide a guideline for the local church with strategies to systematically develop a pastoral compensation plan

that honors God, provides for the adequate compensation of the pastoral staff and under girds the church and its ministries.

A. The Biblical Basis of Adequate Compensation for Pastoral Staff

Scripture provides clear guidelines into the way in which pastoral staff should be compensated. Those who answer the call to the ministry take on significant responsibilities. Surveys indicate that most pastors, even on multiple staff, are involved in ministry responsibilities 60-80 hours per week. The hours are generally long each day and extend into the evenings on at least two to three evenings per week. A pastor is on call at any time day or night for emergencies and intervening in crises. A pastor is required to be a biblical scholar, counselor, teacher, leader, vision caster for the church, chief cook and bottle washer and many other functions.

In 1 Timothy 5:17-18, Paul writes, “The elders who direct the affairs of the church well are worthy of double honor, especially those whose work is preaching and teaching. For the Scripture says, ‘Do not muzzle the ox while it is treading out the grain,’ and ‘the worker deserves his wages.’”

In Galatians 6:6-7, Paul writes, “Anyone who receives instruction in the Word must share all good things with his instructor. Do not be deceived: God cannot be mocked. A man reaps what he sows.”

1 Thessalonians 5:12-13 say, “Now we ask you, brothers, to respect those who work hard among you, who are over you in the Lord, and who admonish you. Hold them in the highest regard in love because of their work.”

Dr. Garry McIntosh, in his book, “How to Develop a Pastoral Compensation Plan,” points out that these Scriptures put a significant responsibility on the church to develop an adequate compensation plan to provide for the pastors of the church. The church can expect to be effected in either a positive or negative way by the way that they “sow” in compensating the pastoral staff.

B. Establishing a Base Salary for the Senior Pastor

There are several methods that can be used to establish a “base salary” for the Senior Pastor. The base salary consists of the basic salary without supplemental or benefit additions plus housing costs. Below is a short description of each method:

- 1. Comparable Worth** – Contact the local school district and get a report of the salary and benefits package for the principal of a Senior High School. This position most closely approximates, in a school system, what the responsibilities of a Senior Pastor would be. Usually the package that a principal is provided with would also reflect the local economy.

2. Position and Experience – primarily used in multiple staff churches. People with the greatest responsibilities and in the position the longest are paid the higher amount.

3. Church Ruling Board Method – David Pollock writes in his book, “Business Management in the Local Church” that one method to use in establishing a reasonable salary package for the Senior Pastor is to obtain the salary and benefits of each person on the senior board of the church, total those figures and divide by the number of people on the board and use the resulting figures to compensate the Senior Pastor.

4. Keyed to Housing Costs – by conducting a demographic study of your community, you can easily obtain what the average home mortgage payment is in your community. The Association of Realtors use the following assumption in determining the affordability of housing: the monthly payment for principal, interest, taxes, and insurance (PITI) can be no more than 30% of income. Using this figure, a reasonable base salary would be approximately 3 times the average PITI payment in a community. If the average monthly PITI payment is \$1,500, then the monthly base salary of the Senior Pastor would be 3 x \$15,00 or \$4,500 per month or \$54,000 per year.

C. Supplementing the Base Salary

Once you’ve established a base salary for the Senior Pastor, there are several supplemental considerations.

1. Length of service (experience) – as a pastor serves in the local church for a period of time, that experience should be rewarded in an appropriate way. An example of a suggested scale from Dr. McIntosh is listed below:

Years in ministry	Supplement	Years in ministry	Supplement
1	1%	10	15%
2	2%	11	17%
3	3%	12	19%
4	4%	13	21%
5	5%	14	23%
6	7%	15	25%
7	9%		

2. Level of Education – as the pastor(s) continue his/her professional education, the church will benefit from the increased knowledge. A Master’s degree would increase the base by 3%, a special degree in counseling or

other areas would increase the base by 6% and a Doctorate would increase the base by 9%.

3. Continuing Education – in order to encourage a pastor to continue his/her education, a certain amount should be set aside for the purpose of helping to cover the cost of continuing education. This could be 1% or 2% of the base salary. That would be paid as it is needed. It should be a separate line item in the church budget, not included in salary.

4. Social Security offset – pastors are considered to be self-employed by the IRS and as such, they are required to pay the full amount of the SE tax (Social Security tax). People who are not self-employed (which is the vast majority) pay half of the requirement and their employer pays the other half. Many churches provide an additional pay equal to 7.65% (half of SE tax) of the pastor's salary to help "offset" the additional debt and put the pastors on an equal playing field as the vast majority of employed people. This is taxable income to the pastor.

5. Housing Allowance – the amount of the housing allowance is actually included in the base salary figure but there are several tax considerations in separating this amount out of gross salary for reporting purposes. Federal tax law permits a pastor who owns or rents a home to exclude from gross income that portion of income that is designated in advance as a "housing allowance" by the church or governing church board. That housing allowance must be documented in a letter for record by the governing board by the end of the previous calendar year. The amount designated as housing allowance per month can include the following in the total: rent, monthly mortgage payments, property taxes, insurance, utilities, furnishings, repairs and maintenance.

6. Cost of Living Adjustment – each month the U.S. Department of Labor Statistics issues a Consumer Price Index of CPI for the United States as well as regionally for the purpose of showing how the cost of living has either increased or decreased. By taking the price changes in housing, utilities and various key consumer goods in the last twelve months, if a CPI of 2% is determined, this means it costs 2% more now to obtain the same goods and services than a year ago. Many employers and churches adjust salaries accordingly.

D. Benefits (see Appendix for samples of various benefits)

1. Paid Sick Leave – most churches establish a certain number of days per year for sick leave. Ten days per year would be one possibility. Most pastors work enough hours to more than compensate for any days off for sickness. It is recommended that carry over of sick days not used from one year to the next be limited to one year's accumulation.

2. Paid Holidays – examples of holidays would be July 4th, Labor Day, Thanksgiving Day, Christmas and New Year's Day. Many times pastors work on holidays and it is appropriate to allow them days off in lieu of the actual holiday date that they worked. It is recommended that unused paid holidays not be carried over. Comp (compensation) days can be used if the pastor works on a holiday. The comp day should be used within one month of the holiday.

3. Paid Vacations – generally this is negotiated by the Pastoral Search Committee or other church board in the hiring process but a reasonable starting point would be 10 vacation days or two weeks in the first year and increasing to 20 days or four weeks after ten years of service. For a ten day per year paid vacation rate, use 6.67 hours per month accumulation rate. It is recommended that you establish a limit on carry over of vacations by establishing a bank of days that does not exceed one and a half years accumulation of vacation days at any time.

4. Additional Paid Days – paid time for working with ministerial organizations, jury duty, military training, bereavement, and advance education are all items to be considered. Establish a limit of paid days to limit church liability.

5. Paid Insurance – many churches provide health and life insurance for pastoral staff. A significant number of churches provide some kind of Life Insurance. Health insurance can be provided to the pastor(s) and their families covered 100% by the church, 100% of the pastor(s) and a portion of the families or a portion of the pastor(s) and their families. Many churches are also providing disability insurance for the pastor(s).

6. Retirement – some kind of retirement fund or provision should be provided. Additional help can be found by visiting the web site of the Board of Pensions of the Church of God or contacting someone from that organization. The web address is www.cogpension.org. The phone number is 88-844-8983. Many helpful resources, articles and tax information are available 24 hours a day.

7. Additional Benefits – Included on the Board of Pension web site are up to date articles and methods of additional benefits that are possibilities for clergy. Such as; Sabbaticals, professional allowances, continuing education and health reimbursement arrangements.

E. Reimbursements

A church should have a line item in their budget for pastoral expenses and project what expenses would be incurred for each (each item must have a limit established):

1. **Auto** – ABC Manual Block C2 section F
2. **Meals** – meals purchased while on official church business
3. **Lodging** –rooms and lodging while on church business
4. **Gifts** – gifts purchased and given in the role of pastor of the church to members of the church or staff.
5. **Benevolent gifts** – money, food or lodging given by the pastors to those in need.
6. **Entertainment** – any time the pastors are required by church duties to entertain church guests at home or at restaurants should be reimbursable with appropriate documentation.
7. **Additional reimbursements** can be found in the books mentioned in the bibliography. The church can either issue a set amount of money to the pastors at the beginning of the year or periodically. They can also establish a line item in the budget and reimburse as they are requested to do with the receipts, purchase orders or other documentation. In either method, the pastors need to keep receipts and records to justify the reimbursements to the IRS and the church.

Calling Agreement

Once a church and pastor have reached an agreement on salary package, it should be put in writing. An example of a “calling agreement” follows:

Minister "Calling" Agreement

Note: This is not to be considered a contract in the usual sense. It is simply a written statement of ministerial compensation as agreed to by church leaders and ministers.

The _____ of _____ and
Board/Committee church

Reverend _____ have discussed the following salary, fringe benefits and reimbursables, and have reached understanding and agreement. This agreement is effective from _____, 20__ to _____, 20__.

I. **Salary** for the year will total \$_____. Of the salary \$_____ is to be considered Housing Allowance or Housing Maintenance Allowances. (The Board of Trustees will adopt the Housing Allowance resolution annually.) The salary will be paid _____.

II. Fringe Benefits:

A. **Pension Contribution:** The church will pay ____ % of total salary. Amount this year will be \$_____.

B. **Health Insurance:** The coverage is provided by _____ at an estimated cost of \$_____. The premium will be paid by the church to _____. If the cost rises during the year, the church will / will not pay the increase. (circle one)

C. **Social Security** (Self-employment Tax): This cost is to be paid by the minister. The church, however, in recognition that the minister pays 100% of this cost compared to secular workers who pay 50% of this cost, chooses to assist the minister with this obligation by contributing to him/her the following: \$_____.

D. **Vacation:** The schedule provides _____ vacation weeks for the current calendar/fiscal year. (circle one)

E. **Workman's Compensation Insurance.** This coverage is / is not provided. (circle one)

F. **Emergency Leave of Absence:** Emergency leave is defined as follows:

The minister will / will not receive normal salary. If not, explain: _____ (circle one)

G. **Ministry Leave of Absence:** The church will provide for the minister to be away for ____ days / weeks for preaching missions, conference leadership, etc. The minister will receive normal salary for ____ days / weeks while serving in this manner.

H. **Sick Leave:** The sick leave agreement concerns those illnesses and injuries which cause disability extending beyond ____ days. Salary will continue at full rate for ____ days. For the next ____ days, it will continue at ____ % of the total salary. The church does / does not provide disability insurance. If yes, the amount per week benefit is \$ _____. Benefits are payable after ____ days of disability. The benefits are to be paid to _____.

Minister/church
or death of the minister, the parsonage is to be vacated within ____ days / weeks.

I. **Life Insurance:** The church will pay \$ _____ per week/month to _____.

J. **Chaperone Leave of Absence:** The job-related activity is anticipated and appreciated by the church. This year the church acknowledges the following leave requests and approves.

- | | |
|---|---|
| 1. _____
Event Duration | 2. _____
Event Duration |
| 3. _____
Event Duration | 4. _____
Event Duration |
| 5. _____
Event Duration | 6. _____
Event Duration |

II. Reimbursables:

A. Auto Expense Allowance:

____ Government (IRS) allowable @ ____ cents per mile, OR
____ Other:

_____.

B. Publications and Library: The minister is free to invest \$ _____ in various magazines, tapes, books, etc. These items are to be the property of _____
Minister/church

C. Education Leave: The minister is free to schedule _____ as an approved continuing education experience. The time away is to be _____ days / weeks.
(circle one)

Tuition costs of \$ _____ are to be paid by _____
(minister/church). Travel costs of \$ _____ are to be paid by _____
(minister/church).

The salary will / will not continue. Effective 12/31/2001, the Tax Relief
(circle one)

Reconciliation Act of 2001 provides that graduate education costs (limited to \$5,250.00 annually) are not taxable income when provided to an employee in studies that enhance their work-related performance. Total undergraduate costs remain tax free.

III. Other:

A. Pulpit Supply: During approved absences, the church will / will not pay
(circle one) pulpit supply costs. When the minister is paid by both the church and the group receiving his/her service, the minister will / will not pay the pulpit
(circle one) supply costs.

B. Other items such as equipment, computer, etc.:

Acknowledged: _____ minutes dated _____,
Board/Committee
20____.

Dated: _____, 20__ Signed:

Minister

Chairperson

Pastoral Evaluations

The ABC's committee has not found an evaluation form that is really functional for churches. However, below are three samples of what may be used.

Pastoral Questionnaire

We invite your participation in a program to assist your pastor to strengthen his/her effectiveness in ministry. Please answer the questions candidly and objectively. The answers will be shared with the pastor only in a composite report so that confidentiality can be maintained.

A. Professional Abilities and Attitudes

Circle the appropriate number to indicate your assessment of your pastor.

	Poor	Fair	Avg.	Good	Excel
1. Fulfills responsibilities promptly and adequately	1	2	3	4	5
2. Shows satisfaction in his/her work	1	2	3	4	5
3. Protects confidentiality	1	2	3	4	5
4. Works effectively under pressure	1	2	3	4	5
5. Dresses, grooms appropriately	1	2	3	4	5
6. Manages time wisely	1	2	3	4	5

B. Personal Characteristics

Circle the number that best reflects your observation of the pastor's characteristics, with the numbers showing a scale from the description on the far left to that on the far right.

1. Weak spiritually Low commitment	1 2 3 4 5	Strong spiritually Deeply committed to Christ, His church and the ministry
2. Conventional Lacks originality, freshness	1 2 3 4 5	Imaginative; innovative Uses fresh, new methods; sees new possibilities
3. Insensitive to others Tactless, brusque, cool, distant	1 2 3 4 5	Warm; sensitive to others Empathetic, understands other's feelings; caring
4. Suspicious Distrusts others and their motives	1 2 3 4 5	Trustful Shows confidence in others

5. Indecisive Has difficulty making decisions	1 2 3 4 5	Decisive Makes decisions and carries them out promptly
6. Lacks enthusiasm Not inspiring; doesn't get excited	1 2 3 4 5	Enthusiastic Emotionally responsive; gets excited, inspiring
7. Divisive Polarizes people	1 2 3 4 5	Healer Brings people together
8. Lacks confidence Needs constant support	1 2 3 4 5	Secure; confident Doesn't need to depend on others constantly
9. Rigid Resists change; opinionated	1 2 3 4 5	Flexible Open to change; can compromise
10. Compromises values Accommodates values circumstances	1 2 3 4 5	Maintains high principles Has strong ethical convictions and lives by them
11. Ill at ease Appears nervous, tense	1 2 3 4 5	Poised, stable Well composed
12. Vague thinker Elusive, illogical	1 2 3 4 5	Clear thinker Logical, coherent
13. Inaccessible Isolates self; seems too busy to care	1 2 3 4 5	Accessible Open, approachable, eager to be helpful
14. Low credibility Manipulative, untrustworthy	1 2 3 4 5	High credibility Dependable, trustworthy
15. Disorganized Scattered, weak plans	1 2 3 4 5	Organized Well thought through plans and presentations

C. Pastor Skills

Circle the appropriate number.

	Poor	Fair	Avg.	Good	Excel
1. Soul-winning; outreach					
Conducts/supports public evangelistic meetings	1	2	3	4	5
Holds personal Bible studies	1	2	3	4	5
Involves and trains laypersons for soul-winning	1	2	3	4	5
Conducts baptismal classes for adults and children	1	2	3	4	5
Visits evangelistic interests at home	1	2	3	4	5

	1	2	3	4	5
	Poor	Fair	Avg.	Good	Excel
Supports health, family, community classes	1	2	3	4	5
2. Pastoral Care					
Makes pastoral visits	1	2	3	4	5
Does counseling	1	2	3	4	5
Gives leadership to youth	1	2	3	4	5
Relates to members with warmth and care	1	2	3	4	5
Handles conflict	1	2	3	4	5
3. Worship					
Preaches	1	2	3	4	5
Encourages worship atmosphere – warm, orderly, reverent, spirited, appropriate music	1	2	3	4	5
Conducts baptisms, communion services, child dedications, etc.	1	2	3	4	5
4. Leadership and administration					
Conducts board, committee meetings	1	2	3	4	5
Follows up board, and committee actions	1	2	3	4	5
Guides overall church program	1	2	3	4	5
Communicates church program to members	1	2	3	4	5
Inspires and motivates members	1	2	3	4	5
Recruits and trains leaders	1	2	3	4	5
Gives financial leadership	1	2	3	4	5

Summarize strengths:

Suggestions for improvements:

The above survey was prepared by the Potomac Conference.

Pastoral Survey

Name of Church _____

Name of Pastor _____

As a part of our self-improvement program, we are surveying church members to discover how we can improve our pastoral skills. Your name was drawn from a random sample to represent your congregation in helping your pastor better understand his/her strengths and weaknesses.

Please mark your agreement or disagreement with each of the ten statements. Comments are especially important when you disagree with the statement.

1. My pastor is a spiritual leader.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

2. My pastor organizes and administers the church effectively.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

3. My pastor meets the reasonable expectations of our congregation.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

4. My pastor's sermons are biblical, interesting, and helpful.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

5. My pastor visits regularly in members' homes to provide encouragement and spiritual growth.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

6. My pastor is helpful when I am sick or in a crisis.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

7. My pastor is accessible when I need him/her.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

8. My pastor is interested in our youth and encourages good programming for them.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

9. My pastor trains our officers and leaders for their church duties.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

10. My pastor supports evangelistic programs to help our church grow.

- Strongly disagree
- Disagree
- Unknown
- Agree
- Strongly agree

Comments:

The thing I like best about my pastor is:

If I were going to change anything about my pastor it would be:

The above survey was prepared by the Potomac Conference.

This last example of a pastor(s) evaluation has several parts and has been utilized by large, multi-staff churches.

Goal Review Form

Date: _____

Person being reviewed: _____ Position: _____

Supervisor completing review: _____ Position: _____

Total # of Goals: _____ # of Goals on Schedule: _____ # Goals behind: _____

1. What has been the most productive project or goal?

2. What goals need to be reworked?

3. What areas of ministry need more definition and development?

4. What has been learned in this last season of ministry?

5. What, if any, changes will you implement in this next season?

6. What do you need from me to help you accomplish your goals?

Signatures:

Staff: _____

Supervisor: _____

Performance Review Process

Performance Reviews help guarantee the most objective appraisal of an employee's performance. The following process is to be used with all employees and key volunteers who oversee a significant ministry area. The goal is to regularly assess an individual's skills, workload, compensation, and any performance accomplishments, and reduction of performance gaps.

Schedule the Review: The supervisory person should schedule the review in advance, suggested minimum of one month.

Determine the Type of Review: The supervisory person should determine the type of review to be conducted, i.e. primary review (supervisor to individual), a 180° (supervisor and peers) or a 360° review (180° plus ministry recipients).

Give out Review Material Based on Review Type: Give any review material to the individual being reviewed and any peers or sources (recipient) participating in the review process.

Collect Return Forms: If any forms need to be returned to you prior to the review, specify the due date.

Clarify degree of review and outcome expectations: Review material prior to the review and determine if there are any expected outcomes connected to this review, i.e. promotion, expanded responsibilities, decreased responsibilities, raises, or reprimands. Is it a primary review (supervisor to individual), a 180° (supervisor and peers) or a 360° review (180° plus ministry recipients). Review previously completed reviews to see if a follow-up to a "performance gap" is necessary.

Fill out Performance Review: With all of your forms gathered and reviewed, fill out either the performance review (once a year or at a special occasion), or the goal review (2-3 yearly). The last page of the performance review has a summary section for each portion of the 360°.

Meet with Person Being Reviewed: Meet with the staff or volunteer being reviewed. Let the staff person express their feelings and perceptions of their performance, and follow-up with your assessment of what has gone well (celebrate) and what needs improvement. Discuss all areas being considered making additional notes where needed follow-up or celebration is important.

Record Score and Make Recommendations: Make and record your assessment of the person being reviewed based on the 1-5 scale. Show the possible score and the score they received. Make a recommendation for yearly reviews, either a bonus and/or a raise.

Follow-up Paperwork: Make 4 copies of the completed review; give one to the staff; one to any department head over your position; keep a copy for your file; and submit the original to the Office Administrator with any recommendations for bonus, raises, or job changes.

Follow-up Personal: Touch base with the staff being reviewed to encourage and give on-going supervision and feedback.

Overview of Definitions

1. Goal Evaluation: Done by Council and Supervising pastor or leader.
 - Use goal review for the evaluation process.
 - Goal review filled out by supervisor.
2. Team Evaluation: Done by coworkers and supervisor.
 - Are there any “concern cards” in the employee file, and do they reflect any unhealthy trends? Evaluated by supervisor.
 - Staffs that work with the person under review will be asked to respond in writing to the following questions with a numerical evaluation and a comment.
3. Recipient Evaluation: Done by a sampling of the group being ministered to.
4. Performance Evaluation: Done by supervisor with copies going to the individual being reviewed, their personnel file and to any elder or leadership council that are intended to review such material.
5. Staff assessment review: Done by individual being reviewed. Each staff person will be given three reviews in a year. The goal evaluation and the team evaluation will be conducted at all three reviews. The recipient, performance, and staff assessment evaluations will accompany the third and final review of the year.

Recipient Questions

1= poor
5= excellent

Due Date: _____

1. Servant Leadership: _____ displays a servant kind of leadership that makes those volunteering feel supported. 1 2 3 4 5
Comments:

2. Shepherding: _____ consistently displays caring behavior towards those around him/her through good listening and supportive words and actions. 1 2 3 4 5
Comments:

3. Communication: _____ gives clear direction and instruction to the volunteers he/she leads. 1 2 3 4 5
Comments:

4. Stimulates growth: _____ leads in such a way that those being ministered to are challenged and inspired to live a more consistent spiritual walk. 1 2 3 4 5
Comments:

5. Casts Vision: _____ keeps the church's mission and vision in the minds of those being ministered to. 1 2 3 4 5
Comments:

6. Effectiveness: _____'s ministry produces the fruitfulness that represents effective ministry. 1 2 3 4 5
Comments:

Reviewed by: _____

Date: _____

Note: Use back of page if needed.

Team Questions

1= poor
5= excellent

Due Date: _____

1. Integrity: Does _____ conduct him/herself in a manner that is consistent to our values and standards of leadership? 1 2 3 4 5

Comments:

2. Conflict Management: _____ handles conflict quickly, clearly and with a gracious attitude. 1 2 3 4 5

Comments:

3. Shepherding: _____ consistently displays caring behavior towards those around him/her through good listening and supportive words and actions. 1 2 3 4 5

Comments:

4. Communication: _____ consistently gives clear direction and instruction in oral and written form. 1 2 3 4 5

Comments:

5. Performance: _____ follows through on his/her responsibilities with a clear commitment to quality and other's time. 1 2 3 4 5

Comments:

6. Team value: _____ carries his/her share of the weight on our team. 1 2 3 4 5

Comments:

Reviewed by: _____

Date: _____

Note: Use back of page if needed.

Performance Review

Employee: _____

Supervisor: _____

Date: _____

Employee Comments (self evaluation)

Answer the following three (3) questions in the space provided below or on the back of this form and exchange with the supervisor conducting the review. If additional pages are used, please include your name and the date on each.

1. What were the most positive aspects of my performance during the last 12 months?

2. What were the weakest aspects of my performance during the last 12 months?

3. Which steps can I take which will best improve my performance in the next 12 months?

Employee Comments (cont.)

1. What did your supervisor do in the last twelve months that was the most helpful in improving your job performance?

2. What did your supervisor do that hindered your job performance?

3. What could your supervisor do in the next twelve months to improve your job performance?

Performance Review

Employee: _____

Supervisor: _____

Date: _____

Supervisor Comments (Employee Performance)

Answer the following three (3) questions in the space provided below or on the back of this form and exchange with the employee. If additional pages are used, please provide the date and the employee's name on each.

1. What were the most positive aspects of the employee's performance during the last 12 months?

2. What were the weakest aspects of the employee's performance during the last 12 months?

3. How can this employee best improve his/her performance in the next 12 months?

Supervisor Comments (cont.)

List employee's major areas of responsibilities and the style of supervision provided.

Major Areas of Responsibility	Directed	Coached	Supported	Delegated

Please give an overall ranking to the employee's job performance.

- Unacceptable – Job performance must change dramatically in order to retain position.
- Below expectations – Needs significant improvements in one or more areas.
- Expectations met – Accomplishing job for which they were hired.
- Exceeds expectations – Quality of effort and results consistently above average.
- Far exceeds expectations – Skill and effort of employee would make them extremely difficult to replace.

It is the policy of _____ Church that performance reviews take place at least annually. The supervisor has the responsibility to communicate to his/her employees what he/she expects, and the employee has the right to know what his/her supervisor is thinking relative to on-the-job performance.

The employee and his/her supervisor are to answer the questions on the attached forms one week prior to the review and then exchange their written comments. The supervisor should encourage an open, two-way discussion. A complete set of these comments should be kept by each party and then signed by both the employee and supervisor and placed in the employee's personnel file.

A performance review for _____ was conducted on
Name

Date

signature – Employee

date

signature – Supervisor

date

Sabbaticals

Churches should have policies in place that allow for pastoral sabbaticals. Richard Shockey has written the following document to help churches prepare for such events.

When a minister serves a congregation for six years or longer, it is time for a sabbatical. An extended time away for the purpose of study, enrichment, vision casting, travel, rest, prayer and/or visiting different cultures provides the needed respite that is pivotal in helping assure continued healthy leadership. Congregations may be strengthened by offering a pastor or an associate a sabbatical – time to briefly step away from the cyclical, unending demands of daily parish life.

A sabbatical is not a vacation. Rather it is a time for intentional exploration and reflection, for drinking anew from God’s life-giving waters, and for regaining the enthusiasm and creativity for ministry.

Genesis and Leviticus speak of “Sabbath time” in terms of days, years, and land usage. Since the Sabbath is recognized as a distinctive time in creation – as a gift of rest for both renewal and hope – Scripture infers that regular, periodic rejuvenation is vital in all areas of life. The Old Testament writers directed a time period for the soil to remain untilled so that it could replenish itself. Just like the soil, humans need a season to lie fallow for revitalization of the body, mind, and soul. Dave Ellingson declared, “We require a time to receive rather than give, to get input rather than give output, to carefully nurture and cultivate our lives so that the soul of our spirits might be rid of weeds and have an opportunity to receive nourishment (Ellingson, page 2).”

Pastors, associates, and ministry leaders are called to the work of ministry as servants of the church. Because of the spiritual dimension of leadership and the emotional energy required by the task, ministers often get into a “give and give and give, but never receive” treadmill. When there is little relief from the constant pressure of Sunday morning deadlines, committee meetings, counseling sessions, visitation schedules, community commitments, and a host of other day-to-day encounters, a leader might scream, “Stop the world. I want to get off!” Greg Asimakoupoulos discovered in his weariness, “Much of my depression was actually my body’s muffled cry for rest (Asimakoupoulos, page 102).”

A sabbatical allows the minister to get off the treadmill in exchange for a battery recharge of vision and hope. It creates an opportunity for the minister to:

- recapture a sense of vision,
- be nurtured in faith and skills,
- become introspective,
- rekindle spiritual passion,
- refocus priorities,
- review the ministerial journey, and

- reflect on the call of God for life and ministry.

A sabbatical feeds the body, mind, and soul resulting in renewed, refreshed, and revitalized energy to function as a shepherd and servant leader. Several clergy persons have expressed “ah-ha” moments as a result of the sabbatical journey. Often, the sabbatical extends the pastor’s tenure with a congregation. When the minister returns with a renewed vision, the congregation often opens a new, exciting chapter in congregational ministry.

A congregation would be well advised to establish a sabbatical policy that determines at what point in the minister’s tenure a sabbatical may occur, the length of time that may be taken, and a process for evaluating the experience. For example, one church established a policy providing for a three-month sabbatical after the minister had completed six years of service to the congregation (associates were included in the same sabbatical policy). Following the sabbatical, the minister was asked to report on the experience. In addition, a questionnaire was developed for congregational evaluation of church life while the pastor or associate was gone. The survey helped the leadership prepare for the next sabbatical leave.

Issues centering on finances often surface when the subject of ministerial sabbaticals is raised. In many cases, congregations may declare, “We can’t afford it.” This kind of reaction is more likely if the church is experiencing a budget crisis at the time of a sabbatical leave request or has failed to make adequate preparations for the funding of sabbaticals.

Careful planning, however, can assure a sabbatical’s fiscal feasibility. Assuming a sabbatical policy of two to three months is granted after six years of ministry, a simple formula may be written into the yearly church budget enabling an amount, equal to one to four weeks of a minister’s salary package, to be set aside for sabbatical reserve. After six years, the accumulated amount would be available from the reserve fund. The same formula would continue during the sabbatical year, providing for ministerial continuing education expenses and travel costs, as well as monies to pay interim expenses. If invested, the reserve funds could collect interest and further enhance an excellent resource pool for sabbatical expenses.

A sabbatical allows the minister to be away from the congregation for an extended time period. In all cases, there needs to be a backup plan for crises moments. An interim pastor or a minister-on-call should be available to provide pastoral care and leadership during emergency experiences. The lay leaders and/or pastoral staff need to clarify lines of authority, logistical issues, visitation patterns, newcomer follow-up, and a host of other issues during the minister’s absence.

It is best to establish a single, key contact person who is designated to interact with the minister during the sabbatical. This contact person may call the minister on an “as necessary” basis. To site a specific example of such a necessity, one pastor was contacted when the church was struck by lightning and burned to the ground.

Except in dire emergencies, however, the minister should be free to experience the sabbatical unhindered by the routine of congregational life. When a plan is established, congregational life generally runs smoothly and efficiently during the sabbatical.

A minister should design a sabbatical that is unique to his/her personal requirements. When Jesus retreated, he went to a mountain or out on a boat. He designed his time away based on the inner needs in his life. Ministers should do the same.

Sabbaticals should be planned with the church's leadership. A written sabbatical plan gives objective focus and a common, agreed-upon understanding of the purpose and goals for the time away. Elements of the sabbatical should be strategically planned to give balanced time for personal relaxation and other components such as education, travel, etc. Ingredients of a sabbatical proposal include:

- What the minister desires to accomplish during the sabbatical.
- A description of the sabbatical plan, with timelines, and activities.
- Detailed congregational leadership assignments during the minister's absence.
- A specific declaration of expected budget expenses.
- The preparation of an evaluation form to assess church life during the sabbatical.

Preparation for a sabbatical requires time. It could take as long as one year to contemplate and finalize the plan and to position leadership for the absence of a minister. Intentional planning is absolutely necessary. The time investment is well worth it, however.

Vibrant, healthy congregations are led by vigorous, effective ministers. To retain the spark of dynamic leadership, a minister needs to step away from the intensity of daily ministry for breathing space. During a respite from leadership, pasturing, administrating, counseling, comforting, and fundraising, the minister may learn, grow, and renew his/her personal wellsprings of faith and commitment. Following a sabbatical, a minister often resumes congregational leadership with a fresh spirit and a renewed passion.

Getting ready for retirement

Rev. Leonard Snyder has prepared the following insights regarding retirement for the pastor.

Some years ago I heard Dr. Elton Trueblood say, "Life is lived in chapters and it is a wonderful thing to know what chapter you are in." He went on to say that everyone

should hurry up and retire so one could do the things he/she wanted to do without having to worry about earning a living.

As a minister looks back over the chapters of his/her life the book may be divided into many chapters. Some of those chapters might be entitled, Childhood, The Teen Years, When I Became a Christian, My Call to and Preparation for Ministry, My First Assignment, My Best Experience, The Parenting Chapter, or The Grandparenting Chapter. Perhaps in the pages, yet to be written in the book of your life is a chapter called RETIREMENT. The time immediately preceding that chapter could be called THE TRANSITION CHAPTER. What happens in the Retirement Chapter is going to be greatly affected by what happens in this chapter.

If you are the one facing retirement, interest in this subject may be prompted by the clock of life that keeps ticking. That clock seems to either trigger changes of which we and others may be aware. Perhaps at this point in your life you may be noticing changes that are not always so welcomed. It may be that you don't hit the golf ball as far as you need to, or working all day and attending meetings all evening leaves you a little more "done in" than before. An all-day shopping trip now calls for a little bounce back time. Having the kids home for Thanksgiving is still wonderful, but you notice that it is a lot more work than you remembered it being.

On the flip side, the chapters in the life of a church may be related to topics such as: When We Started, Our First Pastor, Our First Building Program, and many other chapters. Sometimes people think of the chapters in the life of a local congregation in terms of the pastors who were there. These chapters may be noted by a display of pictures hanging in some prominent place. For whatever reason, it is not likely that any of those people whose pictures appear in this gallery of photographs are in the local congregation except the present pastor.

Whether it is a principle or a fact of life, it is generally true that laypersons come to stay and pastors come to go. In most cases you hope pastors come to stay for a lifetime, unless God-inspired vocational or educational pursuits or a call to ministry leads them elsewhere. However, one cannot imagine or wish for a situation where all former pastors were still present and active in a local congregation.

Change is inevitable. Congregations that have maintained warm and cordial working relationships with their ministers are to be commended. Likewise, those who come to the time of retirement and are still faithfully involved in ministry are to be commended.

A Baptist survey that I heard about recently stated that only one out of every twenty who begin ministry will finish it. Another statistic showed that of every 10 who begin ministry, five will be out within five years. Only two of those will re-enter ministry.

Cleaning out some files, I came across a couple of letters from old friends of mine. One was a boyhood friend, who was with me the night I became a Christian. He was

one of the gifted young men in the Movement who had almost completed his studies for a PhD when family problems entered the scene. Finally there was a separation, a divorce, and then his defrocking. It is still one of my life's losses. I re-read the letter of his hurt and frustration and realized again that basically he had no one to blame but himself.

The other letter was from a friend in college. He, too, was gifted and became a recognized pastor, but a moral failure led to his giving up the ministry.

My point is not to suggest that there are many failures, but to call for a commendation of those who have been faithful. Hopefully the local congregation that has a pastor and spouse coming to the Retirement Chapter will find some appropriate way to honor ones who have been faithful. The question is not one of calculating so-called successes, nor whether they received 1, 3, or 5 talents from the Lord, but only that they have been faithful to use what God entrusted to them.

An interesting Old Testament Scripture recognizes the need for a chapter call Retirement.

(Num 8:24-26 NIV) "This applies to the Levites: Men twenty-five years old or more shall come to take part in the work at the Tent of Meeting, but at the age of fifty, they must retire from their regular service and work no longer. They may assist their brothers in performing their duties at the Tent of Meeting but they themselves must not do the work. This, then, is how you are to assign the responsibilities of the Levites."

While our situations are far removed from those described for the Levites, it does point out that even centuries ago, people recognized the need for a transition in the aging process of life.

1. Issues for the church to consider

1. When will your pastor retire? Related to that are questions like, "How old is your minister and does he/she plan to retire at 62, 65, or some future date? Probing the minister for the answer to these questions is probably not the best way to deal with this issue. Hopefully the minister will make that announcement at the appropriate time.

It needs to be understood by both parties that the will of God is the ultimate consideration any time a pastoral change is made. There may be other issues than the 65th birthday that determine when this should occur. In the larger picture, there could be health issues, or it could be that a working spouse could acquire lifetime health benefits for the family by working another year at his/her place of employment. This might be a major financial advantage and there is no set time in most situations when a person should retire.

Pressing a pastor for an answer to this question is usually not wise. However, a pastor must be aware of the fact that a congregation may have a legitimate interest in knowing at what point this transition will occur.

2. If a pastor has lived in a parsonage through his/her ministry, where will “home” be in retirement? Is there some way to help the pastor make a transition from a church-owned house to buying or renting for perhaps the first time since entering the ministry? While living in a parsonage has benefits, the downside of the story comes at retirement when a minister is faced with the reality that the parsonage is no longer available and there is no place else to live. A house that has been home for a number of years and that is now paid for, partly out of what was considered a minister’s pay package, is the property of the church, not the one who has lived in it. In a sense, the pastor either paid rent, by exchanging part of the pay package to live there, or made payments on the house by the same means.
3. Ministers come to serve and then move on. While there are exceptions, ministers need to accept the reality that ministry in a given place is for a SEASON.

It is also true that most congregations understand that ministers do not come to STAY, even as persons who serve in other fields of endeavor, i.e., persons in politics or business.

Congregational lay leaders are given assignments in the body of Christ for a specific period of time and then they, too, move to other areas of service. Persons who hold the same church job for overly-long periods of time may be well-intentioned but may also become problem persons in the life of the church.

We are ALL servants of the Most High God working in HIS church under the HOLY SPIRIT, following BIBLICAL EXAMPLES AND GUIDELINES.

2. Issues for the minister to consider

1. Where will you worship?
You worked and ministered in a place where in many ways you have had it YOUR way. That is probably an exaggeration, but hopefully you have not been in a situation where it never went like you thought the Lord would have it go. After retirement, what happens if it isn’t going the way you have led the church to go? There will be those who sense your possible frustration or hurt and that can lead to problems.

Generally, it is probably true that a retiring minister’s family would see no reason for them to move from the local congregation. It is a delicate matter and could be very disruptive. Therefore the retiring minister should not expect others to make the decision about where to live and worship.

How would it feel if the news came that the candidating minister, thought very highly by the Search Committee, would not consider coming because the former pastor would continue to worship in the local congregation? That sort of thing does happen. A rather large church recently had a difficult time securing a new pastor, partly because the pastor who had recently retired decided to stay in the congregation.

Another congregation has had years of conflict because the former minister wanted to come back to the congregation from which he retired. This is a lovely couple with family in the church who cannot understand why there should be any problem ... but there is.

Maybe in one out of ten situations, it is successful, but even then, it may take a lot of work to make it happen. It usually works better for the retired pastor than it does for the new pastor. What can the new pastor say, when confronted with “Do you want our former pastor to continue to worship here?” or “Do you mind if he does the funeral or wedding for a particular family?”

Some former pastors who stayed on have actively solicited the opportunity to do weddings and funerals.

The thought that it might not be best to continue to worship in the local congregation, may not be the easiest topic for a family discussion, but it IS one that needs to take place. There is no easy answer that applies to every situation.

2. Where will you live?

1. Even though you may live in your own house, some will still think of it as the parsonage, the house where the pastor lives.
2. For some, the thought of moving as the retirement chapter begins is a frightening and disconcerting thought. For others it might be an entirely new thought, and for some an unacceptable thought.
3. We served in Hamilton for 33 years and then moved to Delaware, Ohio when I served for five years as Director of Ohio Ministries. I am not sure what we would have done had we retired while still in Hamilton. We might have moved to another city or perhaps just opted to attend another congregation nearby. Our move made that choice easier. In addition, I am sure it was an advantage for a new and excellent pastor to have the freedom of not having a former pastor looking over his shoulder. He has often, and I believe sincerely, invited us to worship there on a regular basis, but I believe we have made the right decision for us. It would be very difficult to refuse the invitations that might have come to do weddings

and funerals, experiences that are needed to help build strong ties to the new minister.

4. My study is not scientific and I, as Paul, cannot say this is of the Lord, but it is my honest opinion that when you leave a church you should leave.
3. Who will I be?
 1. The retiring minister may well be asking the question, “Who will I be when I retire?” This leads to another question, “How much of what we think of ourselves is based on what we do?” How does one continue to relate to those who just yesterday called him/her pastor. The day after retirement is it still Pastor, Brother, or is it just Bill or Bob or Jane?

What you are called is not just an issue for the retiring pastor, but may also be an issue for the new minister or the members of the congregation. If the retiring pastor has deep feelings about the matter they should be made known so that everyone may be comfortable and avoid a possible embarrassing situation.

2. We were still in Hamilton for two weeks after my final Sunday and I recall saying that until we moved in a couple of weeks, I would certainly consider helping in an emergency. During that time, the Secretary called to say there was a need. She explained that the folding machine wouldn't work and she could not finish her work. I gladly went and fixed it but afterward, I humorously thought, “After 33 years my value to the congregation is reduced to being able to repair a folding machine!”
4. What will you do?
 1. We were asked by many different people, “What are you going to do when you retire?” Though we probably did not say it, the obvious answer to that question that often came to us was, “Why do we have to do anything?” What a blessed relief not to have to keep the schedule that has consumed much of your life for many years. To be able to let the phone ring occasionally without picking it up, and without fear of being called to task for an oversight, might be part of what retirement is all about.
 2. Obviously, one who has served the Lord for so many years will find a myriad of ways to continue to serve. Some service will be with remuneration and other opportunities will simply be accepted as a part of your service as a member of a local congregation and your continuing service to God.
 3. Perhaps you, too, will suddenly realize that one who has dealt with all the deep issues of many people's lives in sermons, lessons and counseling

appointments may be reduce to a fixer of some piece of equipment. And you don't have to wear a shirt and tie to do that.

4. It can be a time to enjoy in a greater way things like family, fishing, tennis, golfing, photography, extended travel, missions trips or accepting conferences and preaching in places that time might not have permitted prior to retirement. You can have more time to enjoy old friends and greater opportunity to find new ones.
5. Will we make it financially?
 1. It is a wonderful thing if one can have an income for life that is not related to a particular responsibility or employment situation.
 2. How well you have planned for retirement will quickly become evident once the regular church checks stop coming. It is important that one take into consideration the need to cover things like health insurance and medical expenses. Many people retiring from other lines of work receive lifetime health insurance coverage. This almost never happens in the experience of a local congregational minister, but nothing says it couldn't happen.
 3. Early planning pays great dividends in the later years of life. Some say that it is those early dollars invested in a retirement program that makes the most difference.
 4. The Social Security Office can give possible income projections for your retirement that are helpful. Also, if there should happen to be an error in your account, the earlier you catch and correct it, the better it is.
 5. The Church of God Pension Board has an outstanding plan and their staff persons are always willing and anxious to help.
6. Issues for both church and minister to consider
 1. Will the pastor continue to live in the same city and worship with the same congregation? Obviously, the decision about where the minister is to live is one he/she must personally make. However, where they worship is another matter. It would seem that the kind thing to do is to invite the minister to continue to worship with the congregation and the many dear friends. However, the Pulpit or Search Committee may discover that some prospective ministers do not want to consider an invitation because the former minister is still there. It is a delicate issue and the prospective minister may not express his/her reluctance to the committee. Even if the question is put to the prospect, he/she knows that there may be a pre

formed bias behind the question and may be reluctant to share true feelings.

2. Candor at this point, from one who has dealt with such matters, prompts me to make this unscientific statement. In 9 out of 10 situations, it is not good for the former minister to continue to worship in the congregation from which he/she just resigned. Personality issues may be a factor here, but in almost every case I know where this has happened, the former pastor thinks it is working better than the present pastor.
3. Perhaps a potential conflict may arise when the leaders follow the new minister in ways that are contrary to those of the former minister led and still thinks best. Will the congregation feel hesitant to follow the new minister because of some sense of respect for the feelings of the former minister? How completely can the former minister lay down the leadership role when what has been hammered out in many meetings through discussion and prayer is set aside for a new and untried plan? Will the new minister feel free to make remarks or preach sermons that might be needed to raise some questions about the ways things were done in the past? It is not an easy situation!

What DOES the former minister do when it is not possible to be excited or even support the new programs and changes that are taking place?

4. When a pastor has retired from a congregation there are those who, for very sincere and understandable reasons, want to invite his/her back to officiate at weddings or conduct funerals. In such situations, it is hard for the former minister to say no. It is equally hard for the present minister to say no to the question by the former pastor, "Should I do it?" It is almost certain that someone would be offended if the present pastor would suggest that it might not be advisable.

Weddings and funerals are times of building relationships with people and every new minister welcomes the opportunity to serve and build those necessary bonds between minister and member. Except in extreme cases, it is probably best for the congregation to accept the presence of the new pastor who is anxious to serve and proceed on that basis.

7. A final thought

1. Prepare to appreciate and enjoy the Retirement Chapter. It need not be a dreaded ugly giant...but a beautiful gift from God. It is not a time to stop, but a time to slow down as you get ready to go and meet Him.
2. It will be largely a personal decision to be happy or frustrated. If you are a gripper, it will probably get worse.

3. A friend, who had a somewhat distinguished ministry, complained that he ended up living in a tin box, meaning a trailer, which incidentally was a very nice one. He seemed sour and cynical because he did not get the recognition that he thought he deserved and apparently did not have the financial base he desired. His negative attitude not only affected him, but those around him as well.
4. If you are a happy person in the Lord, there is every reason to believe you can continue to be happy in the Lord.
5. Changes will likely occur
Your support group will change
Your location will likely change
Your income will change
Your lifestyle will change
Your wants will change
Your taxes will change
Your dress will change
Your goals and ambitions will change.
You will not be driven by others, but by your God give call.
6. Those who, throughout their ministry, have told others that the Lord will provide, have no reason to believe anything different as they retire.

Psalm 32:8

I will instruct you and teach you the way you should go, I will counsel you with my eye upon you."

Not what I wish to be, nor where I wish to go,
For who am I that I should choose my way?
The Lord shall choose for me, 'tis better far, I know'
So let Him bid me go or stay.

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Interim Ministry Network, 5740 Executive Drive, Suite 220, Baltimore, MD. 21228.
Phone: (410) 719-0777.

Appendix A Employee Compensation Item Examples

Continuing Education: as budget item and as time item

Example 1: as budget item

The congregation should provide a minimum of \$300 per year to defray the cost of tuition, etc. for the pastor to improve his/her skills and to experience personal growth for a more effective ministry.

Example 2: as time item

Continuing education and service to the church at large is encouraged of the pastoral staff. To encourage such, the following schedule of time away will apply:

- A. Senior Pastor: from two to three (2-3) weeks as granted by the Board of Elders.
- B. Associate Pastor: from one to two (1-2) weeks as granted by the Board of Elders.

Since there are some educational programs that are available one day a week, the pastoral staff may request of the Board of Elders to be given an additional day off for that purpose. This would be done instead of the one, two, or three (1, 2, or 3) weeks mentioned above.

On occasion clerical and other staff may request permission to attend a continuing education event that will facilitate them in their job performance. Up to five (5) days per year may be granted by permission of the Senior Pastor. Any expenses for their training will be paid by the Church and they will be paid their regular salary if they are required to be away from their duties.

Additional time may on rare occasions be granted: (ex. Doctoral intensive seminars, clergy renewal leave, etc.) but only by the approval of the Board of Elders and the Senior Pastor.

Unused continuing education and other service time may be used as vacation by pastoral staff but encouragement is given to use it as intended.

Example 3: as time item

1. The pastoral staff is allowed one Sunday per fiscal year to accept a speaking engagement outside of their normal responsibilities within the church. This is in addition to any speaking engagement they may schedule on days they take as vacation days.
2. The pastoral staff are allowed and encouraged to serve as speakers at retreats, camps, and other Church of God functions (not Sundays).

3. All absences as a result of speaking engagements of the associate pastor(s) require the approval of the Senior Pastor. Absences of the Senior Pastor require approval of the Board of Elders.
4. All full-time employees must request and receive approval from the Board of Elders to engage in **any** outside employment. This includes both volunteer and paid outside employment.
5. Part-time employees may engage in outside employment that doesn't affect the performance of their scheduled duties without specific approval of either the Board of Elders or their supervisor.
6. The church realizes the value of continuing education and supports the pastoral staff in obtaining that education. The Board of Elders must be aware of deviations from normal work schedules resulting from attendance in continuing educational opportunities.

Social Security Allowance:

Example 1:

Social Security Tax for ministers is based on base salary, plus housing allowance. Hopefully congregations will provide the full allowance, which is equal to 15.3% of the base salary, plus housing, after 7.65% is first deducted from the total. Please note: For tax purposes the SECC (Social Security Tax for Ministers) allowance given to the minister is classified as additional salary and is also subject to Federal and Social Security taxation.

Housing Allowance: See Block C2

Paid Sick Leave:

Example 1:

At least 3 weeks per year with full salary. The sick leave should accumulate year after year, if not used, so were an extended illness to develop, the congregation would better know how to compensate the pastor and for how long.

Example 2:

1. Sick leave for the Senior Pastor and Associate Pastor(s) is part of the salary negotiation, which is conducted when the call is issued. The sick leave period will be tied to the church fiscal year.
2. Annually the Administration Division will review sick leave benefits.
3. Part-time support staff that work less than 20 hours per week will receive three paid days of sick leave per church fiscal year. The "week" of vacation will be equal to their average work week.

4. Part-time support staff that work more than 20 hours per week will receive one paid week of sick leave per church fiscal year. This includes full-time support staff. The “week” of vacation will be equal to their average work week.
5. Sick leave may accrue from year to year; however, under no circumstances will an employee accrue more than twice his/her annual benefit of sick leave. For example, Employee A receives one week of sick leave per fiscal year. If he/she doesn't use that sick leave it may roll over onto the next fiscal year. If no sick leave is taken that second year the person now has twice his/her annual benefit of sick leave – no more sick leave will accrue until their current balance is reduced.
6. Sick leave will not be paid upon the termination of employment.

Example 3:

- A. Full-time (30+ hours) clerical and other staff will be granted up to five (5) paid sick days per fiscal year (January-December). Unused days will be forfeited. On exceptional occasions, these days may be used as personal days but only by permission of the Senior Pastor. Part-time clerical and other hourly staff will accumulate no sick days and will be paid only when they work.
- B. Full and part-time pastoral staff will not be regulated by a given number of sick days but will report to and be answerable to the Senior Pastor. The Senior Pastor will report to and be answerable to the Board of Elders. Part-time pastoral staff (15-39 hours) will be governed by the policy for full-time clerical and other staff.

Example 4:

- A. Sick leave time would be up to 5 days a year at full pay.
- B. In the event of total disability or extensive sickness the Church Council will be called upon to respond according to the need.
- C. If the employee is sick or for some reason will not be coming to work, they will notify the Senior Pastor as early as possible.

Example 5:

All the pastors of the _____ Church of God shall be entitled to the following sick pay benefits.

Full-time Pastors

Sick days are accumulated at 8 hours per month of service. These days are carried over from year to year and are reduced only by actual paid sickness. The maximum net days accumulated are limited to 90 days.

Part-time Pastors

Sick days are accumulated at 4 hours per month of service. These days are carried over from year to year and are reduced only by actual paid sickness. The maximum net days accumulated are limited to 45 days.

These days are to be used only for sickness of yourself and are not redeemable for additional vacation time.

If you are ill for 5 or more sequential days, you will be required to furnish a doctor's slip verifying your need to be off work.

Upon death, retirement, or other termination of employment, no pay adjustment will be made to the employee for this policy.

Paid Holidays:

Example 1:

All pastors of _____ Church of God are entitled to the following paid holidays.

- New Years Eve
- New Years Day
- Good Friday
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas Eve
- Christmas Day

Should the holiday fall on a Saturday on Sunday, the prior day or following day shall be observed as determined in advance by the Management Board.

Example 2:

- A. Holidays shall total nine each year. They will be: New Years, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving and the day after, Christmas Eve and Christmas Day. Holidays may not be banked. They must be taken as near as possible to the actual day.
- B. All employees will be paid for holidays based on the number of hours in their average work day.

Example 3:

The following holidays are observed and given with pay for full-time clerical employees and all part-time to full-time pastoral staff:

Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day following Thanksgiving, Christmas Eve, Christmas Day, and New Year's Day.

For clerical and other staff, if the holiday does not fall on a working day, another day may be taken in coordination with the Senior Pastor. For pastoral staff, if the holiday falls on a Sunday or at a time when required to minister, another day may be scheduled in coordination with the Senior Pastor.

Example 4:

1. Official church holidays are:
 - a. New Year's Day
 - b. Memorial Day
 - c. The Fourth of July
 - d. Labor Day
 - e. Thanksgiving Day
 - f. Christmas
2. Full-time employees who are normally scheduled to work during a church holiday will receive a paid day off.
3. Part-time employees may take the holiday off without pay. They may also receive the holiday off if they are due any compensatory time. Either case will be at the discretion of the supervisor. Additionally, they may choose to work when the office is closed with the concurrence of their supervisor. If the supervisor concurs with their working through the holiday, they will be paid at the normal rate.
4. If a paid holiday falls within an employee's vacation, it will not be counted as a vacation day – they will receive pay for the holiday. For example, Employee A takes Monday through Friday off. Normally they would be charged with five days of vacation time; however, if Monday were a church holiday they would be charged with four days of vacation time and receive one day of paid holiday. This assumes this employee is a full-time employee. If the employee were a part-time employee, they would be charged with four days of vacation and would receive the holiday off without pay.
5. If an employee is required to work on a church holiday, they will receive compensatory time off after the holiday at the discretion of their supervisor. Overtime will not be authorized.

Example 5:

The pastor should be treated as members of the congregation are treated by their employers.

Paid Vacation:**Example 1:**

Four weeks (including Sundays) regardless of how long the pastor has served.

Example 2:

1. Vacation time for the Senior Pastor and Associate(s) is part of the salary negotiation, which is conducted when the call is issued. The vacation period will be tied to the church fiscal year.
2. Pastoral staff may only take one Sunday per week of vacation. For example, if a pastoral staff member has 14 days vacation, he/she may only include two Sundays.
3. Annually the Board of Elders will review vacation benefits.
4. Part-time support staff that works less than 20 hours per week will receive one paid week of vacation per church fiscal year. The “week” of vacation will be equal to their average work week.
5. Part-time support staff that work more than 20 hours per week will receive two paid weeks of vacation per church fiscal year. The “week” of vacation will be equal to their average work week.
6. Each employee receives his/her full annual allocation of vacation days upon the anniversary of the church year (July 1st). All employees must successfully complete their probation period prior to being eligible to take vacation.
7. Vacation time cannot accumulate from fiscal year to fiscal year. All employees are expected to take their full benefit of vacation each year to ensure they are rested and healthy.
8. In the event an employee resigns, they will receive any vacation time not used in accordance with the following.
 - a. Each employee receives his/her full annual allocation of leave upon the anniversary of the church year (July 1st). If they resign prior to the anniversary of the church year, their vacation benefit will be subdivided into twelfths and they will be awarded on twelfth for each month of employment of the current church year. If they have taken more vacation than they would earn (one twelfth per month) they will repay the excess vacation. If they are owed vacation it will be paid as directed below.
 - b. The vacation pay will be received one pay period after the last earned paycheck of the employee terminating employment.
9. Annual vacation must be scheduled with the Senior Pastor. Priority of vacation will be based on seniority. Seniority is based on position and time in the position. For example, the Senior Pastor, regardless of length of service to the church,

- would be the most senior employee. The Associate Pastor is the second most senior employee. In the case of several Associate Pastors, the more senior Associate Pastor would be the one with a greater length of service to the church.
10. The Senior Pastor approves vacations for all subordinate employees; the Board of Elders approves the Senior Pastor's vacation period.

Example 3:

- A. The vacation year runs concurrent with the congregation's fiscal year – January 1 – December 31.
- B. Unused vacation time is forfeited at the end of the fiscal year.
- C. A vacation week is Monday-Friday for clerical, custodial and other hired persons. A vacation week including weekends is nine (9) consecutive days in duration. Two weeks is sixteen (16) consecutive days or two Monday – Friday periods. A vacation week for pastoral staff is for nine (9) consecutive days but inclusive of but one Sunday. Two weeks is sixteen (16) consecutive days and inclusive of two Sundays.
- D. Given holidays that fall during a vacation are in addition to the vacation time.
- E. No clerical or pastoral staff will take more than two (2) consecutive weeks of vacation at a time except with the permission of the Senior Pastor. The Senior Pastor will do so only with permission of the Board of Elders. Custodial staff will coordinate vacation time with the Board of Trustees unless the Board of Trustees request that such be scheduled through the Senior Pastor for coordination purposes.
- F. Clerical and custodial staff will be granted vacation time if employed thirty (30) or more hours per week. The following schedule will apply:
 - Six (6) months to one (1) year.....1 week
 - One (1) year to five (5) years.....2 weeks
 - Six (6) years to ten (10) years3 weeks
 - Ten (10) years and over4 weeks
 A maximum of four (4) weeks can be earned.
- G. Full-time pastoral staff (40 plus hours) will be governed by the following schedule:
 - Six (6) months to five (5) years3 weeks
 - Six (6) years to ten (10) years4 weeks
 - Eleven (11) years to fifteen (15) years5 weeks
 - Sixteen (16) years and over6weeks

(Whenever a new full time staff member is added, consideration is to be given for his/her level of vacation time they had acquired during the previous service.)

Part-time pastoral staff (15-39 hours) will be governed by the policy for clerical and custodial staff except the Sundays away will correspond with the number of weeks of vacation time earned.

- H. The Senior Pastor will be the clearinghouse for all vacation scheduling and will be responsible to keep such a schedule. He/she will be the final authority in

matters of vacation scheduling so to avoid more than one staff member being away at a time.

- I. Scheduling of requested vacation time for pastoral staff will be in accordance with seniority with the possible exception of the Senior Pastor. The Senior Pastor, regardless of seniority, will have preference.

Example 4:

- A. All employees shall be eligible for vacation time within each calendar year according to the following schedule:

1 year through 4 years	2 work weeks (Incl. 2 Sun.)
5 years through 14 years	3 work weeks (Incl. 3 Sun.)
15 or more years	4 work weeks (Incl. 4 Sun.)

- B. Unused vacation time will be paid at the end of the year.
- C. An employee shall not take any vacation before serving at least 6 months, unless approved by the Church Council.
- D. Vacation time during the first year ending December 31, shall be in proportion to the time served in the local congregation during the calendar year.
- E. Vacations shall be arranged so that at least one staff person is available at all times.
- F. Pastor and associates shall limit their absences to no more than two consecutive weeks unless approved by the Church Council.
- G. All vacation schedules must be approved by the Senior Pastor at least 30 days prior to requested vacation time.
- H. The Senior Pastor will submit vacation schedules to the Church Council at least 30 days prior to the proposed vacation.

Example 5:

The pastors of _____ Church of God shall be entitled to the following vacation in accordance with their service time with _____ Church of God or as stated in your employment contract.

<u>Service Time</u>	<u>Full-time employee</u>	<u>Part-time employee</u>
Up to 6 months	none	none
6 months to 1 year	8 days	4 days
1 year to 5 years	13 days	6.5 days
5 years to 10 years	18 days	9 days
Over 10 years	23 days	11.5 days

Annual leave shall be taken so as not to interfere with the Church operations. When a conflict of two person's vacation exists, the lesser service person's vacation shall be rescheduled.

Sundays Policy

Since Sundays are the primary contact time with the people, the number of Sundays allowed away from the church will be restricted. However, given the nature of ministry with its pressures and heavy expectations, and given working spouses schedules that often necessitate weekends away for maximum usage of vacation time, the allowance will be as follows. For full-time pastors they are:

Up to six months	No Sundays away
6 months to 1 year	1 Sunday away
1 year to 5 years	3 Sundays away
5 years to 10 years	4 Sundays away
Over 10 years	5 Sundays away

For part-time pastors the number of Sundays allowed will be as follows:

Up to six months	No Sundays away
6 months to 1 year	1 Sunday away
1 year to 5 years	2 Sundays away
5 years to 10 years	3 Sundays away
Over 10 years	4 Sundays away

Another way to put this is that one week's vacation typically will equate to one Sunday away. Two weeks vacation equates to two Sundays, etc. No pastor may take more than two consecutive weeks of vacation without the express approval of the Senior Pastor.

Service on behalf of the congregation such as youth conventions, the North American Convention, work camps, etc. are not considered as vacation time and any Sundays gone in their execution are not counted against the Sunday allowance. Occasional speaking engagements away from the church may be allowed for associates upon coordination with and approval by the Senior Pastor.

Since full-time pastors do not enjoy the occasional benefit of a three day weekend due to Sunday being in the middle (Memorial Day & Labor Day), twice per year they may take their day off coupled with two additional days exclusive of a Sunday (unless they choose to use a Sunday in their allowance) and use this for personal time away with family.

Additional Paid Days:

Maternity Leave:

Example 1:

A benefit of 50% of salary will be paid up to six weeks. Vacation, sick, or personal days may also be used.

Example 2:

Maternity leave will be granted to female pastoral staff members. They will be given six (6) weeks leave with all salaries and benefits. The scheduling of the leave will be done in coordination with the Senior Pastor and the Board of Elders.

Example 3:

1. All full-time employees are entitled to six weeks maternity leave upon the delivery of a child. This maternity leave only applies to female staff members actually delivering a child.
2. Full-time employees will receive four weeks of the maternity leave at full pay with the remainder as unpaid leave.
3. Full-time employees may request an additional period of maternity leave. This request should include a letter from medical personnel stating the medical necessity of additional leave. The Administration Division will review the request and determine if additional leave is appropriate. Additional leave may be granted as an unpaid leave of absence.

Bereavement Leave:

Example 1:

1. In the event a death occurs within the immediate family, employees are allowed one week of bereavement leave with pay. This includes full-time and part-time employees.
2. The immediate family consists of:
 - a. Spouse
 - b. Parent(s)
 - c. Child(ren)
3. In the event a death occurs within the extended family (not immediate family), employees are allowed 50% of their normal workweek as bereavement leave with pay. This includes full-time and part-time employees.
4. The extended family consists of:
 - a. Grandparent(s)
 - b. In-laws (parents and siblings)
 - c. Sibling(s)
5. If a church holiday occurs within the period of bereavement, it is charged as a holiday and the bereavement leave will be extended on workday for full-time employees. For example, Employee A takes Monday through Friday as bereavement leave but Friday is a normal church holiday. That employee would receive Monday through Thursday as bereavement leave, Friday would be their normal holiday, and the following Monday would complete the full week of bereavement leave.

Example 2:

Funeral leave with pay will be granted upon the death of an employee's close relative, including close step-relatives. "Close relative" generally includes one's spouse, parents, current in-laws, grandparents, siblings, children and grandchildren. If the funeral is in-state, the paid leave will not exceed 3 days. If the funeral is outside the state, the paid leave will not exceed 5 days. Part-time employees will be paid based on their regularly scheduled hours. Any additional time requested shall be charged against the employee's annual leave or will be without pay. The employee requesting funeral leave must notify his or her supervisor as soon as possible.

Jury Duty:**Example 1:**

All employees summoned to jury duty will continue to receive their regular compensation during active jury duty for up to fifteen days in one calendar year. If you are called to serve on jury or witness duty, you must submit a copy of the summons to serve as soon as possible after you receive notification. Your pay will be adjusted by compensation received for serving on said jury.

Example 2:

All salaried employees will be paid for jury duty. Hourly employees will be paid only if during their regularly scheduled working hours.

Sabbatical Leaves:

1. Sabbatical leaves only apply to full-time pastoral staff.
2. A pastoral staff member is eligible to apply for a sabbatical leave after six years of continuous service to the church.
3. Once a staff member takes a sabbatical, they may not apply for another one until they have served six continuous years of service after returning from the sabbatical.
4. The sabbatical benefit will consist of up to a three-month leave of absence.
 - a. The Board of Elders will determine pay during this time at the time of application.
 - b. The Board of Elders should consider the cost of the sabbatical, the source of any additional funding, a policy for payback, and the time limit during their considerations.
5. A pastoral staff member applying for a sabbatical should prepare their request in writing no less than six months prior to the start date. This application should include:
 - a. Purpose of the sabbatical
 - b. Schedule of how the time will be spent

- c. Expected benefits to be received by the staff member taking the sabbatical
 - d. Expected benefits to be received by the congregation
6. The Board of Elders will review and approve the application prior to the staff member beginning the sabbatical.

Block B5

Conditional Deeding

Protection of church property is an important consideration for church leaders. Who receives the property or proceeds from the property must be determined early on.

The last thing church leaders want to think about is the possibility of having to close a church. However, if the church leaders do not designate in their Articles of Incorporation and/or bylaws, who receives the property or proceeds from the property, the property can become the responsibility of the courts to distribute as they see fit.

It is important that church leaders realize that federal law requires that churches include a dissolution clause in their bylaws and Articles of Incorporation.

The following are two examples for the wording that can appear in a dissolution clause:

Example #1

Should a division occur in this Congregation, its property, real and personal, shall belong to that part, regardless of size, which remains faithful to these bylaws, and which adheres to the doctrines and teachings of the Church of God, with general offices in Anderson, Indiana. Should this Congregation elect to no longer affiliated with the Church of God, whose general offices are in Anderson, Indiana or should the Congregation elect to dissolve, its property, real and personal, shall become the property of Indiana Ministries of the Church of God located in Carmel, Indiana. All properties of the Congregation are to be conditionally deeded to Indiana Ministries of the Church of God.

Should a division occur in this Congregation, its property, real and personal, shall belong to that part, regardless of size, which remains faithful to these bylaws, and which adheres to the doctrines and teachings of the Church of God, with general offices in Anderson, Indiana. Should this Congregation decide on any of the following, its property, real and personal, shall become the property of Indiana Ministries of the Church of God:

1. Decide to no longer adhere to the doctrines of the Church of God, Anderson, IN.
2. Decide to sever relations with the Church of God, Anderson, IN.
3. Decide to stop functioning as a church body.

All properties of the Congregation are to be conditionally deeded to Indiana Ministries of the Church of God.

A way to secure the property for the Church of God, Anderson, IN, churches are encouraged to conditional deed their properties to their state, area, district, or province office of the Church of God. This chapter contains examples of conditional deeding policies for Ohio, Florida, Michigan, and special IRS Requirements.

IRS Requirements

If a church is incorporated, the IRS requires the following three statements appear in the Articles of Incorporation even if the property is deeded to the state, area district, or province office of the Church of God. These statements are:

1. Said corporation is organized exclusively for charitable, religious and educational purposes, including, for such purposes, the making of distributions to organizations under Section 501(c)(3).
2. No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, trustees, directors, officers or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of Section 501(c)(3) purposes. No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of, or in opposition to, any candidate for public office.

Notwithstanding any other provision of the Articles, the corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501(c)(3) of

the Internal Revenue Code or (b) by a corporation, contributions to which are deductible under Section 170 (c)(2) of the Internal Revenue Code (or corresponding section of any future Federal tax code).

3. Upon dissolution of this corporation, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose.

These statements must appear as worded above. The IRS must be contacted if different wording is desired. If these statements do not currently appear in the church's Articles of Incorporation, an amendment should be submitted.

If the church is not incorporated, the conditional deeding can appear in the dissolution clause of the bylaws or governing document.

SAMPLE OF CONDITIONAL DEEDING AS ESTABLISHED BY OHIO MINISTRIES

The following procedures, approaches and clause were developed by William F. Simpson and John Kranyak Attorneys of Law for Ohio Ministries.

I. Goal

The objective herein is to provide methods by which Ohio Ministries may create and retain a future real property interest in property owned and operated by its local Ohio-based churches in the event such local churches fail to operate the real property for certain stated church-related purposes.

II. Suggested Approaches Based on Different Factual Scenarios

Step 1: *A written agreement between the local church and Ohio Ministries*

The local church and Ohio Ministries must enter into an agreement that sets forth the consideration (each to the other) for the conveyances outlined below, such as opportunities through the district/state organization(s) for the licensing and ordaining of ministerial candidates, assisting during the time of pastoral transition upon request by representative(s) of the congregation, providing training and/or fellowship opportunities for the local congregation, and the obligation of the local church to follow certain church-based teachings. Further, the agreement should state that, *inter alia*, Ohio Ministries may obtain certain real estate and re-convey the same back to the local churches as set forth below.

Step 2: *A conveyance from local church to Ohio Ministries*

The local church must convey its free simple absolute to Ohio Ministries. This may be accomplished by using either a general warranty or limited warranty deed.

Step 3: *A re-conveyance from Ohio Ministries to local church whereby Ohio Ministries retains a future property interest*

Ohio Ministries must re-convey the property back to the local church by using a limited warranty deed, which deed must convey a fee simple subject to a condition subsequent, explicitly reserving Ohio Ministries' right to terminate the local church's estate and re-enter the same upon the local church's violation of a stated condition.

For example, the deed may state:

Ohio Ministries, owning [property] in fee simple absolute transfers said [property] to [local church] with the condition that if said property ceases to be used for/as [certain purposes], [local church's] estate shall be subject to Ohio Ministries' right to reenter [and terminate said estate] for breach thereof.

(Sample language adopted from OHIO REAL ESTATE LAW AND PRACTICE (2nd. Ed., current through December 31, 1999), HAUSSER/VAN AKEN, Chapter 19, §19.11(B)(1), pp. 396-397.)

Upon the happening of the stated condition, Ohio Ministries would have the option to terminate the estate, but would not have to physically "enter" it in order to do so; the "right of re-entry" is, today, merely a legal term of art. That said, as long as Ohio Ministries appropriately manifests its intention to terminate the estate granted to the local church, such estate will be so terminated.

B. WHEN THE LOCAL CHURCH OWNS REAL PROPERTY SUBJECT TO MORTGAGE(S)

Step 1: *A written agreement between the local church and Ohio Ministries*

This step is identical to §II.A., Step 1 (above).

Step 2: *A conveyance from local church to Ohio Ministries*

This step is identical to §II. A., Step 2 (above), but the conveyance must be made subject to prior existing mortgages.

Step 3:

- a. A re-conveyance from Ohio Ministries to local church whereby Ohio Ministries retains a future property interest

This step is identical to §II.A., Step 3 (above), however, see the attached pro forma subordination agreement.

- b. Subordination agreement between Ohio Ministries and Prior Mortgagee(s)

Ohio Ministries must enter into an agreement (of even date with the deed in §II.B., Step 3.a. (above)) in favor of any and all prior mortgagees stating that Ohio Ministries' future property interest is and will be subordinate to any and all prior existing mortgages.

C. WHEN THE LOCAL CHURCH IS IN THE PROCESS OF ACQUIRING REAL PROPERTY

Step 1: *A written agreement between the local church and Ohio Ministries*

This step is identical to §II.A., Step 1 (above).

Step 2: *The purchase contract must allow for direct deeding or an assignment and assumption to Ohio Ministries without liability to Ohio Ministries*

The purchase contract between the local church and the seller must (a) require that the seller (Grantor) directly convey the subject real property to Ohio Ministries or (b) state that the local church may, in its sole discretion, assign any or all of its rights under the contract, without any liability to assignee (presumably, Ohio Ministries) for any default by the local church.

Step 3: *A (post-closing) conveyance from Ohio Ministries to local church whereby Ohio Ministries retains a future property interest*

Upon completion of the foregoing §II.C., Step 2, after closing Ohio Ministries' will convey the real property to the local church thereby retaining a future property interest; this step is identical to §II.A., Step 3 (above).

III. OTHER ISSUES

A. CONSIDERATION FOR CONTRACTUAL CONVEYANCES

B. TITLE REVIEW

Title should be reviewed every ten (10) years to avoid issues regarding Ohio Ministries' loss of any re-entry due to a subsequent deed conveyance that would commence the running of The Ohio Marketable Title Act's (Ohio Revised Code §5301.30 et. seq.) forty (40) year period that could cut off Ohio Ministries' future interest.

C. REAL ESTATE TRANSFER EXEMPTION STATUS

When a transfer of real property is made to or from a charitable organization, as defined in section 501(c)(3) of the Internal Revenue Code of 1986, such charitable organization is exempt from paying conveyance/transfer fees "provided such transfer is without consideration and is in furtherance of the charitable or public purposes of such organization." R.C. §319.54(F)(3)(r).

SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT ("Agreement") is made as of the _____ day of _____, 2002 from **OHIO MINISTRIES**, a(n) _____, whose address is _____ ("Ohio Ministries") to _____ a(n) _____, whose address is _____ ("Lender"), and

RECITALS:

- A. **[Local Church]**, a(n) _____, whose address is _____ ("**[Local Church]**") was the prior fee owner of certain real property located in the State of Ohio, County of _____, City of _____, legally described on Exhibit "A" hereto (the "**Property**");
- B. Lender is the holder of a certain "**Mortgage**", dated _____, granted by "**[Local Church]**" to Lender and recorded on _____, in Mortgage Book _____, Page _____, _____ County Recorder's Office, Ohio, to secure _____ Dollars (\$_____), plus interest, covering the **Property**.
- C. On _____, 200__, "**[Local Church]**" conveyed the **Property** to Ohio Ministries, subject to Lender's prior rights and priority pursuant to the **Mortgage**, as recorded in Instrument Number) _____, _____ County Recorder's Office, Ohio;
- D. Ohio Ministries is re-conveying the **Property** to "**[Local Church]**", Ohio Ministries therein retaining a future property interest (the "**Re-conveyance**"); and
- E. Ohio Ministries now desires to assure Lender that the **Mortgage** will remain in full force and effect in accordance with its terms, and that the **Re-conveyance**, and Ohio Ministries' future interest retained therein, is and shall remain subject and subordinate to Lender's prior **Mortgage** on said **Property**.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Ohio Ministries agrees as follows:

- 1. The **Re-conveyance** creating Ohio Ministries' future property interest in the **Property** is and shall remain subject and subordinate to Lender's prior **Mortgage** on said **Property**, and to all of the terms, covenants and conditions of said **Mortgage**.
- 2. This Agreement shall inure to the benefit of the Lender and shall be deemed to also include any subsequent holder of the note that is secured

by the Mortgage and/or any other persons succeeding to the title to the Property or any part thereof, whether by virtue of foreclosure or sale or transfer in lieu of foreclosure, or pursuant to the exercise of any of Lender's rights and remedies under the Mortgage.

- 3. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, Ohio Ministries has executed this Agreement by its duly authorized officer as of the day and year first above written.

Signed and acknowledged
In the presence of:

OHIO MINISTRIES:

A(n) _____

Print name: _____

By: _____

Name: _____

Print name: _____

Its: _____

STATE OF _____:

: ss.

COUNTY OF _____:

The foregoing instrument was acknowledged before me this _____ day of _____, 200_, by _____ of OHIO MINISTRIES, a(n) _____, for and on behalf of said _____.

Notary Public

My Commission Expires: _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

How to Safeguard the Title to Local Church Property

Printed Originally by:

Church Extension of the Church of God, Inc.
PO Box 2069 Anderson, IN 46018
Phone (765) 644-2555 Fax (765) 644-2756

Revised By:

Florida Church of God Ministries
211 Presidents Drive
Lake Wales, Florida 33859-7943
Phone (863) 638-1134 Fax (863) 638-1289
November 2003

Preface

This document has been prepared to assist congregations, state, district, provincial, and national organizations of the Church of God in providing safeguarding for their properties. This concern arises from our mutual interest in making sure that none of the church's properties are lost to the Church of God. When a congregation falters and ceases to meet, who gets the property? If a group emerges in a congregation with contrary beliefs, can it be kept from taking the property?

You will find practical step-by-step guidance for assuring that our church properties are safeguarded. There are resolution forms and a model-Safeguarding Clause. For specific assistance you may contact Florida Church of God Ministries, Inc.

Contents

- Preface
- Introduction
- Loss Possibilities
- Protection from Loss
- Permanent Policy Statement
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If It Is To Be Mortgaged
If It Is To Be Sold

- Controversy In The Local Church
- Cooperation
- Church Property Fallen Into Disuse
- Forfeiture Through Loss Of Fellowship
- General Assembly Resolution On Conditional Deeding

Introduction

It is a policy firmly fixed in the belief and practice of the Church of God, with general offices in Anderson, Indiana, that congregations hold title to their own properties. In a few cases the title to the property of a new congregation is temporarily held by state, district, provincial or national organization. Title to properties used for mission purposes may be held by Church of God Ministries, Inc.

The Church of God, however, is more than an aggregation of local congregations. It is a fellowship of believers with necessary organizations and agencies for administering local, district, state, province and general church programs. In addressing the procedures to safeguard the title to local church property, this document recognizes the organizational relationship between the local congregation and the state, district, provincial and national organizations and agencies of the church.

For many years congregations have been buying and building new properties for the purpose of expanding their mission and program. A congregation, along with its governing body, must be concerned that the title to its property is in good order and that the property remains in the use of the Church of God for the purpose originally intended. The question is, "How is the title to church properties to be safely held?"

Loss Possibilities

1. Some congregations have encountered difficulties, which result in the loss of their properties. Some losses may result from inadequate organization of the local church for business purposes, or from imperfect or faulty titles. Each congregation should employ good legal counsel in establishing or reviewing the charter and by-laws of the church business organizations and the title to its property. These important documents should conform to state and local laws and protect the congregation in the continuous administration of its stated objectives and mission, and its rights to property.
2. Property is sometimes lost when title is held solely by the congregation without any provision for safeguards. There are instances in which a dissenting group has mustered enough voting power to wrest the property away from the members who have maintained fellowship and unity with the Church of God. This kind of loss was enough evidence when F.G. Smith, then editor of Gospel Trumpet, in 1923 sought

the counsel of an attorney, who was acquainted with the Church of God and its organization, for a legal method to safeguard property for the use of Church of God. The attorney advised that by-laws are insufficient to protect the congregation and that property could be safeguarded only by inserting a condition in the deed to the property. He suggested that each congregation put in its deed a clause naming a general agency of the church as having a conditional interest in its property. From this suggestion came the use of the safeguarding clause that is now in use by many congregations of the Church of God.

The safeguard clause is an effective measure. It has discouraged division and dissension in the local churches. That a property cannot be seized by a group that does not represent the faith and doctrine of the general body is a strong deterrent to divisive efforts. And, disputes over rights to the property usually can be settled short of court action if the title is safeguard.

3. Sometimes a congregation ceases to exist and leaves the property in the name of a governing body who, for one reason or another, cannot act as trustees. The safeguarding clause in the deed protects the property that has fallen into disuse, assuring that it can be disposed of properly and its value preserved for the Church of God.

Protection from Loss

The Safeguarding Clause is designed to safeguard the congregation from loss of its property by the above and other means. Also, there are limitations and restraints placed by the General Assembly of the Church of God upon the agency named in the Safeguarding Clause – Florida Church of God Ministries, Inc. In approving and recommending Conditional Deeding, the General Assembly also protects the church from invasion of congregational rights or restriction of normal use of the church's property.

To assure that the Safeguarding Clause will never work to the benefit of Church Extension the following resolution was adopted by the Board in regular session, June 14, 1924:

Permanent Policy Resolution

*"In view of the proposal, in order to prevent possible property loss, local churches should be encouraged to deed their church property conditionally, so that whenever the General Ministerial Assembly decides that a particular church 'is no longer in fellowship and doctrinal unity with the Church of God, as represented by its General Ministerial *Assembly, the property involved shall go to, vest in, and become the property, in fee simple of the Board of Church Extension and Home Missions of the Church of God, Anderson, Indiana: therefore be it:*

“Resolved, that the Board of Church Extension and Home Missions of the Church of God make the following declaration of permanent policy:

- 1. That it will claim no jurisdiction or authority over either the business or the Ecclesiastical phases of the work of any local congregation whose property is so deeded.*
- 2. That when there is no question raised as to a congregation being in ‘fellowship and doctrinal unity with the Church of God, as represented by its General Ministerial Assembly,’ the Board of Church Extension and Home Missions will cooperate with that congregation whenever the transfer of property or other local business arrangements require the signature of this Board. The Board of Church Extension and Home Missions of the Church of God, Inc. will under no circumstances assume any personal liability in the acquiring, encumbering, or disposition of any such property.*
- 3. That this Board will make not claim ownership of any local church property so deeded until after the General Ministerial Assembly of the Church of God, of Anderson, Indiana, shall have declared the property forfeited to the Board and shall have instructed the Board to take the necessary steps to secure possession of it.*
- 4. That whenever the General Ministerial Assembly has declared a local church property forfeited to the Board of Church Extension and Home Missions, this Board shall, before deciding to sell the property, make investigation with the view of re-establishing it, if possible and practical, a congregation that is representative of the general body of the Church of God. If it becomes necessary to sell the property, this Board in Church Extension work will use the proceeds from the sale.*
- 5. If any local Board of Trustees of any Church of God, of any place, desired to encumber the property it holds, it may do so, if there are not any questions raised as to its congregation maintaining fellowship and doctrinal unity with the General Ministerial Assembly of the Church of God, which meets in Anderson, Indiana. In this case, the Board of Church Extension and Home Missions will grant its consent to such encumbrance, and it will stipulate that it assumes no personal liability. In all such cases the Board of Church Extension and Home Missions will endorse on any deed, or mortgage, or other instrument, ‘its consent to the execution of the within instrument and that it assume no personal liability,’ and duly execute and acknowledge the same.”*

Church Extension has acted during its tenure as a safeguarding agent of the Church of God according to the letter and spirit of the above resolution.

*Note: In assembly on June 17, 1965, by its own action, the General Ministerial Assembly officially changed its name to General Assembly of the Church of God. It

has, also, empowered its legal body, the Executive Council of the Church of God, to act for it between assemblies.

A "Conditional Deeding Resolution" was approved by the General Assembly of the Church of God in a duly called session on June 25, 1980; and, this resolution was affirmed in the June 1999 session of the General Assembly.

The event involving Church Extension in 2000-2003 has required state and regional assemblies to undertake the role of safeguarding agents on behalf of the Church of God.

How to Safeguard

To protect church property by conditional deeding, follow these steps:

1. Secure the necessary information about conditional deeding. Free copies of this document are available from the Florida Church of God Ministries State Office. Write the state office for answers to any specific question. Every effort will be made to furnish the information needed.
2. Plan a meeting of the congregation's official governing board in which all information is shared and facets of the plan are discussed. If it is their desire to safeguard the church's property with a conditional deed, a resolution to recommend such action to the congregation should be voted on.
3. A resolution should be prepared by the official board to be presented to the congregation for its consideration and vote. The following is a model resolution which may be used as it is or modified to meet particular needs.

Resolution Authorizing Conditional Deeding (for the local congregation)

WHEREAS, The Church of God, with general offices in Anderson, Indiana, does not provide through one general organization of the church, nor in conferences, for the holding title to all local church property, but each congregation is autonomous so far as its business and the holding of church property is concerned; and

WHEREAS, it has been found that in the holding of local church property solely in the names of trustees, in the name of the business corporation of the local church there is always the danger of the loss of such property by the Church of God; and

WHEREAS, There have been in recent years numerous examples of such loss or difficulty; and

WHEREAS, The General Assembly of the Church of God recommends a plan of

Conditional Deeding, whereby local church property may be safeguarded to the original purpose for which it was obtained, namely, use by and for the Church of God, with general offices in Anderson, Indiana; therefore be it

RESOLVED, That we the members of _____ (Name of local church) _____ of _____ (City) _____, _____ (State) _____ do hereby approve the plan of Conditional Deeding recommended by the General Assembly which meets annually in Anderson, Indiana; and be it further

RESOLVED, That our pastor, _____, the officers of the business organization of this congregation, and/or the governing body of our congregation be and is hereby authorized to put into effect the safeguarding of our church property located _____ (Street address) _____ legally described as:

(Full legal description as it appears in the deed (s) to the property)

and be it further

RESOLVED, That authorization be, and is hereby given to the officers of the business organization of this congregation, and/or the governing body, and our pastor to order or execute such documents as are necessary to include in the deed(s) to the property describe above the following safeguarding clause:

“To have and to hold, so long as the local Church of God known as _____ (Name of Congregation) _____ at _____ (Street Address) _____, _____ (City), _____ (State) _____,

maintains fellowship and doctrinal unity with the General Assembly of the Church of God which meets annually in Anderson, Indiana and the property remains in use by said church. If this property falls into disuse, or if in the opinion of said General Assembly the local church at _____ (City) _____, _____ (State) _____ is no longer in fellowship and doctrinal unity with the Church of God, as presented by the General Assembly, this property shall go to, vest in, and become the property in fee simple of Florida Church of God Ministries, Lake Wales, Florida, or its successors or assigns, and be it further

RESOLVED, That a copy of this resolution, certified by the secretary and pastor of the congregation, be sent to Florida Church of God Ministries, Lake Wales, Florida.

Certification Statement

This is to certify that the above is a true and correct copy of the Resolution passed at a duly called meeting of _____ (Name of Congregation) _____ at _____ (City) _____, _____ (State) _____ held on _____ (Date) _____ at _____ (Place) _____, a quorum

being present; and there having been announcement of said meeting posted, and make in _____ (Number) regular meetings of the congregation, as required in the bylaws of this congregation, prior to the time of the meetings, and that there were _____ (Number) voting members present with _____ (Number) voting in favor of the Resolution and _____ (Number) voting against it.

Date _____

(Signed) _____ Pastor
(Signed) _____ Secretary

4. Employ a good attorney, whose practice includes real estate counseling, to examine the Resolution for any legal inconsistencies with local and state laws, and to recommend any needed modifications and correct procedure under your state's laws.

(CAUTION: DO NOT ALTER THE SAFEGUARDING CLAUSE without first contacting Florida Assembly office about any such needed modification before presenting the congregation for a consideration and a vote.

5. A business meeting of the congregation should be called in accordance with the requirements of its bylaws. The prepared Resolution should be read in a public meeting prior to the business meeting. In the business meeting all the information known to the Official Governing Board regarding the Conditional Deeding plan should be shared with the congregation and the Resolution presented for discussion and vote.
6. If the Resolution is approved by the congregation in its business meeting, an attorney should be engaged to insert the Safeguarding Clause into the deed(s) to the church property by means available under the laws of the state or province. If new property is being purchased, the Safeguarding Clause may be included in the deed by the seller, at the request of the congregation.
7. The new deed(s) or other legal instruments should be filed immediately with the Recording Office in the local Court House or Government Building.
8. A certified copy of the Resolution certified by the secretary and pastor, and a copy of the deed(s) containing the Safeguarding Clause should be sent to Florida Church of God Ministries, Lake Wales, Florida.

When the Property is to be Sold Mortgaged or Sold

The Safeguarding Clause in a deed places a condition in the title to the property, which must be removed if the property is to be mortgaged or sold. Upon request by the congregation, Florida Church of God Ministries will subordinate or release its interest in the title.

If it is to be Mortgaged

If the congregation decides to mortgage its property to secure a loan from a local financial institution, Florida Church of God Ministries will enter into a subordination agreement with the lending institution to assure it a first mortgage position.

Contact the Florida Church of God Ministries office to secure the appropriate resolution, which the congregation should approve in a duly called business meeting.

If it is to be Sold

If the property is to be sold, contact the Florida Church of God Ministries office to secure the appropriate resolution for release of Florida Church of God Ministries Conditional interest in the deed.

In a duly called business meeting the congregation should vote upon a resolution to sell the property. If such resolution is approved, then present the resolution obtained from Florida Assembly, which requests the release of the Florida Church of God Ministries' Conditional Interest.

Controversy in the Local Church

When controversy arises in a congregation resulting in opposing factions claiming the right to the church property, members of the congregation should seek the counsel of the state, district, provincial, or national organization. Florida Assembly will work with the state, district, provincial, or national organization and/or the congregation to preserve the property for the constituency maintaining harmony and fellowship with the Church of God as represented by the General Assembly of God.

Cooperation

It is stated policy of Florida Church of God Ministries to cooperate with the local congregation in every way consistent with the welfare of the congregation and the church general. It is not intended that Florida Church of God Ministries should benefit from conditional deeding, but serve the church in retaining its property for its original intended use.

Church Property Fallen into Disuse

If a congregation dissolves, it is highly desirable that the officers and governing board work with Florida Assembly of the Church of God in disposing of the assets.

When it becomes known to Florida Church of God Ministries that one of its congregations has ceased to exist and the property is no longer in use by the Church of God, steps should be taken to dispose of the property. This should be done in

cooperation with the congregation's officers and governing board as it still exists, and with Florida Church of God representatives.

Forfeiture through Loss of Fellowship

In the event that a congregation loses fellowship and doctrinal unity with the Church of God in the state in which it is located, steps should be taken to preserve the property for the Church of God. When, in the judgment of Florida Church of God Ministries, the property should be claimed, the organization should declare this in a formal statement. Florida Church of God Ministries, through its representatives will implement procedures necessary to claim the property and gain possession.

REAFFIRMATION BY GENERAL ASSEMBLY

(Reprinted here is the text of the Resolution approved by the
General Assembly of the Church of God
in a duly called session on July 25, 1980)

General Assembly of the Church of God
Conditional Deeding Resolution
June 1999

“ WHEREAS the General Assembly of the Church of God has traditionally upheld the concept of Conditional Deeding as an effective means of safeguarding Church of God property, and

WHEREAS the General Assembly in session on the _____ day of June, 1999, wishes to re-emphasize the propriety, wisdom, and usefulness of safeguarding church property, and

WHEREAS Conditional Deeding has been administered by Church Extension of the Church of God, Inc., successfully for many years at the request of the General Assembly, and

WHEREAS the Church Extension of the Church of God, Inc. has made a public statement of permanent policy which stated in part that Church Extension will claim no jurisdiction nor authority over the business or Ecclesiastical phases of the local congregation; that Church Extension will work with the local congregation and it's governing board in the transfer or encumbrancing of their property; and that Church Extension will not claim ownership of any Conditionally Deeded property until after appropriate action is taken by the General Assembly or its assigns; and should Church Extension take title to any such property, it shall work with the appropriate governing board of the congregation and/or state, district, area, province organization to re-establish the property shall not inure to the benefit of Church Extension; be it therefore

RESOLVED that Church Extension of the Church of God, Inc. is requested and encouraged by the General Assembly of the Church of God to continue the program of Conditional Deeding to insure the safeguarding of church property within the Church of God.”

A “Conditional Deeding Resolution” was approved by the General Assembly of the Church of God in a duly called session on June 25, 1980; and, this Resolution was affirmed in the June 1999 session of the General Assembly.

The following is the Safeguarding Clause to be inserted in the deed to local church property for Conditional Deeding purposes.

SAFEGUARDING CLAUSE

“To have and to hold, so long as the local Church of God known as

_____ at _____
(Name of Congregation) (Street Address)

_____ (City) _____ (State) _____ (Zip)

maintains fellowship and doctrinal unity with the General Assembly of the Church of God which meets annually in Anderson, Indiana and the property remains in use by said church. If this property falls into disuse, or if in the opinion of said General Assembly the local church at

_____, _____
(City) (State)

is no longer in fellowship and doctrinal unity with the church of God, as represented by the General Assembly, this property shall go to, vest in, and become the property in fee simple of Florida Church of God Ministries of the Church of God, Inc., Lake Wales, Florida, or its successors or assigns.”

For the State of Michigan

CONDITIONAL DEED AGREEMENT

This Conditional Deed Agreement is made this _____ day of _____, 200__, by and between _____ of

(name)

(Address)

(herein "Local Church") and The General Assembly of the Church of God in Michigan, a Michigan Church, of 4212 Alpha Street, Lansing, Michigan 48910 (herein "Church of God in Michigan").

WHEREAS, the Church of God in Michigan does not provide through one general organization of the church, nor in conferences, for the holding of title to all local church property, but each congregation is autonomous so far as its business and the holding of church property is concerned; and

WHEREAS, it has been found that in the holding of local church property solely in the name of trustees, or in the name of the business corporation of the local church, there is always the danger of the loss of such property by the Church of God in Michigan, and

WHEREAS, there have been in recent years numerous examples of such loss or difficulty; and

WHEREAS, the General Assembly of the Church of God in Michigan recommends a Plan of Conditional Deeding, whereby local church property may be safeguarded to the original purpose for which it was obtained; namely, use by and for the Church of God in Michigan, with general offices in Lansing, Michigan; and

WHEREAS, Local Church desires to participate in the Church of God in Michigan's Plan of Conditional Deeding,

NOW, THEREFORE, in consideration of one dollar (\$1.00) paid to each other, receipt of which is hereby acknowledged, the parties agree as follows:

1. LOCAL CHURCH QUIT CLAIM DEED

Local Church agrees to execute and record a Quit Claim Deed conveying its fee simple title to its real property located in _____ of

_____.

State of Michigan and legally described as follows:

("Real Property") Free and clear of any liens to the Church of God in Michigan. A sample Quit Claim Deed is attached under Tab 1.

2. CHURCH OF GOD IN MICHIGAN CONDITIONAL DEED

The Church of God in Michigan agrees to execute and record a Quit Claim Deed conveying its interest in the real property subject to the following stated conditions:

A. Church Related Activities

Local Church agrees to perform and maintain throughout the time it is the fee simple owner of the real property the following Church of God in Michigan's activities:

- 1) Complying with The Church of God, Anderson, Indiana, National Credential Manual as maybe or hereafter amended,
- 2) Following biblical doctrine as commonly accepted by The Church of God, Anderson, Indiana, and
- 3) Remaining in existence, e.g. no dissolving and/or ceasing to operate as local Church of God.

B. Liens

Local Church agrees to keep the real property free and clear of all liens, including mortgages, except liens, and/or mortgages, consent to, in advance, by the Church of God in Michigan.

C. Real Property Taxes

In the event the real property is not exempt, or should lose its exemption, from real property taxes, then Local Church agrees to timely pay all real property tax due on the real property.

D. Property Insurance

Local Church agrees to keep all buildings, improvements and personal property on the real property adequately insured against loss on damage by fire, windstorm, vandalism and any other casualties.

3. ESCROW DEED

Local Church agrees to execute Quit Claim Deed conveying its fee simple title to the Church of God in Michigan, which will only become effective when the Local Church violates one or more of the stated conditions and fails to cure the violation(s) within thirty (30) days from receipt of notice of the violation(s) from the Church of God in Michigan. Local Church further agrees to surrender possession of the real property to the Church of God in Michigan on the effective date of the Escrow Deed. The Escrow

Deed shall be held in escrow by the Church of God in Michigan's corporate attorney, currently Thomas A. Klug.

Further, upon effective date of the Escrow Deed, the parties agree that the Church of God in Michigan shall have the exclusive right to:

- A. Terminate the Local Church's fee simple interest in the real property by recording the Escrow Deed,
- B. Reenter and take possession of the real property; and
- C. Remove the Local Church from possession of the real property.

4. SURVEY

Local Church agrees to provide the Church of God in Michigan a copy of a stake survey and/or mortgage report, if any, that it may have in its possession.

5. RISK OF LOSS

Local Church agrees to be solely responsible for all risk of loss relating to the real property during the time it owns the real property under the Conditional Deed.

6. POSSESSION

During the time the Escrow Deed is held, in escrow, and is not operative, Local Church shall have possession of the real property. On the effective date of the Escrow Deed, Local Church agrees to deliver possession of the real property to the Church of God in Michigan.

7. ARBITRATION

In the event a dispute arises which cannot be resolved amicably between the parties, the Local Church and the Church of God in Michigan agree to resolve the dispute through arbitration. The parties further agree that the dispute shall be settled in accordance with the rules, then in effect, adopted by the American Arbitration Association. A judgment of any court having jurisdiction over the subject matter shall be rendered upon the award or determination made pursuant to this Agreement. This Agreement is specifically made subject to and incorporates the provisions of Michigan law governing arbitrations, MCL 600.5001; MSA 27A.5001, as amended, and the applicable court rules, MCR 3.602, as amended. This Agreement is enforceable as to all parties and initials below. It is requested that the American Arbitration Association attempt to appoint, whenever possible, arbitrators from within the county where the property in dispute is located. The terms of this Agreement shall survive the closing.

8. RECORDING

The parties agree that this Agreement may be recorded.

9. PROPERTY TRANSFER AFFIDAVIT

Purchaser acknowledges that within forty-five (45) days from date of execution of the deeds, a property transfer affidavit is required to be filed with the assessor for the city or township where the property is located. 1994 P.A. 415.

10. ASSIGNMENT

A party shall not assign this Agreement without consent of the other party.

11. NOTICE

Any notice required or permitted hereunder shall be in writing and mailed, by certified mail, return receipt requested, with proper postage or delivered to the respective parties at their addresses set forth above.

12. GOVERNING LAW

This Agreement shall be governed by the law of the State of Michigan. Venue shall lie in the county where the real property is located.

13. ENTIRE AGREEMENT

Upon acceptance, this Agreement shall supersede any and all understandings and agreements and constitutes the entire agreement between the parties hereto and no oral representations or statement shall be considered a part hereof.

14. BINDING EFFECT

Upon acceptance, this Agreement shall bind, and inure to the benefit of the successors, and assigns of the respective parties hereto.

15. RESOLUTION

Both parties represent that this Agreement has been approved by resolution of their respective governing boards (e.g., General Assembly, Board of Trustees), and the individuals signing this Agreement are authorized to sign on the respective party's behalf.

*

(Name of Local Church)

Dated:

By:

*

Dated:

By:

*

STATE OF MICHIGAN)
COUNTY OF _____)^{SS.}

The foregoing instrument was acknowledged before me this _day of _____

200 __, by _____ and _____
(Name(s) of Officer(s)) (Name(s) of Officer(s))

the _____ and _____
(Title(s) of Officer(s)) (Title(s) of Officer(s))

of _____, a Michigan Corporation, on behalf of the
Corporation.
(Name of Local Church)

Notary Public
_____ County, Michigan
My commission expires: _____

THE CHURCH OF GOD IN MICHIGAN

Dated:

By:

***Executive Secretary/Treasurer**

STATE OF MICHIGAN)
COUNTY OF _____)^{SS.}

The foregoing instrument was acknowledged before me this _day of _____

200 __, by _____, the Executive Secretary of The Church of
God in

Michigan, a Michigan Corporation on behalf of the Corporation.

Notary Public
_____ County, Michigan
My commission expires:

* Type name and title where applicable

Drafted By:

THOMAS A. KLUG (P27462)

Attorney at Law

3626 Dunckel Road, PO Box 24127

Lansing, MI 48909

Voice: 517-332-3555

Fax: 517-332-0083

CONDITIONAL DEED

THE GRANTOR, The General Assembly of the Church of God in Michigan, a Michigan Non-

Profit Corporation, of 4212 Alpha Street, Lansing, Michigan 48911 Quit Claims to GRANTEE,

_____ of
(Name of Local Church)

_____, a Michigan Non-Profit
(Address)

Corporation, the following described parcel of land situated in the

_____ of
(City/Township)

_____, _____ of _____, and State of
(City/Township) (County) (County)

Michigan and legally described as:

and more commonly known as: _____
(Address)

For the sum of **ONE AND NO/100 (\$1.00)** United States dollars and subject to the conditions that:

A. Grantee performs and maintains throughout the time it is the fee simple owner under this Conditional Deed of the above described real property the following Church of God in Michigan's activities:

- 1) Complying with The Church of God, Anderson, Indiana, National Credential Manual as maybe or hereafter amended,
- 2) Following biblical doctrine as commonly accepted by The Church of God, Anderson, Indiana, and
- 3) Remaining in existence, e.g. no dissolving and/or ceasing to operate as local Church of God.

B. In the event the Grantee shall fail to perform and/or maintain one or more of the above described Church of God in Michigan activities, or if the real property falls into disuse, or, if in the opinion of Grantor's General Assembly, Grantee is no longer in fellowship and doctrinal unity with The Church of God, Anderson, Indiana, as represented by the General Assembly and fails to cure within thirty (30) days from the date of Grantee's receipt of written notice from Grantor, then this real property shall go to, vest in, and become the property in fee simple of The General Assembly of the Church of God in Michigan, Lansing, Michigan and Grantor shall have the exclusive right to:

1. **Terminate the Local Church's fee simple interest in the real property by recording the Escrow Deed,**
2. **Reenter and take possession of the real property; and**
3. **Remove the Local Church from possession of the real property.**

TRANSFER OF RIGHT TO DIVIDE

This conveyance does not make a division of the transferred parcel and no divisions have been made since March 31, 1997. This conveyance is exempt from the provisions of Sections 108 and 109 of the Land Division Act (MCLA 560.101 et seq, as amended) see Atty. General Opinion No. 7005 (12/30/98).

MICHIGAN RIGHT TO FARM

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

TRANSFER TAX EXEMPTION

This conveyance is exempt from the County and State Transfer Tax pursuant to MCLA 207.505(a) and MCLA 207.526(a).

Dated this __ day of _____, 200__.

GRANTOR:

THE GENERAL ASSEMBLY OF THE
CHURCH OF GOD IN MICHIGAN

BY: _____
* _____
Executive Secretary/Treasurer

STATE OF MICHIGAN)
COUNTY OF _____)^{SS.}

The foregoing instrument was acknowledged before me this _____ day of _____

200__, by _____ the Executive Secretary/Treasurer of The
General

Assembly of the Church of God in Michigan, a Michigan Corporation , who is authorized
to

sign on behalf of the Corporation.

Notary Public
_____County, Michigan
My commission expires:_____

Drafted by **Thomas A. Klug (P27462) Attorney at Law., 3626 Dunckel Road, P.O. Box 24127, Lansing, Michigan 48909** using information provided by Grantor, including but not limited to the legal description. Preparer disclaims the accuracy, adequacy, or completeness of such information, and does not make any express or implied warranties regarding same.

City Treasurer's Certificate: _____ County Treasurer's Certificate:

When Recorded Return to:

Send Subsequent Tax Bills to:

Thomas A. Klug
Attorney at Law
3626 Dunckel Road
P.O. Box 24127
Lansing, MI 48909

The Church of God in Michigan
4212 Alpha Street
Lansing, MI 48911

Tax Parcel # _____ Recording Fee _____ Transfer Tax\$

- **Type name and title where applicable.**

CHURCH OF GOD IN MICHIGAN
CONDITIONAL DEED RESOLUTION

“**WHEREAS** the General Assembly of The Church of God in Michigan has traditionally upheld the concept of conditional deeding as an effective means of safeguarding local Church of God real property in the State of Michigan, and

WHEREAS the Board of Directors of the Church of God in Michigan wishes to re-emphasizes the propriety, wisdom, and usefulness of safeguarding church property; and

WHEREAS conditional deeding has been administered by The Church of God in Michigan successfully for many years; and

WHEREAS The Church of God in Michigan have made a public statement of permanent policy which states in part that The Church of God in Michigan will claim no jurisdiction nor authority over the business or ecclesiastical phases of the local congregation; that The Church of God in Michigan will work with the congregation and it’s governing board in the transfer or encumbrancing of their property; and that The Church of God in Michigan will not claim ownership of any conditionally deeded property until after appropriate action is taken by the Board of Directors; and that should The Church of God in Michigan take title to any such property, it shall work with the appropriate governing board of the congregation and/or state, district, area, province organization to re-establish the property in the work of The Church of God in Michigan and said property shall not inure to the benefit of the Church of God in Michigan; **be it therefore**

RESOLVED that The Church of God in Michigan shall continue the program of conditional deeding to insure the safeguarding of church property within The Church of God in Michigan.

A “Conditional Deeding Resolution” was approved by the Board of Directors of The Church of God in Michigan in a duly called session on January, 2004.

Chair

Vice Chair

Secretary

For additional information write or call

THE CHURCH OF GOD IN MICHIGAN
4212 Alpha Street
Lansing, Michigan 48910
Phone: (517) 393-7020

CHURCH OF GOD IN MICHIGAN
CONDITIONAL DEED RESOLUTION

RE: _____
(LOCAL CHURCH)

WHEREAS, The Church of God in Michigan, with general offices in Lansing, Michigan, does not provide through one general organization of the church, nor in conferences, for the holding of title to all local church property, but each congregation is autonomous so far as its business and the holding of church property is concerned; and

WHEREAS, it has been found that in the holding of local church property solely in the name of trustees, or in the name of the business corporation of the local church, there is always the danger of the loss of such property by The Church of God in Michigan, and

WHEREAS, there have been in recent years numerous examples of such loss or difficulty; and

WHEREAS, the **General Assembly of The Church of God in Michigan recommends a program of conditional deeding, whereby local church property may be safeguarded to the original purpose for which it was obtained; namely, use by and for The Church of God in Michigan, with general offices in Lansing, Michigan, and**

WHEREAS, the members of _____ of _____,
(Name of local church)

Michigan _____, desires to participate in The Church of God in Michigan's Program of Conditional

Deeding,

NOW, THEREFORE, BE IT:

RESOLVED that The Church of God in Michigan is hereby authorized to enter into a Program of

Conditional Deeding with _____ of _____,
(Name of local church)

Michigan _____.

FURTHER RESOLVED, that the Executive Secretary/Treasurer of The Church of God in Michigan are authorized to execute such documents (e.g. Conditional Deed Agreement, Conditional Deed) as are necessary to safeguard the local church's real property located at

(Street Address)

Michigan _____ and to comply with the Program of Conditional Deeding.

FURTHER RESOLVED, that a copy of this resolution, certified by The Church of God in

Michigan's Secretary, be sent to the Board of Church Extension and Home Missions of The Church of God in Michigan, Lansing, Michigan.

(Signed) _____
_____, Executive Secretary/Treasurer

* * * * *

This is to certify that the above is a true and correct copy of the above Conditional Deed Resolution.

Date: _____ (Signed) _____
_____, Secretary

ASSIGNMENT OF VENDEE'S LAND CONTRACT INTEREST

FOR A VALUABLE CONSIDERATION, receipt of which is acknowledged, the undersigned

_____, a Michigan Non-Profit
(Name of Local Church)
Corporation, of _____,
(Address)

("Assignor) hereby sells, assigns and sets over to The General Assembly of the Church of God in Michigan, a Michigan Non-Profit Corporation, of 4212 Alpha Street, Lansing, Michigan 48911 ("Assignee"), its interest in a certain land contract, dated _____, 200__, executed between

_____ and _____,
(Name of Seller) (Name of Seller)

_____, of _____, as
(Marital Status or Entity Description) (Address of Seller)

Sellers, and _____, as Purchaser for the sale and
(Name of Local Church)
purchase

of real property located in the _____ of _____
(City/Township) (City/Township)

_____ of _____, and State of Michigan and legally
(County) (County)
described as:

and more commonly known as: _____
(Address)

together with sums due and to become due thereon and covenants that there is now owing thereon

_____ (\$ _____) United
(Dollar Amount) (Dollar Amount)

States Dollars, with interest from _____. This Assignment is made without recourse by the Seller against the Assignee on the land contract. Assignor understands and agrees that it will remain liable for all of the terms of the land contact, even after the consent by the seller to this Assignment.

Dated this _____ day of _____, 200__.

ASSIGNOR:

* _____
(Name of Local Church)

BY: _____
* _____

BY: _____
* _____

STATE OF MICHIGAN)
COUNTY OF _____)^{SS.}

The foregoing Acceptance was acknowledged before me this _____ day of _____
_____ 200__, by _____ and _____
(Name(s) of Officer(s)) (Name(s) of Officer(s))
the _____ and _____
(Title(s) of Officer(s)) (Title(s) of Officer(s))

of _____, a Michigan Corporation on behalf of
(Local Church)
Corporation.

Notary Public
_____ County, Michigan
My commission expires: _____

ACCEPTANCE

Assignee hereby accepts said Assignment without recourse to it on the land contract. Assignee

understands and agrees, however, that the seller(s) shall retain title to the real property until the land contract is paid in full.

Dated this _____ day of _____, 200__.

ASSIGNEE:

THE GENERAL ASSEMBLY OF THE
CHURCH OF GOD IN MICHIGAN

BY: _____
* _____,
Executive Secretary/Treasurer

STATE OF MICHIGAN)
COUNTY OF _____)^{SS.}

The foregoing Acceptance was acknowledged before me this _____ day of _____
_____ 200 __, by _____ the Executive
Secretary/Treasurer of The Church of

God in Michigan, a Michigan Corporation, who is authorized to sign on behalf of the Corporation.

Notary Public
_____ County, Michigan
My commission expires: _____

CONSENT

Seller(s) hereby consent to the above Assignment of Vendee's Land Contract Interest without recourse by Assignor, _____
(Name of Local Church)

Assignee, The General Assembly of the Church of God in Michigan.

Seller(s), however, do not release the Assignor, _____
(Name of Local Church)

from its contractual obligations on the land contract and shall retain title to the real property until the land contract is paid in full.

Dated this _____ day of _____, 200__.

SELLER:

BY: _____
* _____

BY: _____
* _____

STATE OF MICHIGAN)
COUNTY OF _____)^{SS.}

The foregoing Consent was acknowledged before me this ___ day of _____, 200__,

by _____ and _____,
(Name of Seller) (Name of Seller)

as Seller(s).

Notary Public
_____ County, Michigan
My commission expires: _____

OR

* _____
(Name of Seller)

BY: _____
* _____

BY: _____

* _____

STATE OF MICHIGAN)
COUNTY OF _____)ss.

The foregoing Consent was acknowledged before me this ___ day of _____

200 __, by _____ and _____
(Name(s) of Officer(s)) (Name(s) of Officer(s))

the _____ and _____
(Title(s) of Officer(s)) (Title(s) of Officer(s))

of _____, a Michigan ** _____ on
behalf of
(Name of Seller)

the Corporation.

Notary Public
_____ County, Michigan
My commission expires: _____

***Type name and title where applicable.**

**** Type corporation, limited liability company or partnership where applicable.**

Document drafted by:
THOMAS A. KLUG (P27462)
ATTORNEY AT LAW
3626 DUNCKEL ROAD
PO BOX 24127
LANSING, MI 48909
VOICE: 517-332-3555
FAX: 517-332-0083

QUIT CLAIM DEED

THE GRANTOR, Church Extension of the Church of God inc. of 1812 University Blvd., an

Indiana Non-Profit Corporation, **Quit Claims to GRANTEE, The General Assembly of the Church of**

God in Michigan, a Michigan Non-Profit Corporation, of 4212 Alpha Street, Lansing, Michigan 48911, the following described parcel of land situated in the

_____ of _____, of
(City/Township) (City/Township)
_____, and State of Michigan and legally described as:
(County)

and more commonly known as: _____
(Address)

For the sum of **ONE AND NO/100 (\$1.00)** United States dollars.

TRANSFER OF RIGHT TO DIVIDE

This conveyance does not make a division of the transferred parcel and no divisions have been made since March 31, 1997. This conveyance is exempt from the provisions of Sections 108 and 109 of the Land Division Act (MCLA 560.101 et seq, as amended) see Atty. General Opinion No. 7005 (12/30/98).

MICHIGAN RIGHT TO FARM

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

TRANSFER TAX EXEMPTION

This conveyance is exempt from the County and State Transfer Tax pursuant to MCLA 207.505(a) and MCLA 207.526(a).

Dated this __ day of _____, 200__.

GRANTOR:

* _____
(Name of Local Church)

BY: _____
*

BY: _____
*

STATE OF INDIANA)
COUNTY OF _____)^{SS.}

The foregoing instrument was acknowledged before me this _____ day of _____

200__, by _____ and _____
(Name(s) of Officer(s)) (Name(s) of Officer(s))

the _____ and _____
(Title(s) of Officer(s)) (Title(s) of Officer(s))

of Church Extension of the Church of God inc., An Indiana Corporation on behalf of the Corporation.

Notary Public
_____ County, Indiana
My commission expires: _____

Drafted by **Thomas A. Klug (P27462) Attorney at Law., 3626 Dunckel Road, P.O. Box 24127, Lansing, Michigan 48909** using information provided by Grantor, including but not limited to the legal description. Preparer disclaims the accuracy, adequacy, or completeness of such information, and does not make any express or implied warranties regarding same.

City Treasurer's Certificate: _____

County Treasurer's Certificate:

When Recorded Return to:

Send Subsequent Tax Bills to:

Dr. William H. Jones
Executive Secretary Treasurer
4212 Alpha Street
Lansing, MI 48910

The Church of God in Michigan
4212 Alpha Street
Lansing, MI 48910

Tax Parcel # _____ Recording Fee _____ Transfer Tax\$

*** Type name and title where applicable.**

QUIT CLAIM DEED

THE GRANTOR, _____ of
(Name of Local Church)

_____, a Michigan Non-Profit
(Address)

Corporation, **Quit Claims to GRANTEE, The General Assembly of the Church of God in Michigan,** a Michigan Non-Profit Corporation, of 4212 Alpha Street, Lansing, Michigan 48911, the following described parcel of land situated in the

_____ of _____, _____ of
(City/Township) (City/Township) (County)

_____, and State of Michigan and legally described as:
(County)

and more commonly known as: _____
(Address)

For the sum of **ONE AND NO/100 (\$1.00)** United States dollars.

TRANSFER OF RIGHT TO DIVIDE

This conveyance does not make a division of the transferred parcel and no divisions have been made since March 31, 1997. This conveyance is exempt from the provisions of Sections 108 and 109 of the Land Division Act (MCLA 560.101 et seq, as amended) see Atty. General Opinion No. 7005 (12/30/98).

MICHIGAN RIGHT TO FARM

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

TRANSFER TAX EXEMPTION

This conveyance is exempt from the County and State Transfer Tax pursuant to MCLA 207.505(a) and MCLA 207.526(a).

Dated this __ day of _____, 200__.

GRANTOR:

* _____
(Name of Local Church)

BY: _____

* _____

BY: _____

* _____

STATE OF MICHIGAN)
COUNTY OF _____)SS.

The foregoing instrument was acknowledged before me this _____ day of _____

200__, by _____ and _____
(Name(s) of Officer(s)) (Name(s) of Officer(s))

the _____ and _____
(Title(s) of Officer(s)) (Title(s) of Officer(s))

of _____, a Michigan Corporation on behalf of the
Corporation.
(Name of Local Church)

Notary Public
_____ County, Michigan
My commission expires: _____

Drafted by **Thomas A. Klug (P27462) Attorney at Law., 3626 Dunckel Road, P.O. Box 24127, Lansing, Michigan 48909** using information provided by Grantor, including but not limited to the legal description. Preparer disclaims the accuracy, adequacy, or completeness of such information, and does not make any express or implied warranties regarding same.

City Treasurer's Certificate: _____

County Treasurer's Certificate:

When Recorded Return to:

Send Subsequent Tax Bills to:

Thomas A. Klug
Attorney at Law
3626 Dunckel Road
P.O. Box 24127
Lansing, MI 48909

The Church of God in Michigan
4212 Alpha Street
Lansing, MI 48911

Tax Parcel # _____ Recording Fee _____ Transfer Tax\$

*** Type name and title where applicable.**

ESCROW DEED

THE GRANTOR, _____ of
(local Church)

_____, a Michigan Non-Profit
(Address)

Corporation, **Quit Claims to GRANTEE, The General Assembly of the Church of God in Michigan**, a Michigan Non-Profit Corporation, of 4212 Alpha Street, Lansing, Michigan 48911, the following described parcel of land situated in the

_____ of _____, _____ of
(City/Township) (City/Township) (County)

_____, and State of Michigan and legally described as:
(County)

and more commonly known as: _____
(Address)

For the sum of **ONE AND NO/100 (\$1.00)** United States dollars.

TRANSFER OF RIGHT TO DIVIDE

This conveyance does not make a division of the transferred parcel and no divisions have been made since March 31, 1997. This conveyance is exempt from the provisions of Sections 108 and 109 of the Land Division Act (MCLA 560.101 et seq, as amended) see Atty. General Opinion No. 7005 (12/30/98).

MICHIGAN RIGHT TO FARM

This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

TRANSFER TAX EXEMPTION

This conveyance is exempt from the County and State Transfer Tax pursuant to MCLA 207.505(a) and MCLA 207.526(a).

Dated this ___ day of _____, 200__.

GRANTOR:

* _____
(Name of Local Church)

BY: _____
* _____

BY: _____
* _____

STATE OF MICHIGAN)
COUNTY OF _____)ss.

The foregoing instrument was acknowledged before me this _____ day of _____

200 __, by _____ and _____
(Name(s) of Officer(s)) (Name(s) of Officer(s))

the _____ and _____
(Title(s) of Officer(s)) (Title(s) of Officer(s))

of _____, a Michigan Corporation on behalf of
(Name of Local Church)
the Corporation.

Notary Public
_____ County, Michigan
My commission expires: _____

Drafted by **Thomas A. Klug (P27462) Attorney at Law., 3626 Dunckel Road, P.O. Box 24127, Lansing, Michigan 48909** using information provided by Grantor, including but not limited to the legal description. Preparer disclaims the accuracy, adequacy, or completeness of such information, and does not make any express or implied warranties regarding same.

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3626 Dunckel Road
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Lansing, MI 48909

The Church of God in Michigan
4212 Alpha Street
Lansing, MI 48911

Tax Parcel # _____ Recording Fee _____ Transfer Tax\$

***Type name and title where applicable.**

Block C1

Clergy and the Law

In a perfect world, pastors would only need to concern themselves with sermon topics and visitation. However, this is not a perfect world. Today clergy must be concerned about various legal issues that effect them directly.

Pastors need to be knowledgeable about issues that should appear in their contracts. What recourse they can take if removed by a church. They especially need to know the limits of their authority, rights, and privileges. The pastor's position may also bring with it situations that can be considered liabilities. Pastors should be aware of these and recourse for dealing with them. In the pages that follow these issues will be dealt with in detail.

CONTRACTS

The relationship between a pastor and a church is contractual in nature. This contract can be written, verbal, or assumed.

One court observed that "one becomes pastor of a church pursuant to a contract, made with the person or body having the authority to employ." Another court noted that "just as a church can contract with persons outside the church membership, it can contract with its own pastor."³⁴⁶

As one court observed, "[t]he absence of a written contract is completely immaterial; the conduct of the parties clearly indicates an agreement to retain [the] pastor until his dismissal by the church."³⁴⁷

It is important to determine when the contract is enforce. There are legal rights available to both parties once the contract is enforced.

For a contract to be enforceable, it must be detailed in mainly three sections. These sections include:

1. The nature of the services to be performed.³⁴⁸
2. Compensation to be paid.³⁴⁹
3. The term of employment (which may be indefinite).³⁵⁰

³⁴⁶ Richard R. Hammar, Pastor, Church & Law, Third Edition (Matthews, NC: Christian Ministry Resources, 2000): p. 51.

³⁴⁷ *ibid.*: p. 51.

³⁴⁸ *ibid.*: p. 52.

³⁴⁹ *ibid.*: p. 52.

³⁵⁰ *ibid.*: p. 52.

An enforceable contract ordinarily will be created on the day the minister signs the agreement or mails an acceptance to the church.³⁵¹

Just because a contract contains information referring to a weekly, monthly, or yearly salary does not guarantee the pastor a full year's employment. Such language does not guarantee a "contract for life" situation. The courts will usually not support a "contract for life" claim by the pastor.

When a church and a pastor sign a valid contract, the door is open for either party to breach it. The courts will resolve such cases if it does not involve inquiry into religious discipline and laws.

As one court has observed, the civil courts will involve themselves in a contractual dispute between a church and its pastor only if "the determination of the parties' rights can be accomplished by the application of neutral principles of law without the necessity of adjudicating matters of church doctrine or determining matters of church government in an hierarchical church."³⁵²

There are two additional factors that courts will review in determining whether or not to deal with church/pastor contract suits.

1. Lawsuits brought by ministers who were dismissed prior to the end of the term of employment specified in an employment contract must be filed within the time period specified in the applicable statute of limitations – which begins to run upon the expiration of the contract term.³⁵³
2. Wages not paid under the terminated contract will not necessarily be the measure of damages. The minister has a legal duty to mitigate the church's damages by accepting available alternative employment of the same or similar character. If the minister diligently seeks alternative employment of the same or similar character, but none is available, he or she is entitled to sue for the full salary corresponding to the terminated portion of the employment term. If the dismissed minister does not seek other employment, then the church's liability will be reduced by the amount which the minister, with reasonable diligence, might have earned from other employment during the remaining contract term. If the minister finds work of the same or similar character during the remaining term of employment, then the church's liability will be reduced by the value of the compensation received by the minister from the new employer.³⁵⁴

³⁵¹ *ibid.*: p. 52.

³⁵² *ibid.*: p. 53.

³⁵³ *ibid.*: p. 53.

³⁵⁴ *ibid.*: pp. 53-54.

There are two theories under which a church can dismiss a pastor before the expiration of a contract term.

1. A minister can be dismissed for committing a specific ground for dismissal specified in an employment contract or in the church's governing instrument. A church should not discharge a minister for misconduct without credible and convincing evidence. Churches should avoid the use of vague terminology in reciting the grounds for termination of employment in employment contracts or in the church's governing instrument. Terms such as dishonesty, immorality, incompetence, inefficiency, and unbecoming conduct should be avoided. The grounds should be stated with sufficient clarity that neither the minister nor the church will be in doubt as to their meaning. Some churches include a provision in their governing instrument specifying that the church's governing board will have sole discretion to determine whether grounds for dismissal have occurred. This is a good practice, and it is likely one that civil courts will honor.³⁵⁵
2. A church ordinarily may dismiss a minister prior to the expiration of a specified term of employment if the minister violates an implied condition of employment. Implied conditions of employment are not stated in the contract, but are reasonable inferences of the parties' unexpressed intentions and assumptions.³⁵⁶

There are two other cases in which courts will support early dismissal of a pastor: incapacitating illness of a long duration or an intervening mental incapacity.³⁵⁷

The situations stated above discuss breach of contract by the church. Pastors can also be sued for breach of contract. If a pastor ends his or her relationship with a church prior to the expiration of a specified employment term, can be sued for:

the cost of obtaining the services of another minister, plus any other damages resulting directly from the ministers' repudiation of the contract, provided that such damages were foreseeable at the time the contract was entered into.³⁵⁸

There are eight elements of a contract that a pastor and a church should be aware of when creating a written contract of employment.

1. **Names.** Legal names of each party.³⁵⁹

³⁵⁵ *ibid.*: p. 54.

³⁵⁶ *ibid.*: p. 54.

³⁵⁷ *ibid.*: p. 55.

³⁵⁸ *ibid.*: p. 55.

³⁵⁹ *ibid.*: p. 55.

2. **Signatures of each party.** If the church is incorporated, then its president and secretary ordinarily are authorized to sign contracts on behalf of the church (they should be sure to sign in a representative capacity, indicating that they are signing on behalf of the church). If the church is unincorporated, state law will determine who should sign on behalf of the church. In some states, duly elected or appointed trustees may sign contracts on behalf of the church.³⁶⁰
3. **Characterize the minister as an employee or self-employed.** If self-employed, it would be helpful to cite the basis for this conclusion.³⁶¹ The pastor is an employee for IRS purposes and self-employed for Social Security purposes.
4. **Job description.** Clergy are entitled to know what is expected of them and what is not. Many conflicts between ministers and church boards or congregations are based on differing assumptions as to the minister's responsibilities. These conflicts can be eliminated by a properly drafted job description.³⁶²
5. **Term.** State the term of employment and conditions for renewal. In some cases the term will be indefinite.³⁶³
6. **Discipline or dismissal.** Grounds for discipline or dismissal should be specified, as should any procedure that must be followed. This often is addressed in the bylaws of either the local church or a denominational agency. If so, it need not be mentioned in an employment contract. It is advisable for the contract to state that it incorporates the provisions of the church's bylaws or other governing documents.³⁶⁴
7. **Arbitration.** Churches and ministers should consider an arbitration clause committing them to use arbitration rather than the civil courts to resolve disputes.³⁶⁵
8. **Compensation.** Define the compensation of the minister. This is an important feature in any employment contract.³⁶⁶

CLERGY REMOVAL

A pastor may be terminated in one of two ways.

³⁶⁰ *ibid.*: p. 55.

³⁶¹ *ibid.*: p. 56.

³⁶² *ibid.*: p. 56.

³⁶³ *ibid.*: p. 56.

³⁶⁴ *ibid.*: p. 56.

³⁶⁵ *ibid.*: p. 56.

³⁶⁶ *ibid.*: p. 56.

- 1. Their employment with a local church may be terminated.**³⁶⁷
- 2. Their ministerial credentials may be terminated by the church or denomination that issued them.**³⁶⁸

There are seven grounds under which pastors have tried to sue churches for their termination.

- 1. no act specified as a ground for dismissal in the employment contract or in church or denominational bylaws occurred**³⁶⁹
- 2. the church or denomination failed to follow the procedure prescribed in its bylaws**³⁷⁰
- 3. violation of a civil or property right**³⁷¹
- 4. breach of the employment contract**³⁷²
- 5. emotional distress**³⁷³
- 6. defamation**³⁷⁴
- 7. fraud or collusion**³⁷⁵

Many wrongful pastoral termination suits have been brought before civil courts only to be refused to be reviewed. The United States Supreme Court has set the precedent for civil court nonintervention in termination cases.

In four separate cases, the United States Supreme Court passed rulings defining the court's stance for nonintervention in pastoral termination suits.

- 1. *Watson v. Jones*.** In this case, the U.S. Supreme Court cited three grounds for nonintervention in clergy termination cases. First, the Court based the rule on the "implied consent" of church members to the exclusive jurisdiction of their church. Second, the Supreme Court suggested that the general rule of judicial nonintervention is based on the first amendment's religion clauses. Third, the Supreme Court noted that churches are much more qualified to resolve their own disputes

³⁶⁷ *ibid.*: p. 59.

³⁶⁸ *ibid.*: p. 59.

³⁶⁹ *ibid.*: p. 59.

³⁷⁰ *ibid.*: p. 59.

³⁷¹ *ibid.*: p. 59.

³⁷² *ibid.*: p. 59.

³⁷³ *ibid.*: p. 59.

³⁷⁴ *ibid.*: p. 59.

³⁷⁵ *ibid.*: p. 59.

(many of which turn on questions of doctrine and practice) than the civil courts.³⁷⁶

2. *Gonzalez*. The United States Supreme Court observed: Because the appointment is a canonical act, it is the function of the church authorities to determine what the essential qualifications of a [clergyman] are and whether the candidate possesses them. In the absence of fraud, collusion, or arbitrariness, the decisions of the proper church tribunals on matters purely ecclesiastical, although affecting civil rights, are accepted in litigation before the secular courts as conclusive, because the parties...made them so by contract or otherwise.³⁷⁷
3. *Kedroff*. The Supreme Court reaffirmed its pronouncement in *Watson* that civil courts have no authority to resolve “questions of disciplines, or of faith, or of ecclesiastical rule, custom, or law.” The Court also observed: There are occasions when civil courts must draw lines between the responsibilities of church and state for the disposition or use of property. Even in those cases when the property right follows as an incident from decisions of the church custom or law on ecclesiastical issues, the church rule controls. This under our Constitution necessarily follows in order that there may be free exercise of religion. This decision is important since it specifically holds that alleged deprivations or interference with “property rights” cannot serve as a basis for civil court review of ecclesiastical determinations regarding the qualifications or dismissal of clergy where “the property right follows as an incident from decisions of the church...on ecclesiastical issues.” This important language should be read together with the Court’s statement in the *Gonzalez* case that “the decisions of the proper church tribunals [on matters regarding the qualifications of clergy], although affecting civil rights, are accepted in litigation before the secular courts as conclusive,” except under extraordinary circumstances described below. These two rulings indicate that dismissed clergy will not be able to have their dismissals reviewed by the civil courts merely because they claim that their civil or property rights have been violated.³⁷⁸
4. *Serbian*. This case is significant for the following reasons: (1) it reaffirmed the rule of judicial nonintervention in cases of ecclesiastical discipline over which an ecclesiastical organization has jurisdiction; (2) it rejected the claim that civil courts can justify intervention in cases of ecclesiastical discipline on the basis of alleged deprivation of “property rights,” if the alleged deprivation is a mere incidental effect of the

³⁷⁶ *ibid.*: pp. 59-60.

³⁷⁷ *ibid.*: p. 61.

³⁷⁸ *ibid.*: pp. 61-62.

underlying disciplinary process; and (3) it categorically rejected civil court review of ecclesiastical disciplinary proceedings on the basis of “arbitrariness,” and defined arbitrariness as a failure by a church to follow its own rules and procedures. The Court based these conclusions on the following grounds: (1) civil courts are forbidden by the first amendment from engaging in “searching inquiry” into the organizational documents of religious organization; (2) civil judges have no training, experience, or expertise in matters of ecclesiastical law or governance; and (3) “constitutional concepts of due process, involving secular notions of fundamental fairness or impermissible objectives,” are not relevant to matters of ecclesiastical cognizance which typically “are reached and are to be accepted as matters of faith whether or not rational or measurable by objective criteria.”³⁷⁹

The majority of pastors can expect to have termination cases rejected by civil courts because of these four rulings. The majority of courts will claim that it is the church’s responsibility to settle the issue not the secular courts. The courts will claim that such cases can not be reviewed without delving into the church’s polity and discipline documents.

As with clergy selection, there are a few rare situations of clergy termination that the civil courts will review. These cases must not involve the use of any religious documents.

- 1. Fraud or Collusion.** The United States Supreme Court has suggested that the civil courts can review clergy terminations if “fraud or collusion” are alleged. However, the mere assertion that a dismissal was based on fraud or collusion will not suffice, since the Supreme Court has required that the alleged fraud or collusion be motivated “by bad faith for secular purposes.”³⁸⁰ A case of this nature has yet to be found.
- 2. Improper Methods.** The civil courts can never review the dismissals of clergy in hierarchical denominations, even if a dismissed minister alleges that the denomination failed to follow prescribed procedure. As a result, if there is any basis for civil court review of clergy dismissals allegedly based on improper procedure, it would be in the context of congregational or independent churches. Some civil courts have been willing to review questions of proper procedure in clergy dismissal controversies. At best, such decisions are appropriate only if three conditions are satisfied: (1) the decision to dismiss a minister was made by a congregational church rather than a hierarchical church; (2) the dismissal violated applicable procedure; and (3) a civil court can

³⁷⁹ *ibid.*: p. 62.

³⁸⁰ *ibid.*: p. 76.

resolve the dispute without inquiring into ecclesiastical doctrine or polity.³⁸¹

- 3. Violation of a Civil, Contract, or Property Right Independent of the Disciplinary Process.** A few courts have been willing to resolve clergy termination disputes if a civil, contract, or property right was allegedly violated that was independent of (rather than incident to) the disciplinary process and that required no inquiry into religious doctrine or polity. Few disputes satisfy these strict conditions. The key point is this: the alleged civil, contract, or property right must be independent of and not a consequence of an underlying ecclesiastical dispute involving ecclesiastical doctrine, polity, or discipline.³⁸²

The courts consistently have held that ministers who fail to “exhaust” their appeals within an ecclesiastical hierarchy are forbidden to seek redress in the civil courts.³⁸³

AUTHORITY, RIGHTS & PRIVILEGES

To help minimize some problems between a minister and a church, the scope of the minister’s authority must be established.

In general, they have the authority to do those things specifically authorized in their employment contract, in the church’s constitution or bylaws, or by specific delegation of authority from the church board or congregation.³⁸⁴

If a minister exceeds the boundaries of his or her authority, his/her actions may be void. It may be assumed by some churches and ministers that because the minister has spiritual authority, he/she automatically has legal authority regarding church matters. This is a false assumption.

Officer of the Church Corporation

Some ministers assume that they automatically become the president of the church corporation. This is not necessarily true.

A minister has no legal right to serve as president of the church corporation unless authorized to do so in the church’s governing documents.³⁸⁵

Property Matters

³⁸¹ *ibid.*: p. 77.

³⁸² *ibid.*: p. 78.

³⁸³ *ibid.*: p. 80.

³⁸⁴ *ibid.*: p. 88.

³⁸⁵ *ibid.*: p. 88.

If the minister carries the proper authority by the church, he or she can engage in property transactions.

If no authority over the business and property affairs of a church has been delegated to a minister, he or she may not lawfully act for the church in such matters.³⁸⁶

A church may of course ratify the unauthorized actions of its pastor. Ratification may be by express action of the congregation or church board, or it may be implied if the church has knowledge of unauthorized action but does nothing to repeal it.³⁸⁷

Performance of Marriage Ceremonies

In all states, ministers have the authority to perform marriages. The definitions of clergy, who are authorized to perform marriages, vary broadly from state to state.

Some states require that the minister be ordained; others require that the minister be either licensed or ordained; and others omit any specific reference to either licensure or ordination.³⁸⁸

If a person performs a marriage without proper authority, he or she could face criminal charges.

If a state law authorizes only ordained ministers to perform marriage ceremonies, an unordained minister will be criminally liable for performing a marriage. Criminal penalties for the unauthorized performance of a marriage ceremony generally include a small fine or short prison sentence.³⁸⁹

Many times ministers are asked to perform marriages in other states. It is essential that the minister investigate the state laws of the state where the marriage will be performed regarding authority to perform marriages.

In some states, it does not matter as to the state of residence of the minister. Some other states give authorization to the minister if he or she holds authorization in his/her state of residence.

There are states that enforce limitations as to authority to out-of-state ministers. One state law specifies that:

³⁸⁶ *ibid.*: p. 89.

³⁸⁷ *ibid.*: p. 89.

³⁸⁸ *ibid.*: p. 90.

³⁸⁹ *ibid.*: p. 90.

the state secretary may authorize, subject to such conditions as he may determine, the solemnization of any specified marriage anywhere within the commonwealth by [a nonresident] minister of the gospel in good and regular standing with his church or denomination.³⁹⁰

There are some states that require ministers:

to register with a government agency before they are authorized to perform marriage ceremonies.³⁹¹

Each state has legal regulations regarding who can and can not marry. Some of these regulations include:

1. Persons who are related too closely are prohibited from marrying in all states, although the prohibited degree of relationship varies widely.³⁹²
2. Persons below a specified age are prohibited from marrying without the consent of one or both parents, or a court.³⁹³
3. Many states prohibit marriages between persons of the same gender; persons with mental disability; and imprisoned felons.³⁹⁴
4. Persons with a living spouse are also barred from marrying.³⁹⁵

It is essential that ministers are familiar with the state regulations in which they reside or in which they are asked to perform marriages.

The majority of states require couples wishing to be married to acquire a marriage license before the ceremony can legally take place. These licenses can generally be obtained at the county recorder's office.

To obtain a license, the couple must complete an application and pay a fee. Blood tests are required by some states before the license can be issued. Once the license is issued, it is only valid for a set point of time. The marriage must be legalized in this period of time or the license will be void. Ministers should check for the validity of the marriage license.

Ministers may be criminally liable for marrying couples with expired licenses. Well in advance of a marriage, the minister should request a

³⁹⁰ *ibid.*: p. 90.

³⁹¹ *ibid.*: p. 91.

³⁹² *ibid.*: p. 91.

³⁹³ *ibid.*: p. 91.

³⁹⁴ *ibid.*: p. 91.

³⁹⁵ *ibid.*: p. 91.

copy of the marriage license, and ensure that it does not expire prior to the wedding date.³⁹⁶

Basically there are no state laws that regulate the actual wedding ceremony. If statutes do exist, they generally claim marriage ceremonies only be:

in accordance with their religious tradition and tenets.³⁹⁷

In the majority of states, the minister is required to:

complete a marriage certificate after the solemnization of a marriage, and return it to the same government office that issues marriage licenses.³⁹⁸

Sometimes mistakes appear on a marriage certificate. The following mistakes will not invalidate the marriage:

misspelling a name, inserting the wrong date, or having less than the required number of witness signatures.³⁹⁹

There are several acts, in relationship to marriages, for which ministers can **face criminal penalties**. These include:

- 1. failure to maintain a record of marriage ceremonies performed**⁴⁰⁰
- 2. failure to return promptly to the proper authorities a properly completed certificate of marriage and the license to marry**⁴⁰¹
- 3. marrying persons without a marriage license, or with an expired license**⁴⁰²
- 4. marrying persons not legally capable of marrying (because of age, relationship, or some other disability specified by state law)**⁴⁰³

There are several items that ministers need to review before agreeing to perform or performing a marriage ceremony. These include:

³⁹⁶ *ibid.*: p. 92.

³⁹⁷ *ibid.*: p. 92.

³⁹⁸ *ibid.*; p. 92.

³⁹⁹ *ibid.*: p. 92.

⁴⁰⁰ *ibid.*: p. 92.

⁴⁰¹ *ibid.*: p. 92.

⁴⁰² *ibid.*: p. 92.

⁴⁰³ *ibid.*: p. 92.

1. **Am I legally qualified to perform a marriage according to the law of my state?** If in doubt, contact your local recorder's office or the office of the attorney general for an interpretation.⁴⁰⁴
2. **Am I legally qualified to perform a marriage according to the law of another state?** Ministers occasionally are asked to perform a marriage in another state. If in doubt, contact the recorder's office in the county where the marriage will occur, or the office of the attorney general in the other state.⁴⁰⁵
3. **Is the engaged couple legally capable of marrying?** You will need to check your state law for the legal qualifications for marriage. Every state lists certain conditions that will limit a person's legal right to marry or even prohibit it. Common examples include persons who are below a specified age, or persons who are too closely related. During premarital counseling be sure to verify that the couple meets all of the eligibility requirements specified by your state's law.⁴⁰⁶
4. **Be sure you explain to the couple the marriage license requirements prescribed by state law.** Again, you need to be familiar with these. They can be obtained from your county recorder's office or the office of your state attorney general.⁴⁰⁷
5. **Be sure that the couple has a valid marriage license with an expiration date later than the date of the marriage.** Check the license several days or weeks prior to the wedding.⁴⁰⁸
6. **Be sure that the marriage license is valid for the county in which the marriage will occur.** Generally, a marriage license is valid only if the marriage occurs in the county in which the license was issued.⁴⁰⁹
7. **Be sure you make a record of each marriage that you perform, in the manner prescribed by your state law.**⁴¹⁰
8. **Be sure to complete a certificate of marriage (if required by state law), and return it to the appropriate government office.**⁴¹¹
9. **You may want to suggest that the couple be tested for any sexually transmitted diseases.**⁴¹²

⁴⁰⁴ *ibid.*: p. 94.

⁴⁰⁵ *ibid.*: p. 94.

⁴⁰⁶ *ibid.*: p. 94.

⁴⁰⁷ *ibid.*: p. 94.

⁴⁰⁸ *ibid.*: p. 94.

⁴⁰⁹ *ibid.*: p. 94.

⁴¹⁰ *ibid.*: p. 94.

⁴¹¹ *ibid.*: p.94.

Exemption from Military Duty

Under the Selective Service Act, ordained ministers are exempt from military service. However, there are several requirements that ministers must fulfill in order to qualify for exemption.

It is a requirement that all males register with the Selective Service. The Selective Service Act specifies that:

it shall be the duty of every male citizen of the United States...who, on the day or days fixed for the first or any subsequent registration, is between the ages of 18 and 26, to present himself for and submit to registration at such time or times and place or places, and in such manner, as shall be determined by proclamation of the President.⁴¹³

The current proclamation specifies that “persons born on or after January 1, 1963, shall present themselves for registration on the day they attain the 18th anniversary of their birth or on any day within the period of 60 days beginning 30 days before such date.⁴¹⁴

Males needing to register can do so at the local United States Post Office. Registering simply requires the verification of the person’s identity, usually with a birth certificate, and the person’s mailing address. Ministers and ministerial students are also required to register.

The Selective Service regulations specify that it is the duty of every registrant who registered after July 1, 1980, to notify the Selective Service within 10 days of any change in their mailing address or permanent residence. And, clergy or ministerial students who have been deferred or exempted from military training or service must notify the Service immediately of any changes in facts or circumstances relating to their exemption or deferral.⁴¹⁵

Each government statute, regulation, legislation and court ruling, in regards to ministry, usually carries it’s own definition of minister or ordained minister. It is the same with the Selective Service Act. The Selective Service Act defines “duly ordained minister of religion” as:

a person who has been ordained, in accordance with the ceremonial [sic], ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the

⁴¹² *ibid.*: p. 94.

⁴¹³ *ibid.*: p. 95.

⁴¹⁴ *ibid.*: p. 95.

⁴¹⁵ *ibid.*: p. 95.

doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.⁴¹⁶

Regular minister of religion is defined as:

one who as his customary vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of a religion, and who is recognized by such church, sect, or organization as a regular minister.⁴¹⁷

The Selective Service Act, also, defines what regular or duly ordained minister does not include:

- (i) A person who irregularly or incidentally preaches and teaches the principles of a religion of a church, religious sect, or organization; or**

- (ii) a person who has been duly ordained a minister in accordance with the ceremonial rite or discipline of a church, religious sect or organization, but who does not regularly, as a bona fide vocation, teach and preach the principles of a religion and administer the ordinances of public worship, as embodied in the creed or principles of his church, sect, or organization.**⁴¹⁸

To receive exemption from the Selective Service, a minister must file a written application for 4-D classification with the Selective Service. In order to receive the 4-D classification, a minister must be working in ministry full-time. The Selective Service provides that:

preaching and teaching the principles of one's sect, if performed part-time or half-time, occasionally or irregularly, are insufficient to establish eligibility for class 4-D. These activities must be regularly performed and must comprise the [applicant's] regular calling or full-time profession. The mere fact of some secular employment on the part of an [applicant] requesting classification in class 4-D does not in itself make him ineligible for that class.⁴¹⁹

⁴¹⁶ *ibid.*: p. 96.

⁴¹⁷ *ibid.*: p. 96.

⁴¹⁸ *ibid.*: p. 96.

⁴¹⁹ *ibid.*: pp. 96-97.

There are several other regulations that cause a minister's exemption to be denied. A minister's exemption will be denied if evidence "clearly shows" that the minister:

1. ***is not a regular minister or a duly ordained minister***⁴²⁰
2. ***is a duly ordained minister but does not regularly as his bona fide vocation teach and preach the principles of religion and administer the ordinances of public worship***⁴²¹
3. ***is a regular minister of religion but does not regularly, as his bona fide vocation, teach and preach the principles of religion***⁴²²
4. ***is not recognized by a church, sect, or organization as a regular minister of religion***⁴²³
5. ***he is a duly ordained minister of religion but does not administer the ordinances of public worship***⁴²⁴

As mentioned earlier, a minister needs to be serving in full-time ministry to qualify for class 4-D. The following ministry and secular work arrangements denied class 4-D for the applying minister:

a minister who worked 28 hours a week as a busboy and 30 hours a month as a minister; a minister who worked 45 hours a week as a carpenter and 15 hours a month as a minister; a minister employed full-time in secular employment and 14 hours a week in the ministry; a minister employed full-time in secular employment and 10 hours a week in the ministry; a minister who regularly performed ministerial work, but for only one-third of his total working hours; and, a minister who worked a 40 hour per week secular job and who devoted only 12 or 13 hours per month to ministerial duties.⁴²⁵

One federal appeals ruled that at least 160 hours per month should be devoted to ministry in order to qualify for the ministerial exemption.⁴²⁶

Some may ask why ministers should be exempt from military service. A federal appeals court answered this question by stating:

Ministers of religion are relieved of the duty of service not so much for their personal religious training and beliefs, but for the disruption of

⁴²⁰ *ibid.*: p. 97.

⁴²¹ *ibid.*: p. 97.

⁴²² *ibid.*: p. 97.

⁴²³ *ibid.*: p. 97.

⁴²⁴ *ibid.*: p. 97.

⁴²⁵ *ibid.*: pp. 97-98.

⁴²⁶ *ibid.*: p. 98.

public worship and religious solace to the people at large which would be caused by their induction.⁴²⁷

Ministerial students can apply for a deferral from military training. The Military Selective Service Act states:

students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction leading to their entrance into recognized theological or divinity schools in which they have been pre-enrolled, shall be deferred from training and service, but not from registration....⁴²⁸

The Selective Service continues to detail deferral of ministerial students as:

in class 2-D shall be placed any applicant who is preparing for the ministry under the direction of a recognized church or religious organization; and (1) who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled or accepted for admission; or (2) who is satisfactorily pursuing a full-time course of instruction in a recognized theological or divinity school; or (3) who, having completed a theological or divinity school, is a student in a full-time graduate program or is a full-time intern, and whose studies are related to and lead toward entry into service as a regular or duly ordained minister of religion. Satisfactory progress in these studies as determined by the school in which the registrant is enrolled, must be maintained for qualification for the deferment.⁴²⁹

The Selective Service Act defines recognized theological or divinity school as:

a theological or divinity school whose graduates are acceptable for ministerial duties either as an ordained or regular minister by the church or religious organization sponsoring a registrant as a ministerial student.⁴³⁰

Just because a ministerial student applies for class 2-D does not necessarily mean he will receive it. The ministerial student must file a application for class 2-D status with his local Selective Service board. This application must be accompanied by:

⁴²⁷ *ibid.*: p. 97.

⁴²⁸ *ibid.*: p. 98.

⁴²⁹ *ibid.*: p. 99.

⁴³⁰ *ibid.*: p. 99.

a statement from a church or religious organization that the applicant is preparing for ministry under its direction. The application for deferral also must contain a “certification” that the applicant (1) is satisfactorily pursuing a full-time course of study required for entrance into a recognized theological or divinity school, or (2) is satisfactorily pursuing a full-time course of study at a recognized theological or divinity school, or (3) is satisfactorily pursuing a full-time graduate program (following the completion of theological or divinity school) that “leads toward entry into service as a regular or duly ordained minister of religion,” (4) is a full-time intern “whose studies are related to and lead toward entry into service as a regular or duly ordained minister of religion.”⁴³¹

Just as ministers applying for class 4-D status must be full-time in ministry, ministerial students must be full-time students in order to qualify for class 2-D status.

Chaplains have been a part of the military since the Revolutionary War. Some have questioned the constitutionality of military chaplains. The courts have supported the military chaplaincy program by claiming that there are not enough civilian clergy located near military bases and overseas to cover the needs of the military personnel. The courts stated that the purpose of the military chaplaincy program:

is to make religion, religious education, counseling, and religious facilities available to military personnel and their families under circumstances where the practice of religion would otherwise be denied as a practical matter to all or a substantial number. As a result, the morale of our soldiers, their willingness to serve, and the efficiency of the Army as an instrument for our national defense rests in substantial part on the military chaplaincy, which is vital to our Army’s functioning.⁴³²

Some persons hold to religious beliefs that prevent them from being willing to serve in the military, especially in war. The Military Selective Service Act provides:

that no person who “by reason of religious training and belief is conscientiously opposed to participation in war in any form” shall be subject to combatant training and service in the armed forces.⁴³³

The United States Supreme Court has supported the concepts of a conscientious objector. The Supreme Court has held:

⁴³¹ *ibid.*: p. 99.

⁴³² *ibid.*: p. 100.

⁴³³ *ibid.*: p. 100.

that conscientious objector status is properly available to any individual who is conscientiously opposed to war on the basis of “moral, ethical, or religious beliefs about what is right and wrong and which are held with the strength of traditional religious convictions.”⁴³⁴

For a person to acquire conscientious objector status:

one must be opposed to participation in war in any form. It is not enough that an individual is opposed merely to a particular war.⁴³⁵

Conscientious objectors may be relieved from combat military service, however, the Military Selective Service Act does provide:

that conscientious objectors may be compelled to perform noncombatant military service or civilian work contributing to the maintenance of the national health, safety, or interest.⁴³⁶

Exemption from Jury Duty

Some states exempt ministers from jury duty, however, many do not. If a minister lives in a state that does not exempt ministers from jury duty, he or she may still be excused from jury duty on the grounds including:

hardship, prejudice, familiarity with the facts or one of the parties, and prior jury service in a similar case.⁴³⁷

The Clergy-Penitent Privilege

In all states, laws exist regarding communication between clergy and penitents. These laws dictate which communications are protected from being forced to be revealed in court. The history of the clergy-penitent privilege has been summarized as:

The priest-penitent privilege originated with the seal of confession. Under the Code of Canon Law of the Roman Catholic Church for a “confession in any way to betray a penitent” was a crime. A confessor who directly violates the seal of confession incurs an automatic excommunication reserved to the Apostolic See. Traditionally, breaking the seal of confession “has been one of the most severely penalized offenses within the Code.” The sanctity of the confession was recognized in English law from the Norman Conquest in 1066 until the English Reformation in the Sixteenth Century. After the Reformation,

⁴³⁴ *ibid.*: p. 101.

⁴³⁵ *ibid.*: p. 101.

⁴³⁶ *ibid.*: p. 101.

⁴³⁷ *ibid.*: p. 101.

hostility towards the Catholic Church in England resulted in a refusal to recognize the privilege. When this country was founded, therefore, the privilege did not exist as common law. Accordingly, American courts required that the privilege be conferred by statute. Where no privilege existed, clergypersons were often compelled to testify despite personal, moral, and religious objections. Although the Roman Catholic Church has the longest tradition of the sanctity of the confessional, for many other Christian denominations their “sincere dedication to secrecy is equally apparent.” In the Episcopal Church, for example, the new Book of Common Prayer’s rite, “The Reconciliation of a Penitent,” warns that the secrecy of a confession is morally absolute for the confessor, and must under no circumstances be broken. Violators are subject to church discipline. The governing body of the American Lutheran Church also has adopted a resolution that the pastor hold inviolate and disclose to no one the confessions and communications made to him as a pastor without the specific consent of the person making the communication. Similarly, the Presbyterian Church in the U.S., the United Presbyterian Church, and the American Baptist Convention have adopted policy statements strongly affirming the inviolability of religious confidentiality. The prospect of clergy going to jail to comply with their religious beliefs rather than disclosing a penitent’s confession resulted in various religious groups bringing pressure on state legislatures to enact a clergyperson privilege. Thus, the origin of the priest-penitent privilege as well as the moving force behind the enactment of the statutory privilege was to protect the clergyperson from being forced against his or her will to reveal confidences. Now almost all states have clergyperson-penitent privileges.⁴³⁸

The United States Supreme Court has supported the clergy-penitent privilege by observing that:

***the priest-penitent privilege recognizes the human need to disclose to a spiritual counselor, in total and absolute confidence, what are believed to be flawed acts or thoughts and to receive priestly consolation and guidance in return.*⁴³⁹**

Various federal and state courts have provided justifications for the clergy-penitent privilege as well as definitions of the privilege. These include:

Sound policy – reason and experience – concedes to religious liberty a rule of evidence that a clergyman shall not disclose in a trial the secrets of a penitent’s confidential confession to him, at least absent the penitent’s consent. Knowledge so acquired in the performance of a

⁴³⁸ *ibid.*: pp. 102-103.

⁴³⁹ *ibid.*: p. 103.

spiritual function...is not to be transformed into evidence to be given to the whole world...The benefit of preserving these confidences inviolate overbalances the possible benefit of permitting litigation to prosper at the expense of the tranquility of the home, the integrity of the professional relationship, and the spiritual rehabilitation of a penitent. The rules of evidence have always been concerned not only with truth but with the manner of its ascertainment.⁴⁴⁰

Communicant-clergyman confidentiality benefits the individual communicant, the clergy, and society. The individual benefits from unfettered freedom of religion in his use of the confessional; his perceived ability to communicate with God through an emissary; the therapeutic value in obtaining psychological and physical relief from fear, tension, and anxiety; and in his exercise of a fundamental right to privacy. The clergy benefits in being able to safely draw out a communicant's innermost thoughts and feelings with the assurance that confidences are protected by public policy. Id. The church as an institution benefits in enjoying recognition of its prestigious place in society. The judiciary benefits by avoiding direct confrontations with the clergy. There is the realization that requiring the clergy to testify will not necessarily produce testimony. The concept of jailing a clergyman for adhering to the absolute duty imposed upon him by deep religious beliefs is offensive.⁴⁴¹

It can not be assumed that every communication between clergy and penitent is privileged. The general statute applies only to:

- 1. communications**
- 2. confidentiality made**
- 3. to a minister**
- 4. acting in his or her professional capacity as a spiritual adviser.**⁴⁴²

Several states have incorporated a ruling referred to as Rule 505 of the Uniform Rules of Evidence. This rule provides:⁴⁴³

(a) Definitions. As used in this rule:

- (1) A "clergyman" is a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious

⁴⁴⁰ *ibid.*: p. 103.

⁴⁴¹ *ibid.*: pp. 103-104.

⁴⁴² *ibid.*: p. 104.

⁴⁴³ *ibid.*: p.104.

organization, or an individual reasonably believed so to be by the person consulting him.

(2) A communication is “confidential” if made privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication.

(b) General Rule of Privilege. A person has a privilege to refuse to disclose and to prevent another from disclosing a confidential communication by the person to the clergyman in his professional character as a spiritual adviser.

(c) Who May Claim the Privilege. The privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.

Communication

There are many forms of communications. These can be verbal, nonverbal, acts or implied. Some of these forms are protected by the clergy-penitent privilege. It can be basically assumed that the clergy-penitent privilege extends:

only to actual communications between an individual and a clergyman.⁴⁴⁴

These communications include verbal, nonverbal, and written forms. Acts can either transmit ideas or not. Acts that do not transmit ideas are not considered privileged.

Letters written to clergy may or may not be considered privileged. The courts have suggested that letters can be considered privileged if it:

1. seeks religious counsel⁴⁴⁵

2. indicates on its face that its contents are to be kept secret⁴⁴⁶

Made in Confidence

In order for communication to be considered privileged it must be made in confidence. This generally means:

⁴⁴⁴ *ibid.*: p. 104.

⁴⁴⁵ *ibid.*: p. 105.

⁴⁴⁶ *ibid.*: p. 105.

that there are no other persons present besides the minister and counselee who can overhear the communication, and that there is an expectation that the conversation will be kept secret.⁴⁴⁷

If the communication is made in the presence of others along with the clergy, it is generally not considered privileged. However,

if the presence of a third person is legally required (e.g., a prisoner who cannot communicate with a minister unless a guard is present), the privilege may apply. A few courts have concluded that communications made to a minister in the presence of elders, deacons, or other church officers are privileged if the communication involved a confession of sin made in the course of a disciplinary proceeding.⁴⁴⁸

In summary:

privileged communications to a minister must not only be made in private, but they also must be made with an express or implied understanding that they will never be disclosed. The substance of the communication, the place where it is made, and the relationship, if any, between the minister and the one making the communication, are all factors to be considered.⁴⁴⁹

Under the Rule 505 of the Uniform Rules of Evidence, confidential communication is defined as:

one that is made "privately and not intended for further disclosure except to other persons present in furtherance of the purpose of the communication."⁴⁵⁰

To a Minister

For the clergy-penitent privilege to be in effect, the confidential communication must be given to:

clergymen, priests, or ministers of the gospel.⁴⁵¹

Confidential communications to the following:

⁴⁴⁷ *ibid.*: p. 107.

⁴⁴⁸ *ibid.*: p. 108.

⁴⁴⁹ *ibid.*: p. 109.

⁴⁵⁰ *ibid.*: p. 111.

⁴⁵¹ *ibid.*: p. 112.

nuns, an elder and deacon in the Christian church, lay religious counselors, lay ministers, unordained, self-proclaimed ministers⁴⁵²

are not protected by the clergy-penitent privilege because the communication was not made to a minister.

Acting in a Professional Capacity as a Spiritual Adviser

Ministers are involved in a variety of forms of communication throughout a day. In many of these situations, he or she is not working in the capacity as a spiritual adviser. Therefore, the communications would not be protected by the clergy-penitent privilege. Only communications made to a “minister acting in a professional capacity as a spiritual adviser”⁴⁵³ are protected by the clergy-penitent privilege.

Ministers should keep the following in mind.

The applicability of the clergy-penitent privilege can be enhanced if a minister simply asks a person during a counseling session whether he or she intends for the conversation to be privileged and confidential. If the counselee responds affirmatively, then there is little doubt that the courts will conclude that the privilege applies. Clergy should bear this point in mind in the course of their counseling. If, during a conversation with a member (wherever it may occur), it appears to a minister that the other person may intend for the conversation to be confidential and privileged, the minister should confirm this understanding verbally. If the minister is ever called to testify in court concerning the conversation, this verbal confirmation should resolve most questions regarding the applicability of the clergy-penitent privilege.⁴⁵⁴

In the Course of Discipline

In order for the clergy-penitent privilege to protect a confidential communication, the communication must be made to a minister “in the course of discipline enjoined by the rules or practice of his or her church.”⁴⁵⁵ The courts vary on their interpretation of the definition of discipline. Some courts apply the privilege only to communications:

made in the understood pursuance of that church discipline which gives rise to the confessional relation, and, therefore, in particular to confessions of sin only, not to communications of other tenor.⁴⁵⁶

⁴⁵² *ibid.*: p. 112.

⁴⁵³ *ibid.*: p. 113.

⁴⁵⁴ *ibid.*: p. 116.

⁴⁵⁵ *ibid.*: p. 119.

⁴⁵⁶ *ibid.*: p. 119.

The course of discipline has been defined as:

The word “discipline”...has no technical legal meaning...The “discipline enjoined” includes the “practice” of all clergymen to be trained so as to ...concern themselves in the moral training of others, and to be as willing to give spiritual aid, advice, or comfort as others are to receive it....So it is in the course of “discipline enjoined” by the “practice” of their respective churches that the clergyman is to show the transgressor the error of his way; to teach him the right way; to point the way to faith, hope, and consolation; perchance, to lead him to seek atonement...It is important that the communication be made in such spirit and within the course of “discipline,” and it is sufficient whether such “discipline” enjoins the clergyman to receive the communication or whether it enjoins the other party...to deliver the communication. Such practice makes the communication privileged, when accompanied by the essential characteristics...The fundamental thought is that one may safely consult his spiritual adviser....When any person enters that secret chamber, this statute closes the door upon him, and civil authority turns away its ear.⁴⁵⁷

Some courts have narrowly ruled that the issue of course of discipline only pertains to the Roman Catholic Church. The United States Supreme Court has not supported this view. In 1982, the Supreme Court ruled:

that when we are presented with a state law granting a denominational preference, our precedents demand that we treat such a law as suspect and that it be invalidated unless it (1) is justified by a compelling governmental interest, and (2) is closely fitted to further that interest.⁴⁵⁸

Ministers need help in knowing what qualifies as confidential communication in the course of discipline. The court has suggested that ministers consider the following:

Whether the location of the communication indicates an intent that the communication be confidential, whether the conversation was casual in nature or undertaken by the cleric and the parishioner with a sense that the parishioner’s moral conduct was at issue, and whether persons not concerned with the subject matter were present. A communication that does not take place in private or that is made in the presence of others not intimately and directly concerned with the issue may indicate that the parties involved did not intend the conversation to be confidential....Likewise, statements made to a cleric in a social context are not privileged because the statements are not made to the cleric in

⁴⁵⁷ *ibid.*: p. 120.

⁴⁵⁸ *ibid.*: p. 120.

the course of his or her professional responsibilities or in a religious context.⁴⁵⁹

The Clergy-Penitent Privilege – Miscellaneous Issues

In determining whether or not the protection of the clergy-penitent privilege applies to a communication, ministers should consider the following:

Step 1: Is there a “communication”? If so, go to step 2. If not, stop here. The clergy-penitent privilege does not apply. Usually, a “communication” refers to an oral conversation. But it can include correspondence and even gestures or other physical acts if intended to transmit ideas.⁴⁶⁰

Step 2: Was the communication made in confidence? If so, go to step 3. If not, stop here. The clergy-penitent privilege does not apply. A communication is confidential if there is an expectation that it will not be revealed. In some states the presence of a third person prevents a communication from being confidential.⁴⁶¹

Step 3: Was the communication made to a minister? If so, go to step 4. If not, stop here. The clergy-penitent privilege does not apply.⁴⁶²

Step 4: Was the communication made to a minister acting in a professional capacity as a spiritual adviser? If so, go to step 5. If not, stop here. The clergy-penitent privilege does not apply. Generally, this requirement is met if a person seeks out a minister for spiritual counsel or confession.⁴⁶³

Step 5: Are you legally authorized to assert the privilege? If so, go to step 6. If not, stop here. The clergy-penitent privilege does not apply. In most states both the minister and counselee may assert the privilege, but in some states the privilege may be claimed only by the counselee.⁴⁶⁴

Step 6: Have all additional legal requirements been met? If so, go to step 7. If not, stop here. The clergy-penitent privilege does not apply. You will need to review your state clergy-penitent privilege statute to identify any additional legal requirements that may apply. Some states require that the communication be made in the course of spiritual “discipline.” While this is defined broadly to include spiritual counsel by most courts, this is not always

⁴⁵⁹ *ibid.*: pp. 121-122.

⁴⁶⁰ *ibid.*: p. 123.

⁴⁶¹ *ibid.*: p. 123.

⁴⁶² *ibid.*: p. 123.

⁴⁶³ *ibid.*: p. 123.

⁴⁶⁴ *ibid.*: p. 123.

true. Some courts have applied this language exclusively to confessions to Catholic priests.⁴⁶⁵

Step 7: Has the privilege been waived by the counselee? If not, go to step 8. If so, stop here. The clergy-penitent privilege does not apply. A privilege may be waived if a counselee discloses to others the same information shared in confidence with a minister.⁴⁶⁶

Step 8: Did the counselee confess to or disclose one or more incidents of child abuse? If not, and if all of the conditions summarized in the preceding steps have been satisfied, then the clergy-penitent privilege probably applies. To be certain, check with an attorney licensed to practice law in your state. If the counselee did confess to or disclose one or more incidents of child abuse, then you may be legally required to report this information to the civil authorities. Check with your state child abuse reporting law, and a local attorney, to be sure. Some states do not abrogate the privilege if child abuse is disclosed.⁴⁶⁷

Clergy-Parishioner Relationship

It is not a requirement for a counselee to be a member of the church of the minister in order for the communication to be protected by the clergy-penitent privilege. However, courts can review church membership when determining if certain types of communication are privileged.

Marriage Counseling

In marriage counseling situations, usually three people are present. As mentioned earlier, the third person present could keep the communication from being privileged. However, in a marriage counseling scenarios, courts have not held that to be true. The courts have held that such communications are privileged even with the third person present. Most courts:

have assumed that statements made to a minister in the course of marriage counseling are made to the minister in his or her professional capacity as a spiritual adviser, and in the course of discipline.⁴⁶⁸

Who May Assert the Privilege

⁴⁶⁵ *ibid.*: p. 123.

⁴⁶⁶ *ibid.*: p. 123.

⁴⁶⁷ *ibid.*: p. 123.

⁴⁶⁸ *ibid.*: p. 124.

In regards to the clergy-penitent privilege, the question arises as to who has the right to assert the privilege. Many states provide that both the penitent and the clergy have the right to claim privilege. Under Rule 505 of the Uniform Rules of Evidence:

the privilege may be claimed by the person, by his guardian or conservator, or by his personal representative if he is deceased. The person who was the clergyman at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the communicant.⁴⁶⁹

Many state laws:

give the minister the right to claim the privilege only on behalf of the penitent, meaning that if the penitent waives the privilege and agrees to testify, the minister cannot assert the privilege independently.⁴⁷⁰

When to Assert the Privilege

It may be confusing to ministers as to when to assert the clergy-penitent privilege. Ministers must understand that they are required to appear in court if so ordered. However, they are not required to disclose privileged information once in court. Therefore, the time to assert clergy-penitent privilege is once the minister is in court or in the process of giving a deposition.

Waiver of the Privilege

The clergy-penitent privilege can be waived by the penitent disclosing the privileged information to a third person. A minister may be the one to waive privilege in some states.

If the privilege is waived it no longer protects communications against compelled disclosure in a court of law or judicial proceeding.⁴⁷¹

The Privilege in Federal Courts

The state clergy-penitent privilege statutes are generally recognized by the federal courts. In 1975, Congress formulated a single principle regarding privileged communications:

The privilege of a witness...shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience. However, in civil actions and proceedings, with respect to an element of a claim or defense as to

⁴⁶⁹ *ibid.*: p. 125.

⁴⁷⁰ *ibid.*; p. 125.

⁴⁷¹ *ibid.*; p. 126.

which state law supplies the rule of decision, the privilege of a witness...shall be determined in accordance with state law.⁴⁷²

Constitutionality of the Privilege

The first amendment may guarantee religious freedom but it does not require that there should be clergy-penitent privilege.

Child Abuse Reporting

Many states require ministers to report possible cases of child abuse. This leaves a minister in an ethical dilemma if this information is acquired during a clergy-penitent communication. Some states have excused ministers from mandatory reporting in such situations.

The following can help a minister decide if he or she is excused from reporting child abuse if the information occurs during privileged communication.

1. Are you a mandatory reporter under your state's child abuse reporting law? A mandatory reporter has a legal obligation to report known or reasonably suspected incident's of child abuse to designated civil authorities. Ministers are mandatory reporters in many states. Be sure to check you state's child abuse reporting law.⁴⁷³
2. Does the clergy-penitent privilege apply? In many states, clergy who are mandatory reporters of child abuse are excused from the duty to report if they learn of the abuse in the course of a conversation that is protected by the clergy-penitent privilege. Did you learn of child abuse in the course of a privileged conversation? If so, you may be excused from the duty to report. Be sure to check your state's child abuse reporting law to see if such an exception exists.⁴⁷⁴
3. If you are not a mandatory reporter. If you are not a mandatory reporter you cannot be criminally liable for failing to report child abuse. However, this does not necessarily relieve you of civil liability. As a result, you still may want to report the abuse.⁴⁷⁵
4. Moral obligation. Be sure to consider the moral as well as the legal issues. What are the consequences if you elect not to report the child abuse? Is it possible that the victim will continue to be abused? If so, do you have a moral obligation to intervene?⁴⁷⁶

⁴⁷² *ibid.*: p. 127.

⁴⁷³ *ibid.*: p. 129.

⁴⁷⁴ *ibid.*: p. 129.

⁴⁷⁵ *ibid.*: p. 129.

⁴⁷⁶ *ibid.*: p. 129.

Confidentiality

The term confidentiality is defined as:

a duty not to disclose to anyone the substance of communication shared in confidence.⁴⁷⁷

Ministers should keep the following in mind:

Be sure to distinguish between the concepts of privilege and confidentiality. The clergy-penitent privilege provides that clergy cannot be compelled to disclose in court the content of communication shared with them in confidence while acting as a spiritual adviser. The related concept of confidentiality imposes upon clergy a duty not to disclose to others any communications shared with them in confidence.⁴⁷⁸

It is essential that ministers understand that they can be found legally accountable if they disclose privileged information without the consent of the penitent. Ministers should keep the following in mind.

Clergy who disclose confidential information shared with them in counseling sessions may be exposing themselves, as well as their church, to legal liability on the basis of malpractice, invasion of privacy, breach of fiduciary duty, and infliction of emotional distress. This conclusion may apply even when clergy share confidential information in order to discipline a member for violating church standards. The point is this – would members disclose confidential information if they suspected that their minister would report it to the church board or congregation in order to discipline them? Clearly, the answer is “no.” Therefore, it is essential for clergy to refrain from disclosing information obtained during confidential counseling sessions – even if it relates to a person’s qualifications or eligibility for membership. Of course, the church board can still discipline the individual, but not on the basis of any information shared with the minister in the course of a confidential counseling session. Another alternative is for a minister to obtain the permission of the counselee to share confidential information with the board or with some other person. If this permission is obtained (in writing), this will serve as a defense in the event that the minister is later sued for disclosing the information.⁴⁷⁹

Disclosure of Criminal Activity to Civil Authorities

⁴⁷⁷ *ibid.*: p. 131.

⁴⁷⁸ *ibid.*: p. 131.

⁴⁷⁹ *ibid.*: p. 132.

Ministers may at times receive information about criminal activity in the course of a clergy-penitent communication. This creates an ethical dilemma for the minister as to whether he/she should disclose the information to the police.

The clergy-penitent privilege does not prevent clergy from disclosing confidential communications to the police. Rather, it prevents clergy from disclosing the content of privileged communications in court. Clergy who choose to inform the police about information shared with them in confidence are providing no more than a “tip.” The police will need to confirm the information through their own investigation, since the minister will be prevented by the privilege from disclosing the information in court.⁴⁸⁰

Church Records

Many churches and ministers assume that all church records are protected from public exposure in a court case. This is not necessarily true. In many cases, the courts have ruled that such papers are not covered by privilege.

Death of the Couselee

In 1998, the United States Supreme Court stated that clergy-penitent privilege may continue after the death of the couselee.

Visiting Privileges at Penal Institutions

Ministers are allowed to visit prisoners in many state correctional facilities to counsel with them.

The first amendment does not forbid outsiders from entering prisons in order to conduct religious services and to “witness” to prisoners, at least if prisoners are not forced to participate. The practice of many prisons in employing chaplains has also been upheld against the claim that it constitutes a violation of the first amendment’s “nonestablishment of religion” clause.⁴⁸¹

Immigration of Alien Ministers

Ministers from outside the United States can receive special immigrant status to visit in the United States, if they can establish that:

⁴⁸⁰ *ibid.*: p. 133.

⁴⁸¹ *ibid.*: p. 137.

- 1. for at least two years immediately preceding the time of application for admission to the United States, he or she was engaged continuously in carrying on the vocation of a minister;**
- 2. he or she seeks to enter the United States solely for the purposes of carrying on the vocation of a minister;**
- 3. his or her services are needed by a religious denomination having a bona fide organization in the United States.⁴⁸²**

The Immigration and Naturalization Act defines the term “minister” as:

a person duly authorized by a recognized religious denomination having a bona fide organization in the United States to conduct religious worship and to perform other duties usually performed by a regularly ordained clergyman of that denomination.⁴⁸³

Miscellaneous Benefits

Ministers can receive a variety of benefits from state and federal tax laws. Most important, they are permitted to exclude from their gross income the cost of owning or maintaining a residence; they can elect (if certain conditions are met) to be exempt from social security; they are not subject to federal income tax withholding (even if they report their federal income taxes as employees); and they are not considered to be “employees” subject to federal unemployment taxes.⁴⁸⁴

The Interstate Commerce Act permits common carriers to provide transportation without charge or at discounted rates to “a minister of religion.” Various states likewise permit common carriers to provide free or discounted transportation to ministers.⁴⁸⁵

LIABILITIES, LIMITATIONS & RESTRICTIONS

Litigation against clergy is on the increase. This section will cover the most common legal liabilities.

Negligence

The issue that surrounds the majority of lawsuits against clergy is negligence. Negligence is defined as:

⁴⁸² *ibid.*: pp. 137-138.

⁴⁸³ *ibid.*: p. 138.

⁴⁸⁴ *ibid.*: p. 138.

⁴⁸⁵ *ibid.*: p. 138.

conduct which creates an unreasonable and foreseeable risk of harm to another person, and which does in fact result in injury.⁴⁸⁶

It must be understood that negligence does not have to be intentional and in most cases is not intentional. Negligence:

may consist either of a specific act or failure to act.⁴⁸⁷

Negligence is usually associated with the operation of an automobile. However, clergy can create negligent situations such as:

entrusting a dangerous article to one who, because of inexperience or immaturity cannot safely handle it; authorizing a children's activity or retreat without adequate adult supervision; knowing of a dangerous condition on the church property but failing to warn members and visitors; failing to take reasonable action to have ice and snow removed from the church's sidewalks and parking lot; or failing to have an excessively slippery floor made safe.⁴⁸⁸

Clergy are not without a variety of defenses that can be employed when sued for negligence. Contributory negligence is one such defense. Contributory negligence is:

simply negligence on the part of the injured party that contributes to the injury.⁴⁸⁹

Many courts have held that contributory negligence was a complete release from liability. This meant that injured parties could not receive any compensation from the party directly responsible for the negligence. Some courts have corrected this situation by creating comparative negligence laws.

These laws seek to apportion damages and liability on the basis of the relative fault of the parties involved. Under the doctrine of comparative negligence, negligence victims who were themselves contributorily negligent will not necessarily be denied recovery. Instead, their recovery will be reduced in proportion to their fault.⁴⁹⁰

Other states have created pure comparative negligence laws. These laws:

⁴⁸⁶ *ibid.*: p. 144.

⁴⁸⁷ *ibid.*: p. 144.

⁴⁸⁸ *ibid.*: p. 144.

⁴⁸⁹ *ibid.*: p. 144.

⁴⁹⁰ *ibid.*: p. 144.

allow a proportionate recovery to all negligence victims, including those whose own contributory negligence was equal to or greater than the negligence of the person directly causing the injury.⁴⁹¹

Yet other states have created fifty percent negligence laws. These laws state that:

victims may recover proportionate damages only if their contributory negligence was less than fifty percent of the combined negligence resulting in their injuries.⁴⁹²

Another defense used by clergy is assumption of risk. Under assumption of risk:

persons who voluntarily expose themselves to a known and appreciated danger created by the negligence of another will not be allowed to recover damages for injuries that occur.⁴⁹³

Imputed negligence is another defense employed by clergy. In this situation, the clergy can impute the church as the responsible party if the clergy is working as an employee of the church. The church becomes the respondeat superior. Respondeat superior generally means that the employer (superior) responds for the employee. The reason for this rule has been stated as follows:

The losses caused by the negligence of employees, which as a practical matter are sure to occur in the conduct of the employer's enterprise, are placed upon the enterprise itself, as a required cost of doing business. They are placed upon the employer because, having engaged in an enterprise which will, on the basis of past experience, involve harm to others through the [negligence] of employees, and sought to profit by it, it is just that he, rather than the injured plaintiff, should bear them; and because he is better able to absorb them and to distribute them, through prices, rates or liability insurance, to society, to the community at large.⁴⁹⁴

Churches may be held responsible for the actions of their pastors. Therefore, they need to consider the following:

1. A church may be legally responsible for the negligence of its minister committed within the scope of employment.⁴⁹⁵

⁴⁹¹ *ibid.*: p. 144.

⁴⁹² *ibid.*: p. 144.

⁴⁹³ *ibid.*: p. 144.

⁴⁹⁴ *ibid.*: p. 145.

⁴⁹⁵ *ibid.*: p. 145.

2. The church will be liable only if the minister is an employee rather than self-employed.⁴⁹⁶
3. A minister's reporting status for federal income tax reporting purposes is of limited significance. The courts often ignore this status completely when deciding if a worker is an employee or self-employed for purposes of imputing liability to an employer under the respondeat superior doctrine. Further, many ministers who report their income taxes as self-employed would probably be reclassified as employees by the IRS if audited.⁴⁹⁷
4. The justification for imputing an employee's negligence to an employer does not apply as forcefully to a church, which, unlike many business corporations, is not necessarily "better able to absorb [legal judgments] and to distribute them, through prices, rates or liability insurance, to society, to the community at large." It is perhaps reasonable to require business to "pass along" the cost of their employees' negligence to consumers through price adjustments. But how does a church "pass along" such costs to the public?⁴⁹⁸
5. The fact that a minister's negligence may be imputed to his or her employing church does not necessarily shield the minister from personal liability. Negligent ministers ordinarily are personally liable for their negligence and can be sued directly by their "victims." It is common for the victim of a minister's negligence to sue both the minister individually and the minister's employing church. The fact that the church may be liable in no way shields the minister from personal liability. And, if for any reason the suit against the church is dismissed, the minister may be solely liable. While unlikely, in some states a church could require a minister to indemnify or reimburse it for damages paid as a result of imputed negligence.⁴⁹⁹

Defamation

Defamation contains the following elements:

1. **oral or written statements about another person**
2. **that are false**
3. **that are "published" (that is, communicated to other persons), and**

⁴⁹⁶ *ibid.*: p. 145.

⁴⁹⁷ *ibid.*: p. 145.

⁴⁹⁸ *ibid.*: p. 145.

⁴⁹⁹ *ibid.*: p. 145.

4. that injure the other person's reputation⁵⁰⁰

Defamation contains two subsections. First, slander is the use of oral words in damaging a person's reputation. Libel results from written words. Both are generally referred to only as defamation.

It must be understood that defamation is the injury to a person's reputation not their feelings.

Clergy filing suit for defamation is often in relation to their dismissal from a church. Clergy need to understand that many courts will refuse to hear their cases because the courts have determined that they:

are barred by the first amendment guarantees of religious freedom and nonestablishment of religion from resolving challenges by dismissed clergy to the legal validity of their dismissals.⁵⁰¹

Pastors Who are Sued for Making Defamatory Statements

Ministers are not immune from being sued for defamation. Ministers should keep from making:

public remarks that might diminish the reputation, respect, goodwill, or esteem of other persons.⁵⁰²

Pastors Who Are Victims of Defamation

Whether ministers like to accept the position or not, they are public figures and because they are classified as such, they are subject to having objectionable comments made about them. Therefore, the courts have ruled that ministers, like other public figures, must prove that objectionable comments are made in malice. Malice is defined as:

either actual knowledge that the remark was false or a reckless disregard as to its truth or falsity.⁵⁰³

The courts have found that it is defamatory to publicly accuse a minister of willful deceit, a greatly confused mind, and the grossest type of moral misconduct; heresy and disturbing the peace of the church; low moral character and scandalous and evil conduct that was so bad that it could not be described publicly; lying, hatred, "tyranny," failure to pay debts, and satanic motives;

⁵⁰⁰ *ibid.*: p. 146.

⁵⁰¹ Richard R. Hammar, "Defamation." *Church Law & Tax Report*, Vol. XIV, No. 2 (March/April 2002): p. 19.

⁵⁰² Hammar, *Pastor, Church & Law*, p. 149.

⁵⁰³ *ibid.*: p. 149.

adultery or fornication; improper handling of church finances; ineptness in administrative ability; and being unable to keep his word for 24 hours.⁵⁰⁴

Ministers must keep in mind that they must be able to prove that the statements were made with malice. They must also remember that a court will not hear their case unless they can prove that the case can be reviewed without inquiry into church doctrine. In essence, it is difficult for a minister to sue for defamation.

Defenses

As with negligence, there are a number of defenses for a person that is sued in a defamation case.

1. Truth

If the person can prove beyond the shadow of a doubt that the statement was truth, this is absolute defense. This defense is based on:

the principle that the dissemination of truth should not be restricted by the fear of defamation lawsuits.⁵⁰⁵

The courts development of invasion of privacy law has created situations in which dissemination of the truth can still be classified as defamation. Under invasion of privacy law, a person can be punished for making statements which:

though true, disclose private facts about another person in a way that would be highly offensive to a reasonable person.⁵⁰⁶

2. Judicial Proceedings

If a person is testifying in a courtroom or deposition, the statements made about another person generally are not considered to be defamatory.

3. Consent

If a person consents to defamatory communications, they can not turn around later and sue for defamation. For consent to be effective it:

must of course be voluntary and knowing.⁵⁰⁷

4. Self-defense

⁵⁰⁴ *ibid.*: pp. 149-150.

⁵⁰⁵ *ibid.*: p. 152,

⁵⁰⁶ *ibid.*: p. 152.

⁵⁰⁷ *ibid.*: p. 153.

Many courts have allowed victims of defamation to respond to the defamation in a manner which, if viewed independently, might constitute defamation. The victim must be careful to confine his or her remarks to the defamatory statements.⁵⁰⁸

5. Matters of “Common Interest”

Many courts have concluded that the law should encourage members of churches and other organizations to share with each other about matters of mutual concern without undue concerns about being sued for defamation. As a result, these courts have ruled that church members are protected by a qualified privilege when sharing with other church members about matters of mutual concern or common interest. This means that such communications cannot be defamatory unless made with malice. Malice in this context means that the person who made the allegedly defamatory remark knew that it was false, or made it with a reckless disregard as to its truth or falsity.⁵⁰⁹

Church leaders occasionally communicate potentially defamatory statements to their congregations. Examples include statements concerning suspected embezzlement by a church employee, allegations of sexual misconduct by a staff member or volunteer, or explanations of why a church employee was dismissed. Before making any statements to the congregation in such cases, church leaders should consider the following points:

- ❑ Such statements may be defamatory.
- ❑ Such statements will not be protected by the qualified privilege if nonmembers are present when they are made.
- ❑ Such statements may be protected by a qualified privilege if they are made to members only. This means that church leaders take steps to ensure that only members are present when the statements are made. This can be accomplished in a number of ways. For example, a special meeting of members is called and only persons whose names are on the church’s current list of active voting members are admitted. As an additional precaution, members present at such a meeting should be asked to adopt a resolution of confidentiality, agreeing not to discuss the information with any non-member under any circumstances. Persons dissenting from this vote should be excused from the meeting. Alternatively, the statements are set forth in a letter that is sent to active voting members (with the notation “privileged and confidential” on both the letter and envelope).

⁵⁰⁸ *ibid.*: p. 153.

⁵⁰⁹ *ibid.*: p. 153.

- Consult with an attorney before making any potentially defamatory statement to the congregation (in a meeting or through correspondence).⁵¹⁰

Statements made under the following circumstances have been held not to be defamatory: a communication made between officers of a church or denomination on any subject in which they both have an interest; communications between members of a religious organization concerning the conduct of other members or officers; charges made against a church member during a church investigation into his character; reading a sentence of excommunication of a church member in the presence of a church congregation; an article in a publication produced by a religious denomination describing difficulties in missions work in an area under the control of a particular minister; charges made by an officer of a church against the church's minister; and disparaging statements made by several church members concerning their minister during a church disciplinary proceeding.⁵¹¹

In many states the "qualified privilege" is an "affirmative defense" that may be lost if it is not asserted in an answer to a lawsuit. If your church is sued for defamation as a result of statements shared with members, be sure your attorney is aware of this rule and raises the qualified privilege as an affirmative defense in the answer to the lawsuit.⁵¹²

6. Mitigating Factors

Although technically not defenses to a charge of defamation, public retraction of a defamatory statement or proof that the allegedly defamed individual provoked a defamatory statement will be admissible for the purpose of mitigating or minimizing damages.⁵¹³

Undue Influence

Frequently churches and even pastors receive gifts that are willed to them. These gifts can be brought into question by the person who willed the gift or by the person's family. The question that is usually raised concerning these gifts is undue influence by the pastor or members of the church. Undue influence has been defined by the courts to mean:

⁵¹⁰ *ibid.*: p. 154.

⁵¹¹ *ibid.*: p. 154.

⁵¹² *ibid.*: p. 155.

⁵¹³ *ibid.*: p. 157.

the exercise of an improper influence over the mind and will of another to such an extent that his professed act is not that of a free agent, but in reality is the act of the third person who procured the result.⁵¹⁴

The general factors reviewed by a court in determining if undue influence has occurred includes:

- (1) old age and mental weakness of a party executing the instrument;***
- (2) the instrument is different from and revokes a prior instrument;***
- (3) the instrument favors one or no blood relation;***
- (4) the beneficiary has procured its execution;***
- (5) it disinherits the natural objects of the grantor's bounty;***
- (6) the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision;***
- (7) others have little or no opportunity to see the grantor.***⁵¹⁵

In regards to gifts to churches or pastors the following factors are reviewed:

- whether the gift was the product of hasty action***
- whether the gift was concealed from others***
- whether the person or organization benefited by the gift was active in securing it***
- whether the gift was consistent or inconsistent with prior declarations and planning of the donor***
- whether the gift was reasonable rather than unnatural in view of the donor's circumstances, attitudes, and family***
- the donor's age, physical condition, and mental health***
- whether a confidential relationship existed between the donor and the recipient of the gift***
- whether the donor had independent advice***⁵¹⁶

⁵¹⁴ Richard R. Hammar, "Wills, trusts, and estates." Church Law & Tax Report Vol. XIV, No. 6 (November/December 2000): p. 28.

⁵¹⁵ *ibid.*: pp. 28-29.

There is another issue that can be attached to undue influence. The issue is constructive fraud. Constructive fraud is based on two elements. These elements are:

- 1. the existence of a “special confidential or fiduciary relationship,” and**
- 2. the parties to this relationship entered into a transaction in which the dominant party takes advantage of a position of trust to the weaker party’s detriment.⁵¹⁷**

Ministers must be aware of the problems surrounding the soliciting of gifts for themselves or their church, especially from elderly or mentally ill members. Ministers can merely suggest that gifts can be made but should not pursue the issue personally. Ministers should suggest that members who are considering willing gifts to them or their church meet with an independent attorney, who does not attend the church. This practice can protect the minister and the church from being accused of undue influence.

Ministers should also be aware that they can be held personally liable for punitive damages. Members of the church can also be held personally liable for punitive damages, if they are involved in helping a person executing a will or deed that is later proved to have been done under undue influence.

Not only does proof of undue influence result in the cancellation of the deed or will leaving the gift to charity, but it also exposes the individuals who participated in the undue influence to personal liability...Well-intentioned church members who assist elderly and infirm church members in executing deeds or wills that make gifts to the church may be exposing themselves to personal liability.⁵¹⁸

If your church receives a gift under a will that is challenged on the basis of undue influence, be sure to bear in mind a couple of considerations. First, undue influence usually is very difficult to prove, particularly when the decedent was in reasonably good mental and physical health at the time the will was executed. Second, in many states, undue influence must be proven by “clear and convincing evidence” – a more difficult burden of proof than the ordinary “preponderance of the evidence” standard. A church that becomes aware that an elderly or infirm person is considering leaving a portion of his or her estate to the church can reduce the possibility of undue influence even further by ensuring that the person obtains the independent counsel of an attorney in drafting the will or trust. Ideally, the attorney should not be a member of the same church. Finally, church leaders should recognize that they have a moral obligation to assist in

⁵¹⁶ Hammar, *Pastor, Church & Law*, pp. 157-158.

⁵¹⁷ Hammar, “Wills, trusts, and estates”, p. 29.

⁵¹⁸ *ibid.*: p. 29.

implementing the estate plans of deceased members so long as they are satisfied that no improper influence was exercised.⁵¹⁹

Invasion of Privacy

Ministers can be sued for invasion of privacy if they revealed personal facts of others. There are four forms of conduct that can be classified as invasion of privacy.

1. Public Disclosure of Private Facts

Those who give publicity to the private life of another are subject to liability for invasion of privacy if the matter publicized is of a kind that would be highly offensive to a reasonable person and is not of legitimate concern to the public. The key elements of this form of invasion of privacy are (1) publicity, (2) of a highly objectionable kind, (3) given to private facts about another.⁵²⁰

Publicity is defined as a communication to the public at large, or to so many persons that the matter is substantially certain to become one of public knowledge. It is not an invasion of privacy to communicate a fact concerning another's private life to a single person or even to a small group of persons. But a statement made to a large audience, such as a church congregation, does constitute "publicity."⁵²¹

Many times, ministers will reveal private facts about members of their congregations in sermons. Though these may be revealed with a positive motive and to encourage the member or the congregation, it may still be considered to be invasion of privacy.

For a statement to be considered to be invasion of privacy it must:

be such that a reasonable person would feel justified in feeling seriously aggrieved by its dissemination.⁵²²

Ministers should be cautious as to what they may reveal in sermons and discussions about members of their congregation. It would be wise for them to consider if the same statement was made about them in public how they would take it.

2. Use of Another's Name or Likeness

⁵¹⁹ Hammar, *Pastor, Church & Law*, p. 163.

⁵²⁰ *ibid.*: p. 164.

⁵²¹ *ibid.*: p. 164.

⁵²² *ibid.*: p. 164.

Many churches produced pamphlets and other documents that they distribute to the public. Churches must be cautious to make sure that they have people's permission to use their names and/or pictures in such material. If not, they can be sued for invasion of privacy.

This type of invasion of privacy is defined as:

the unauthorized use of another's name or likeness for personal or commercial advantage.⁵²³

3. False Light in the Public Eye

One who gives publicity to a matter that places another before the public in a "false light" is subject to liability for invasion of that person's privacy....The false light in which the person was placed must be highly offensive to a reasonable person, and it must have been publicized either with a knowledge that it was false or with a reckless disregard concerning its truth or falsity.⁵²⁴

A minister who ascribes beliefs or positions to others that they do not in fact hold may have invaded their privacy.⁵²⁵

4. Intruding Upon Another's Seclusion

This type of invasion of privacy by ministers or church members can occur when they enter another's home without invitation, enter hospital rooms without permission, or are persistent with unwanted phone calls, just to name a few. This type of invasion of privacy is committed by:

one who intentionally intrudes upon either the solitude or private affairs of another is subject to liability for invasion of privacy if the intrusion would be highly offensive to a reasonable person. This is committed if one without consent enters another's home, inspects another's private records, eavesdrops upon another's private conversation, or makes persistent and unwanted telephone calls to another....it can be committed by unauthorized entry into a hospital room.⁵²⁶

5. Defenses

As with negligence, ministers have a variety of defenses that may be employed if they are accused of invasion of privacy. These defenses can include:

⁵²³ *ibid.*: p. 165.

⁵²⁴ *ibid.*: p. 165.

⁵²⁵ *ibid.*: p. 165.

⁵²⁶ *ibid.*: p. 166.

consent by the alleged victim; statements made in judicial proceedings; statements that are required by law; statements that are exchanged between husband and wife or attorney and client.⁵²⁷

6. The Privacy Act of 1974

The Privacy Act was enacted to permit persons (1) to know of any records about them the government is collecting, maintaining, and distributing; (2) to prevent government records about them from being used without consent and for purposes other than those for which the records were first acquired; and (3) to correct and amend such records if necessary. The Privacy Act applies only to records maintained by the federal government and some federal contractors. It has no relevance to church records.⁵²⁸

The Freedom of Information Act requires that federal agencies promptly make available to any person upon request any identifiable record, subject to various exceptions. The Act also mandates the publication of certain categories of agency information in the Federal Register, and requires that various other kinds of records be made available for public inspection and copying. The purpose of the Act is to promote public access to the information in the possession of federal agencies.⁵²⁹

7. “Sunshine” Laws

“Sunshine” laws provide that meetings of all governmental bodies will be open to the public unless specifically exempted.⁵³⁰

Clergy Malpractice

Malpractice generally is defined as a failure to exercise an accepted degree of skill in the performance of professional duties that results in injury to another.⁵³¹

Malpractice suits are usually filed against doctors and lawyers. However, in recent years the number of cases brought against ministers is on the rise. The Nally case is the landmark case that brought the suing of clergy for malpractice to light.

In this case, the Nally family sued several clergy of Grace Community Church for malpractice, which resulted in the suicide of their son. The courts ruled that the

⁵²⁷ *ibid.*: p. 166.

⁵²⁸ *ibid.*: p. 167.

⁵²⁹ *ibid.*: p. 167.

⁵³⁰ *ibid.*: p. 167.

⁵³¹ *ibid.*: p. 168.

clergy were not guilty of malpractice. This decision, however, should not lead clergy to believe that they are immune to malpractice rulings.

Despite the result of the Nally case, churches should purchase “clergy malpractice” or counseling liability insurance for their pastor staff. There are two reasons for doing so. First, this type of insurance is inexpensive, and in light of the Nally decision should become even less costly. Second, while it is very unlikely that a minister will be successfully sued for malpractice in counseling, it is entirely possible that a minister may be sued. Counseling liability insurance will cover the costs of defending the lawsuit, and will pay any settlements or judgements up to the policy limits.⁵³²

Clergy must also be aware that court decisions have been inconsistent regarding clergy malpractice. Some courts have refused to even review such cases. While others courts have ruled in favor of the plaintiff. The cases of clergy malpractice that the courts have reviewed include:

- 1. *sexual misconduct with an adult or minor***
- 2. *“non-religious” counseling***⁵³³

Contract Liability

Throughout the course of ministry, clergy become involved in various contract situations. These can include building remodeling, building expansion, purchase of church vehicles, etc. Clergy, however, must be aware as to whether they have the authority to sign contracts for the church and that they identify themselves as representatives of the church on the contract. Knowing these two facts can prevent the clergy from being held personally liable for the cost of the contract.

Whether clergy will be personally liable on contracts they sign depends upon two factors: (1) whether their employing church is disclosed in the contract, and (2) whether they sign as a representative.⁵³⁴

Clergy who sign a contract on behalf of a church without disclosing their title or office will not be personally liable if the church is identified in the contract and the circumstances clearly reveal that they signed in an official capacity.⁵³⁵

Ministers should be careful to disclose their representative capacity when signing a contract on behalf of a church, and clearly identify the church in the body of the contract as the party to the agreement.⁵³⁶

⁵³² *ibid.*: pp. 172-173.

⁵³³ *ibid.*: p. 179.

⁵³⁴ *ibid.*: p. 181.

⁵³⁵ *ibid.*: p. 181.

If a minister signs a contract that has not been so authorized, the general rule is that he or she will be personally liable on the contract. The church, of course, can “ratify” an unauthorized contract, in which case the church becomes liable for it.⁵³⁷

Clergy should refrain from signing contracts unless they are certain that (1) the contract has been properly authorized; (2) they are authorized to sign on behalf of the church; (3) the church is clearly identified in the contract as the party to the agreement; and (4) the minister signs in a “representative capacity.”⁵³⁸

A minister of an unincorporated church who signs a contract on behalf of the church may be personally liable on the contract even if the church is identified in the contract and the minister signs in a representative capacity. Several courts have concluded that ministers and trustees of unincorporated churches who sign contracts on behalf of their churches will be personally liable on them.⁵³⁹

Securities Law Violations

All churches at some point raise money for some special program. This could be for remodeling a present building, building a new building, or starting a new ministry. Many times, this money is raised through investment adventures by the members of the congregation or even the outside community. These investments fall under the category of securities.

Various laws and acts have been created to protect an investor’s money. Such an act is the Uniform Securities Act. In this act, the term security is defined as:

any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral trust certificates; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or in general any interest or instrument commonly known as a “security”⁵⁴⁰

Clergy and churches need to understand that there are securities laws that must be observed before, during, and after the sale of securities. If these laws are not

⁵³⁶ *ibid.*: p. 181.

⁵³⁷ *ibid.*: p. 182.

⁵³⁸ *ibid.*: p. 182.

⁵³⁹ *ibid.*: p. 182.

⁵⁴⁰ *ibid.*: p. 183.

followed, the person or people involved in the sale of the securities could face criminal charges.

Most securities laws impose the following conditions on the sale of securities:

- 1. registration of proposed securities with the federal or state government in advance of sale**
- 2. filing of sales and advertising literature with the federal or state government**
- 3. registration of agents and broker-dealers who will be selling the securities**
- 4. prohibition of fraudulent practices⁵⁴¹**

Ministers may be directly impacted by their state's securities law in at least two ways. First, if they are engaged in selling their church's securities (or offering them for sale), they may be required to register as an "agent" or "salesperson." Second, they are prohibited from engaging in any form of fraudulent practice in connection with the offer or sale of securities.⁵⁴²

1. Agent Registration

The Uniform Securities Act, which has been adopted by a majority of states, provides that "it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this act."⁵⁴³

Registration is a fairly simple procedure. Registration involves:

the filing of a detailed application with the state securities commission, payment of the prescribed fee, and in many states, the successful completion of a securities law examination.⁵⁴⁴

The "Church Bond Guidelines" prepared by the North American Securities Administrators Association (NASAA) and adopted by several states, specify that the Uniform Securities Act requires that any person, including an officer or director of the issuer, who wishes to offer or sell church bonds must either be a registered representative of a licensed securities broker-dealer, or alternatively must file for registration as an agent with the administrators of the states in which he intends to sell securities pursuant to section 201 of the

⁵⁴¹ *ibid.*: p. 183.

⁵⁴² *ibid.*: p. 183.

⁵⁴³ *ibid.*: pp. 183-184.

⁵⁴⁴ *ibid.*: p. 184.

Act. This is true even if the church bonds themselves are exempt from registration under...the Act. Any person who sells church bonds without compliance with the agent registration provisions of the Act could also be liable under both the civil and criminal sections of the Act.⁵⁴⁵

Ministers who contemplate making offers or sales of securities should assume that they must register as an agent until they receive adequate assurance that they are exempt. Even those ministers who do not plan on offering or selling securities directly should note that virtually any promotion of church securities, no matter how indirect, may trigger the agent registration requirements.⁵⁴⁶

Section 410 of the Uniform Securities Act provides that any person who offers or sells a security in violation of the agent registration requirement is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the rate of six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Section 410 further provides that the employer of an unregistered agent is also liable.⁵⁴⁷

2. The Prohibition of Fraudulent Activities

The securities laws were created to protect investors from their funds being mis-used. Occasionally, receivers of the funds have used them for their personal use instead of the project for which the funds were raised. A person can be criminally charged for such actions. If the person, who has mis-used the funds, is considered to be of high trust, his/her prison time can be increased by the court.

Under federal sentencing guidelines a court may increase a prison sentence for "breach of a position of trust." In order for a court to increase a prison term on this basis, it must find that (1) the defendant occupied a position of trust, and (2) the defendant abused his position in a manner that significantly facilitated the commission or concealment of the offense. The sentencing guidelines state that "the position of trust must have contributed in some substantial way to facilitating the crime and not merely have provided an opportunity that could as easily have been afforded to other persons."⁵⁴⁸

Failure to Report Child Abuse

⁵⁴⁵ *ibid.*: p. 184.

⁵⁴⁶ *ibid.*: p. 184.

⁵⁴⁷ *ibid.*: p. 184.

⁵⁴⁸ *ibid.*: p. 186.

Child abuse continues to be on the rise in the United States. In many states ministers are mandated to report any cases of child abuse that they are made aware of or suspect. This can leave a minister in an ethical dilemma when that information is obtained in a clergy-penitent situation.

Failure to report child abuse can lead to serious legal problems for the minister.

- 1. Ministers who are mandatory reporters under state law face possible criminal prosecution for failing to comply with their state child abuse reporting law;**
- 2. some state legislatures have enacted laws permitting child abuse victims to sue ministers for failing to report child abuse; and**
- 3. some courts have permitted child abuse victims to sue ministers for failing to report child abuse.⁵⁴⁹**

1. Criminal Liability

Through out the fifty states, there are child abuse reporting statutes. There are a few terms that must be defined before we can proceed. First, child abuse is defined to include:

***physical abuse, emotional abuse, neglect, and sexual molestation.*⁵⁵⁰**

A child is defined as:

***any person under the age of 18 years.*⁵⁵¹**

Some states specifically limit the definition of “child abuse” to abuse that is inflicted by a parent or other person legally responsible for the minor’s care. Such a statute, if interpreted narrowly, might not require clergy to report incidents of abuse inflicted by teachers, child care workers, custodians, associate ministers, adolescents, or volunteer youth workers – even if they otherwise are under a mandatory duty to report child abuse under state law.⁵⁵²

In most states, such “mandatory reporters” must report both actual and reasonably suspected cases of child abuse. Failure to do so is a crime.⁵⁵³

⁵⁴⁹ *ibid.*: p. 187.

⁵⁵⁰ *ibid.*: p. 187.

⁵⁵¹ *ibid.*: p. 187.

⁵⁵² *ibid.*: 187.

⁵⁵³ *ibid.*: pp. 187-188.

Some states define mandatory reporters to include any person having a reasonable belief that child abuse has occurred.⁵⁵⁴

The remaining states define mandatory reporters by referring to a list of occupations which generally includes physicians, dentists, hospital employees, nurses, coroners, school employees, nursery school workers, law enforcement officers, and licensed psychologists.⁵⁵⁵

Since not all states make ministers mandatory reporters, ministers in these states may be what are considered permissive reporters. In these situations, the minister can report a case of child abuse but he/she will not be held legally responsible if he/she does not.

If the minister receives information about child abuse in a clergy-penitent situation, he/she must decide between maintaining confidence and obeying the law.

A number of states have attempted to resolve this dilemma by specifically exempting clergy from the duty to report child abuse if the abuse is disclosed to them in the course of a communication protected by the clergy-penitent privilege. Other states, while not specifically excluding clergy from the duty to report, do provide that information protected by the clergy-penitent privilege is not admissible in any legal proceeding regarding the alleged abuse. Some state child abuse reporting statutes do not list the clergy-penitent privilege among those privileges that are abolished in the context of child abuse proceedings. The intent of such statutes may be to excuse clergy from the testifying in such cases regarding information they learned in the course of a privileged communication.⁵⁵⁶

Even if the clergy-penitent privilege applies in the context of child abuse reporting, it is by no means clear that the privilege will be defense to a failure to report, since (1) the information causing a minister to suspect that abuse has occurred may not have been privileged (that is, it was not obtained in confidence, or it was not obtained during spiritual counseling); and (2) a privilege ordinarily applies only to courtroom testimony or deposition, and not to a statutory requirement to report to a state agency.⁵⁵⁷

Many people are reluctant to report child abuse for fear of being sued. This includes ministers. Throughout the United States, child abuse reporters are immune to being sued. It is sad to say, though, that knowing this law exists has created a disastrous result of people filing malicious false reports. Therefore, the courts are beginning to criminally charge those that file malicious false reports.

⁵⁵⁴ *ibid.*: p. 188.

⁵⁵⁵ *ibid.*: p. 188.

⁵⁵⁶ *ibid.*: p. 188.

⁵⁵⁷ *ibid.*: p. 188.

To file a child abuse report, in many states, ministers begin by: notifying a designated state agency by telephone and confirming the telephone call with a written report within a prescribed period of time.⁵⁵⁸

In such a report, the minister will generally be required to:

- 1. identify the child, the child's parents or guardians, and the alleged abuser by name, and provide their addresses;**
- 2. give the child's age; and**
- 3. describe the nature of the abuse.**⁵⁵⁹

2. Civil Liability Based on Statute

Until recently, there was little victims of child abuse could do about suing individuals that knew of their abuse and didn't report it. Many states now have opened avenues through which victims of child abuse can sue mandatory reporters. This is an important point, only mandatory reporters can be sued.

Persons who are "mandatory" child abuse reporters in some states can be sued by victims of child abuse for failure to comply with state child abuse reporting requirements. These lawsuits may be brought in some states many years after the failure to report. It is possible that other state legislatures will enact laws giving victims of child abuse the legal right to sue mandatory reporters who failed to comply with their reporting obligations. It is also possible that the courts in some states will allow victims to sue mandatory reporters (and perhaps those who are not mandatory reporters) for failing to report child abuse even if no state laws grants them the specific right to do so. These potential risks must be considered when evaluating whether or not to report known or suspected incidents of child abuse.⁵⁶⁰

3. Civil Liability Based on Court Rulings

There are courts in the country that will not allow victims of child abuse to sue ministers who did not report the child abuse. However, ministers should not assume that all courts will disallow such cases. There are courts that do permit suits against ministers who failed to report child abuse. As with many cases involving ministers and churches, the courts are inconsistent in their rulings.

When deciding what to do with child abuse information, a minister should consult with an attorney and discuss the following questions:

⁵⁵⁸ *ibid.*: p. 189.

⁵⁵⁹ *ibid.*: p. 189.

⁵⁶⁰ *ibid.*: p. 190.

1. ***Am I a mandatory or a permissive reporter under state law?***⁵⁶¹
2. ***If the allegations are true, do they constitute child abuse as defined under state law? Remember, in some states the definition of child abuse is limited to abuse inflicted by a parent or person responsible for a child's care.***⁵⁶²
3. ***Do I have reasonable cause to believe that abuse has occurred? Be sure to interpret this broadly. An alleged offender's denial of any wrongdoing does not preclude reasonable cause. Remember, offenders typically deny any wrongdoing.***⁵⁶³
4. ***Did I receive the information in the course of spiritual counseling? If so, does the clergy-penitent privilege protect me from disclosing this information? In a few states, it does.***⁵⁶⁴
5. ***How severe was the abuse? Evaluate the severity of the alleged abuse and the possible existence of other victims of the same perpetrator.***⁵⁶⁵
6. ***Did the alleged abuse involve pedophilic behavior (sexual contact with a pre-adolescent child)? If so, respond aggressively since pedophilia is considered to be incurable and many pedophiles have hundreds of victims over the course of a lifetime.***⁵⁶⁶
7. ***Do I have any risk of civil liability under state law if I choose not to report the abuse? It is possible that abuse victims will be permitted to sue clergy who fail to report (even if they are not mandatory reporters) if their injuries are aggravated and perpetuated because of the failure to report.***⁵⁶⁷
8. ***Should I candidly (but anonymously) discuss the available evidence with the state agency that receives child abuse reports to determine whether the agency believes that a report should be filed?***⁵⁶⁸
9. ***Should I try to persuade the informant to report the abuse? If the informant is unwilling, offer to accompany him or her to the police station or state agency that receives reports of abuse. If this does***

⁵⁶¹ *ibid.*: p. 193.

⁵⁶² *ibid.*: p. 193.

⁵⁶³ *ibid.*: p. 193.

⁵⁶⁴ *ibid.*: p. 193.

⁵⁶⁵ *ibid.*: p. 193.

⁵⁶⁶ *ibid.*: p. 193.

⁵⁶⁷ *ibid.*: p. 193.

⁵⁶⁸ *ibid.*: p. 183.

not work, then ask for the informant's permission to file a report yourself.⁵⁶⁹

10. Can child abuse be reported to law enforcement officials in my state? Some states permit this. If you are in such a state, and you have a law enforcement officer in your congregation, consider reporting to that person.⁵⁷⁰

Diversion of Church Funds

Church income comes from a variety of sources. These sources may include the following:

designated and undesignated contributions, interest on bank accounts, gain on investments, and rent from church-owned properties.⁵⁷¹

The church holds the income from these sources in trust. The designated money is allotted to accounts for that specific purpose. The undesignated money is used for basic church operations.

The principle that church funds and assets are held in trust for the religious and charitable uses of the church is codified in the Internal Revenue Code, which conditions the exemption of churches from federal income taxation on several factors, including the following: (1) none of a church's net earnings inures to the benefit of a private individual, except for the payment of reasonable compensation for services rendered, and (2) a church is organized and operated exclusively for religious purposes.⁵⁷²

Some ministers are tempted to divert church funds for their own personal use. Diverted funds exceed the amount of compensation agreed upon between the minister and the church. Diverting funds for personal use is a criminal offense. Not only is the minister criminally liable but the diverting action can cause the church to lose its tax-exempt status. The majority of time, the diverting of funds is purely inadvertent. However, many ministers have been found guilty of intentional diversion.

Churches and clergy can protect themselves from the disastrous results of a minister diverting funds if they heed the following advice:

ministers ordinarily should not permit church funds or assets to be placed in their names; bank checking and savings accounts should require the signature of two unrelated persons; ministers should not

⁵⁶⁹ *ibid.*: p. 193.

⁵⁷⁰ *ibid.*: p. 193.

⁵⁷¹ *ibid.*: p. 194.

⁵⁷² *ibid.*: p. 194.

pay for their personal or business expenses out of church funds without written authorization; and they should not accept favorable loans and other financial benefits out of church funds in excess of their stated compensation without the advice of legal counsel.⁵⁷³

State Regulation of Psychologists and Counselors

One of the duties that a minister is called upon to perform is counseling. The statutes that surround pastoral counseling vary from those of licensed psychologists.

Each state has established statutes that regulate the practice of psychology. The intent of these statutes is to keep individuals who have not received certification or licensing in psychology from practicing. This helps to protect the public from quacks and those who could cause additional emotional damage to those who seek psychological help.

Certification laws do not prevent persons from practicing psychology, but rather prohibit use of the title “psychologist” or any of its derivation by persons who are not certified psychologists.⁵⁷⁴

Licensure laws prohibit the practice of psychology by anyone who is not a licensed psychologist.⁵⁷⁵

A typical certification statute provides: No person shall, without a valid, existing certificate of registration as a psychologist issued by the [state] attach the title “psychologist” to his name and under such title render or offer to render services to individuals, corporations, or the public for remuneration or a fee; or render or offer to render to individuals, corporations, or the public, services if the words “psychological,” “psychologic,” “psychologist,” or “psychology” are used to describe such services by the person or organization offering to render or rendering them.⁵⁷⁶

In order to receive certification, an individual must apply to the appropriate state authorities. Applicants must demonstrate that:

they are at least 21 years of age, of good moral character, and a citizen of the United States. They must have earned a specified degree in psychology and have practiced psychology for a minimum number of years.⁵⁷⁷

⁵⁷³ *ibid.*: p. 195.

⁵⁷⁴ *ibid.*: p. 195.

⁵⁷⁵ *ibid.*: p. 195.

⁵⁷⁶ *ibid.*: p. 195.

⁵⁷⁷ *ibid.*: p. 196.

The term “practice of psychology” is used in many of the statutes of licensing and certification. The courts are inconsistent in their definition of this term. Some courts define it very broadly, while others define it quite narrowly. The broader definition is:

The “practice of psychology”...is defined as rendering to individuals, groups, organizations, or the public any psychological service involving the application of principles, methods, and procedures of understanding, predicting and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotion, and interpersonal relationships; the methods and procedures of interviewing, counseling, behavior modifications, and psychotherapy; of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation; and of assessing public opinion.⁵⁷⁸

There are activities that licensing statutes exempt from the definition of practice of psychology. These exemptions may vary from state to state, however, the following are usually common in all states:

- 1. professional activities of lawyers, physicians, clergymen, social workers, sociologists, and counselors;**
- 2. activities of government employees in the ordinary course of their employment;**
- 3. activities of a student, intern, or resident in psychology, pursuing a course of study at an accredited university;**
- 4. educational activities of teachers in public and private schools, or the authorized duties of guidance counselors.**⁵⁷⁹

To receive a license to practice psychology, similar procedures must be followed as when applying for certification. However, some states have additional requirements. These may include that the applicant has a doctoral degree or masters degree based primarily in psychology. Many states require an extended number of years in professional experience.

Certification and licensing in psychology have been combined in some states, thus meaning that practitioners must be licensed to practice in psychology. Unlicensed practitioners are also prohibited from using any derivatives of the term psychology.

These statutes apply to ministers in the following manner:

⁵⁷⁸ *ibid.*; p. 196.

⁵⁷⁹ *ibid.*; p. 196.

Ministers who are employed full-time in a pastoral ministry by a church congregation are free to counsel with church members and others in the course of their employment with their church. The same rule ordinarily will apply to ministers who are hired by a church specifically for a counseling ministry. In neither case, however, may a minister use the term psychology or any of its derivatives in connection with such counseling ministry unless he or she is in fact a licensed psychologist. Ministers who establish a full-time or part-time counseling ministry independent of a church ordinarily should not engage in professional counseling unless (1) they are specifically exempted from the prohibition against the unlicensed practice of psychology; (2) their state board of psychologist examiners does not prosecute unlicensed counselors; (3) the term practice of psychology is not defined broadly enough (under applicable state law) to include counseling; or (4) their state has a professional counselor licensing statute under which the counselor is licensed or exempt.⁵⁸⁰

Sexual Misconduct

Litigation involving sexual misconduct by clergy is on the rise. Four aspects of this type of litigation need to be considered.

First, clergy often will assert the “consent” defense – meaning that the “victim” consented to the relationship and accordingly should not be permitted to sue. Victims will allege that a minister’s unique position of authority and respect overcame their free will and made their conduct non-consensual. Second, any theory of liability based on intentional behavior by a minister is potentially excluded from coverage under the church’s general liability insurance policy. If a minister’s conduct is excluded from insurance coverage and the minister has little if any financial resources, then the victim will be left without a remedy unless she can sue the minister’s church or denomination. However, lawsuits brought by victims of clergy sexual misconduct against a minister’s employing church or denomination have been rejected by the courts in most cases unless the victim can prove that the church or denomination had actual knowledge of previous incidents of sexual misconduct by the same minister and did nothing to monitor or restrict the minister’s activities....Third, the first amendment guaranty of religious freedom affords some protection for clergy conduct. Fourth, the abolition by most states of any liability for “seduction” or “alienation of affections” may restrict if not eliminate lawsuits brought against clergy based upon sexual misconduct.⁵⁸¹

Clergy can be found legally liable for sexual misconduct. The principles behind these liabilities and some possible defenses are listed below.

⁵⁸⁰ *ibid.*: p. 197.

⁵⁸¹ *ibid.*: p. 198.

Theories of Liability

1. Malpractice

This has already been discussed in detail above.

2. Fiduciary Duty

Clergy have been found guilty of breach of fiduciary duty by some courts. This breach came when the clergy engaged in sexual misconduct. However, the majority of courts have ruled that ministers did not breach fiduciary duty. This is a result of the fact that some courts do not recognize breach of fiduciary duty to be a basis for legal liability.

3. Emotional Distress (“Outrageous Conduct”)

Victims of clergy sexual misconduct often include in their suit charges of intentional infliction of emotional distress. Outrageous conduct is another name for intentional infliction of emotional distress. Intentional infliction of emotional distress is comprised of four elements:

1. *the defendant acted intentionally or recklessly;*
2. *the conduct was extreme and outrageous;*
3. *the actions of the defendant caused the victim emotional distress;*
and
4. *the emotional distress suffered by the victim was extreme and severe.*⁵⁸²

It is difficult to prove liability in such cases. Liability is proven:

*only when the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.*⁵⁸³

4. Assault and Battery

As part of the suits for clergy sexual misconduct, the clergy may be charged with assault and battery. These charges are classified as intentional torts which means victims can seek financial damages.

⁵⁸² *ibid.*: p. 202.

⁵⁸³ *ibid.*: p. 202.

5. Sexual Harassment

Equal Employment Opportunity Commission (EEOC) regulations define sexual harassment as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.⁵⁸⁴

The EEOC's definition states that sexual harassment occurs when submission or rejection of sexually oriented conduct is used as a basis for employment decisions. These decisions could involve raises, promotions, or job assignments.⁵⁸⁵

Unwelcome sexual innuendo, jokes or comments can lead to charges of sexual harassment when they create an intimidating, hostile or offensive workplace.⁵⁸⁶

Clergy are not immune from sexual harassment charges. Two forms of conduct can be included in sexual harassment.

- 1. quid pro quo harassment, which refers to conditioning employment opportunities on submission to a sexual or social relationship, and***
- 2. hostile environment harassment, which refers to the creation of an intimidating, hostile, or offensive working environment through unwelcome verbal or physical conduct of a sexual nature.***⁵⁸⁷

6. Criminal and Statutory Liability

⁵⁸⁴ *ibid.*: p. 204.

⁵⁸⁵ Julie L. Bloss, *The Church Guide to Employment Law* (Matthews, NC: Christian Ministry Resources, 1993): p. 33.

⁵⁸⁶ *ibid.*: p. 33.

⁵⁸⁷ Hammar, *Pastor, Church & Law*, p. 204.

Many states have enacted legislation making it a crime for “psychotherapists” to engage in sexual contact with a counselee, and some of these laws define the term psychotherapist to include clergy.⁵⁸⁸

7. “Loss of Consortium” or Alienation of Affections

This type of liability is usually rejected by most courts.

Defenses to Liability

1. Consent

Courts are inconsistent with their rulings regarding consent in sexual misconduct cases. In determining rulings in cases of consent, the courts have turned to the Restatement of Torts. Section 892A of the Restatement of Torts provides:

1. ***One who effectively consents to conduct of another intended to invade his interests cannot recover in an action of tort for the conduct or for harm resulting from it.***⁵⁸⁹
2. ***To be effective, consent must be***
 - a. ***by one who has the capacity to consent or by a person empowered to consent for him, and***
 - b. ***to the particular conduct, or to substantially the same conduct.***⁵⁹⁰
3. ***Conditional consent or consent restricted as to time, area or in other respects is effective only within the limits of the condition or restriction.***⁵⁹¹
4. ***If the actor exceeds the consent, it is not effective for the excess.***⁵⁹²
5. ***Upon termination of consent its effectiveness is terminated, except as it may have become irrevocable by contract or otherwise, or except as its terms may include, expressly or by implication, a privilege to continue to act.***⁵⁹³

Except in the case of persons whom the law protects for reasons of policy, such as those who are mentally immature or otherwise incompetent, no one suffers a legal wrong as the result of an act to which, unaffected by fraud, mistake or duress, he freely consents or to which he manifests apparent

⁵⁸⁸ *ibid.*: p. 205.

⁵⁸⁹ *ibid.*: p. 206.

⁵⁹⁰ *ibid.*: pp. 206-207.

⁵⁹¹ *ibid.*: p. 207.

⁵⁹² *ibid.*: p. 207.

⁵⁹³ *ibid.*: p. 207.

consent. This principle is expressed in the ancient legal maxim, *volenti non fit injuria*, meaning that no wrong is done to one who consents....To be effective, the consent must be given by one who has the capacity to give it or by a person empowered to consent for him. If the person consenting is a child or one of deficient mental capacity, the consent may still be effective if he is capable of appreciating the nature, extent and probable consequences of the conduct consented to, although the consent of a parent, guardian or other person responsible is not obtained or is expressly refused. If, however, the one who consents is not capable of appreciating the nature, extent or probable consequences of the conduct, the consent is not effective to bar liability unless the parent, guardian or other person empowered to consent for the incompetent has given consent, in which case the consent of the authorized person will be effective even though the incompetent does not consent; or unless there is a privilege to take emergency action...⁵⁹⁴

2. Statute of Limitations

The amount of time that an individual has to file suit for sexual misconduct varies from state to state. Clergy often use this as a defense, claiming that the suit was filed after the deadline. Some courts will dismiss cases on this basis but there are courts that have extended the statute of limitations when the case involved sexual misconduct. Therefore, clergy can not assume that this will be an adequate defense.

3. First Amendment

The courts are inconsistent in their rulings as to whether the first amendment guaranty of religious freedom protects clergy from being sued. The majority of courts have ruled that it does not.

4. Insurance

Many church insurance policies do not cover sexual misconduct by the minister. Therefore, if found guilty, the minister may be personally responsible to pay for attorney fees and judgments.

5. Elimination of “Loss of Consortium” and “Alienation of Affection” Claims

A number of courts have concluded that a husband whose wife is seduced by a pastor cannot sue the pastor since any basis for liability was effectively abolished when “alienation of affection” was eliminated as a basis for liability by the state legislature.⁵⁹⁵

6. Duplicate Verdicts

⁵⁹⁴ *ibid.*: p. 207.

⁵⁹⁵ *ibid.*: p. 212.

It is common practice for victims of clergy sexual misconduct to sue the church that employed the minister as well as the minister. If the court rules against the church and the minister, arguments can be made for duplicate verdicts.

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Clergy and the IRS

The IRS has many regulations set aside for clergy only. Many of these can be or are confusing for most clergy and their church treasurers. The Board of Pensions of the Church of God has developed a series of memos to address these issues. They are categorized below.

Employment Status

“Who is a ministerial employee for tax purposes?” The answer is significant because it affects how an individual reports compensation and pays taxes. Perhaps the greatest single issue this affects is how to report the value of housing provided and/or the amount of housing allowance paid.

The Church has several different classifications of ministry designations. They are typically separated on the basis of one or more of the following criteria: experience, training, and calling. Likewise, the United States government has tax laws especially applicable to “ministers.” However, not everyone who might be recognized as a “minister” by the Church would be considered as such by the tax laws.

It is the responsibility of the ministerial employee, as well as the church employer, to comply properly with such laws and regulations. The question “Who is a minister for tax purposes?” then is significant. To answer this question, answers are needed to related questions such as: Who do the IRS and Tax Courts consider to be a minister? To whom does the Church give the authority to perform these “recognized” duties of a minister?

The IRS Definition

The Internal Revenue Service uses the term “Minister of the Gospel” and, in the Income Tax Regulations, elaborates that a minister is one who is “duly ordained, licensed, or commissioned” *and* who performs service in the exercise of his or her ministry. This includes the ministration of sacerdotal functions, the conduct of religious worship, and the control, conduct, and maintenance of religious organizations (including integral agencies) under the authority of a church denomination. According to the Income Tax Regulations, “the following rules are applicable in determining whether services performed by a minister are performed in the exercise of his or her ministry” and whether his or her activity and role are recognized as that of a minister by the IRS:

- i) Whether service performed by a minister constitutes the conduct of religious worship or the administration of sacerdotal functions depends on the tenets and practices of the particular religious body constituting his/her church or church denomination.
- ii) Service performed by a minister in the control, conduct, and maintenance of a religious organization relates to directing, managing, or promoting the activities of such organization.
- iii) If a minister is performing service in the conduct of religious worship or the administration of sacerdotal functions, such service is in the exercise of his/her ministry whether or not it is performed for a religious organization.
- iv) If a minister is performing service for an organization which is operated as an integral agency of a religious organization under the authority of a religious body constituting a church or church denomination, all service performed by the minister in the conduct of religious worship, in the administration of sacerdotal functions, or in the control, conduct, and maintenance of such organization is in the exercise of his ministry. (An "integral agency" for the Church of God would be any of our university/colleges, seminary, state, district, and the national agencies.)
- v) If a minister, pursuant to an assignment or designation by a religious body constituting his/her church, performs service for an organization which is neither a religious organization nor operated as an integral agency of a religious organization, all service performed by him or her, even though such service may not involve the conduct of religious worship or the administration of sacerdotal functions, is in the exercise of his/her ministry.

Ministerial Classification

The various classifications by the Church about which questions are raised are discussed below. These descriptive summaries are not intended to be final, "official" definitions, but are offered simply as general information.

The Licensed Minister

The licensed minister is one who has been granted a ministerial license by the state or district assembly. The licensed minister is to have completed at least one year of the course of study. The licensed minister who is preparing for ordination is vested with the authority of preaching the gospel, administering the sacraments in his or her own congregation, and officiating at marriages where state law allows. The licensed minister who is preparing for ordination is vested with the authority of using his or her gifts in various associate ministries, administering the sacraments and, on occasion, conducting worship and preaching.

The Ordained Minister

The ordained minister is one who has been ordained to that order, has completed the course of study, and has completed a specified period of assigned ministry. The ordained minister acknowledges a specific call to lifetime ministry. The ordained minister has the authority to administer the sacraments and to conduct worship and to preach.

How Courts Have Ruled

Court action in 1989 established 5 factors when determining whether one is a minister for tax purposes.

- 1) *Does the individual administer the sacraments?***
- 2) *Does the individual conduct worship services?***
- 3) *Does the individual perform services in the “control, conduct, or maintenance of a religious organization” under the authority of a church denomination or religious denomination.***
- 4) *Is the individual “ordained, commissioned, or licensed?”***
- 5) *Is the individual considered a spiritual leader by his or her religious body?***

If you meet some but not all of these factors, the IRS may or may not consider you a minister. Under the 1989 tax court case, not all factors had to be satisfied. It should be noted that only factor 4, that *one be “licensed, ordained, or commissioned,” needs to be present in every case*. The more of the remaining criteria that one can meet, the more likely one is to fulfill the definition of “minister of the Gospel.” (However, some more recent court cases and an IRS Private Letter Ruling have required that all factors be satisfied. Nevertheless, according to leading church law experts, the 1989 case is still a viable precedent. The Income Tax Regulations noted previously remain the reliable source for determining ministerial qualification.) Also, the Tax Court has not recognized persons as ministers for tax purposes solely on the basis that they were licensed in order to gain tax benefits. In other words, if one seeks a license or ordination simply to gain the rights and privileges associated with it, then the IRS likely would not view that individual as a minister for tax purposes.

How the Rules Are Applied

Generally, there are two “qualifications” for recognition as a minister for tax purposes:

- 1) a proper credentialing which gives one the ability to perform certain services in the exercise of ministry; and**
- 2) the actual performance of services in the exercise of the individual’s ministry.**

First of all, the individual must be recognized by the denomination as one authorized to do the work of ministry (preach the word, conduct worship, administer the sacraments, perform marriages). The IRS and the Tax Courts would understand this to be one duly ordained, licensed, or commissioned. **For individuals in the Church of God, this means being licensed at the state or area level.**

Second, the minister must perform tasks which qualify him or her for tax benefits (conduct worship; preach the word; administer the sacraments; direct, manage, or promote in order to maintain the religious organization; work in an integral agency of the denomination to control, direct, or manage that institution; or be assigned by the denomination to a specific task).

Some Examples:

Example 1: Smith is ordained and pastors First Church. Smith conducts worship and administers the sacraments. Smith is a minister for tax purposes.

Example 2: Jones is licensed and pastors First Church. Jones conducts worship and administers the sacraments. Jones is a minister for tax purposes.

Example 3: Peters is a lay pastor at First Church. Peters conducts worship, yet may not administer the sacraments. Peters is not a minister for tax purposes.

Example 4: Matthews is licensed and is an associate pastor at First Church. Matthews occasionally conducts worship and administers the sacraments. Matthews is a minister for tax purposes.

Example 5: Clarke has no credential or license and is an associate pastor at First Church. Clarke occasionally conducts worship. Clarke is not a minister for tax purposes.

Example 6: Edwards is ordained and maintains the buildings and grounds at First Church. Edwards never conducts worship or administers the sacraments as an employee of First Church. Edwards is not a minister for tax purposes for services performed at First Church.

Example 7: Jacobs is licensed and works for an agency of the church in an administrative roll. Jacobs is a minister for tax purposes.

Example 8: Couch is ordained and teaches at a Church of God college or university. Couch is a minister for tax purposes.

Example 9: Phillips is ordained and retired from full-time ministry. For certain benefits paid to him by his denomination for his service as a minister, he is considered a minister for tax purposes.

Example 10: Brown is a registered minister of music or song evangelist. Brown is not a minister for tax purposes unless he also holds a minister's license or is ordained.

Church Employees or Independent Contractors?

Dear Sirs:

The only employee we have besides our pastor is a part-time custodian (or secretary). Do you know of any way we could pay them by contract and save the trouble of withholding income taxes and Social Security/Medicare (FICA) taxes?"

In one form or another, this question has been asked literally hundreds of times in financial seminars, correspondence, and telephone conversations. The questions come as a response to the increasing responsibilities of churches and other employers for reporting employee compensation information to the IRS. Fortunately, the answer is fairly straightforward. However, it is frequently not the answer desired by the questioner.

Who Are Employees?

There are basically two types of employees defined by the Tax Code: statutory employees and common law employees. Statutory employees have specifically defined jobs that on the surface might appear to be self-employed positions were it not for the statutes that define the work as that of an employee. The common law employee is the category that affects local churches most often.

A common law employee is generally anyone who performs services that can be controlled by the employer. That is, the employer has the legal right to control (even if not enforced) the means, methods, and results of the services provided. If the employer/employee relationship is deemed to exist based on the facts in each case, it does not matter what it is called, nor how the payments are measured or paid, nor if the services are performed full time or part time. The employer must determine any taxable amounts paid, withhold appropriate taxes for lay employees, make appropriate tax payments, and report those taxes to the IRS. Virtually all pastors, associate ministers, church custodians, church secretaries, paid choir directors, paid nursery workers, etc, are viewed by the IRS as common law employees. Their compensation is reported on Form W-2. See Section B for a discussion of the difference between lay employees and ministerial employees for tax purposes.

Who Are Independent Contractors?

Some local churches do hire independent contractors who offer specific services to the general public. Generally, in a year's time an independent contractor will have more than one organization to which he/she offers services. Examples would be services provided by a janitorial service, snow removal service, roofing contractor, etc., that are advertised city-wide. No employer/employee relationship exists between the church and persons performing such services as an independent contractor. Therefore, no withholding is required. However, the local church may still be required to report to the IRS those payments made to an unincorporated, independent contractor. The Tax Code provides that payments for services to an unincorporated, independent contractor in excess of \$600 per year must be reported to the IRS on Form 1099 MISC and transmittal Form 1096.

Note: An unincorporated evangelist would be considered an independent contractor. Any payments to him or her of \$600 or more in a calendar year, (excluding any housing allowance properly designated in advance by the board, retirement contributions, or reimbursed expenses) would require the issuing of a Form 1099 MISC and transmittal Form 1096.

What if We Do Not Withhold and Report?

There are criminal and civil penalties for willful failure to comply with requirements for withholding and reporting. In addition, the amount of certain taxes not withheld at the time of payment from an employee's salary (that must later be paid) becomes the responsibility of the employer! The employee has no obligation to later reimburse the employer for such amount. Further, in some cases, an officer or responsible employee may become personally liable for the taxes and penalties involved.

The IRS has noted, for special review, tax returns of individuals reporting a significant proportion of income on Form 1099 from one source. Many such individuals are being reclassified as employees rather than independent contractors. This has resulted in additional cost, including penalties for both the individual and the now-determined employer. It is best to make the proper determination prior to such a review by the IRS.

What if We Are Not Sure Which Employment Relationship Exists?

The local church should carefully consult **IRS Publication 15, "Circular E-Employer's Tax Guide,"** and **IRS Publication 15-A, "Employer's Supplemental Tax Guide,"** for examples that might be similar to the church's situation. Both are available from the IRS by calling **1-800-TAX-FORM** or see the publication and forms section of their website at **www.irs.gov**. Consultation

should be made with a local legal and/or tax counselor for advice. If questions still arise, a special form is available from the IRS to request that they determine if such person has an employment relationship with the local church. In no case should the questions be ignored nor should there be willful failure to abide by legal requirements for withholding and reporting either wages paid to employees or payments in excess of \$600.00 to unincorporated, independent contractors.

Tax and Reporting Procedures for Congregations

This federal tax information is only a guide to help local churches with the legal requirements of being an employer. It is intended to provide some resources for further investigation. No attempt has been made to cover state and local income taxes or Worker's Compensation which would differ for each local church. Federal Unemployment Tax is not discussed either. Churches are generally exempt from this tax.

Classification of Employees

Since legal and tax obligations of the church board as employer differ for the lay and ministerial employee, it is very important that the classification of each of its employees is determined accurately. The church may have employees who are considered to perform ministerial duties by the church board, but who are actually lay employees by IRS definitions.

Most churches will have at least one employee, the pastor. This is usually a **ministerial employee** since most pastors either are ordained or licensed ministers. Staff associates who are ordained or licensed ministers are generally employees as long as they are performing the ministerial functions listed below:

- 1. Administers the sacraments.**
- 2. Conducts worship services.**
- 3. Performs services in the "control, conduct, or maintenance of a religious organization" under the authority of a church denomination or religious denomination.**
- 4. Is considered a spiritual leader by his or her religious body.**

Other employees (e.g., secretaries and custodians) are **lay employees**.

The following classification summary may be helpful:

Self-employed:

Itinerant evangelists and song evangelists who are not incorporated.

Employees:

Ministerial:

- Pastor who is an ordained or licensed minister
- Staff member who is an ordained or licensed minister and who is performing ministerial or administrative duties

Lay:

- Pastor who is not ordained or licensed
- Church secretaries and church custodians
- Staff members who are not ordained or licensed ministers

These distinctions may not be consistent with the way the role of the individual is seen in the local church. However, they are important to understand because they are based on the IRS guidelines.

The Ministerial Employee

Each year, the church should issue **Form W-2** to each of its employees **including all ministerial employees**. However, the issuance for Form W-2 does not affect how a ministerial employee pays income tax and Social Security/Medicare tax (SECA) (using the self-employment tax rate) to the IRS.

A minister can make estimated quarterly tax payments to the IRS (Form 1040-ES). Or, the minister and the local church may enter into a voluntary arrangement whereby the church withholds federal (and perhaps state and local) income taxes. (The church has no obligation to withhold federal income tax from the ministerial employee. However, each church will need to check the applicable rules regarding withholding state and local income taxes.)

If the church withholds income taxes under a voluntary arrangement, the income tax withheld must be remitted to the IRS on at least a quarterly basis. Quarterly payroll tax returns (Form 941) must also be filed. A thorough understanding of this process should be obtained before entering into a voluntary withholding agreement. Your local tax consultant can help.

Any "allowance" given by the local church for the minister's SECA tax liability must be reported as taxable income on Form W-2 (Box 1). Furthermore, it is also taxable for Social Security (SECA) purposes when the ministerial employee files Schedule SE with the yearly income tax return.

The Lay Employee

Upon hiring a lay employee, the church becomes obligated to withhold federal (and state and local as applicable) income tax and Social Security/Medicare tax (FICA) from the employee's salary and to report that salary and withholding to the IRS and to the individual. Failure to withhold and report can result in penalties and serious problems which should be avoided carefully. For example, in a federal court ruling, four church officers each were held personally responsible for over \$200,000 of the church's unpaid payroll taxes. Obligations, procedures, and tables for withholding federal income tax and Social Security/Medicare tax (FICA) are in IRS Publication 15 "Circular E – Employer's Tax Guide" (available from the IRS by calling 1-800-TAX-FORM or by going to the publication section on their website: www.irs.gov.)

Since January 1, 1984, Social Security/Medicare automatically covers all lay employees (both full-time and part-time) under the FICA plan. This requires withholding one-half of the taxes from the employee, paying a matching amount from the employer's own funds, remitting the funds to the proper depository institution, and reporting this total to the IRS on Form 941 each quarter.

The Employer Identification Number

Your congregation is required to report employment taxes (federal income taxes and Social Security/Medicare taxes withheld) and give Form W-2 to employees, including the minister, whether or not any taxes are withheld. Therefore, your church should already have a federal Employer Identification Number (EIN) and, in some states, a state identification number. Your congregation must use the EIN on all items sent to the IRS.

If your church does not have a number yet, contact Congregational Ministries for instructions in securing this number. Form SS-4, used to request the federal Employer Identification Number, can be secured from the IRS by calling 1-800-TAX-FORM or can be downloaded from their website: www.irs.gov. The absence of the appropriate identification number may cause unnecessary and improper reporting of any amounts withheld for income and/or Social Security/Medicare taxes. It might also cause unnecessary scrutiny of the employee's tax records for previous years. When the IRS supplies the EIN, they will provide a copy of "Circular E" complete with instructions on withholding, remitting, and reporting federal employment taxes.

If your church has an EIN but is receiving quarterly and annual payroll tax forms, simply call the IRS, provide them with your EIN, state that you now have a requirement to file tax returns, and ask them to provide you with a copy of Circular E and the necessary reporting forms.

What is Taxable for Federal Income Tax Purposes?

For the ministerial employee, taxable income consists of cash salary paid as compensation, any cash bonuses or “love offerings,” automobile or other “allowances” (if not paid under an “accountable reimbursement plan”), Social Security/Medicare tax “allowances,” and taxable fringe benefits.

It **does not** include:

- **Housing allowance or the fair market rental value of a church-owned parsonage**
- **Tax-sheltered annuity contributions**
- **Business and professional expense reimbursement (e.g., business-related transportation/travel, meals, books, dues, office supplies, etc.), provided such reimbursements are paid under an “accountable reimbursement plan”**
- **Any other tax-free benefits allowed by IRS (such as health and dental insurance) when premiums are paid or reimbursed by the church**

Subject to certain housing allowance limitations, the greatest exclusion for the ministerial employee is the value of housing and utilities provided or the cash compensation designated as housing allowance and which is used for that purpose.

For the lay employee, taxable income consists of cash salary paid as compensation, any cash bonuses, or “love offering,” automobile or other “allowances” (if not paid under an “accountable reimbursement plan”), Social Security/Medicare tax “allowances,” and taxable fringe benefits.

Taxable income **does not** include:

- **Tax-sheltered annuity contributions**
- **Business and professional expense reimbursements (e.g., business-related transportation/travel, meals, books, dues, office supplies, etc.), if such reimbursements are paid under an “accountable reimbursement plan”**
- **Any other tax-free benefits allowed by IRS (such as health and dental insurance) when premiums are paid or reimbursed by the church**

Business Expense Reimbursements

Requirements for business expense reimbursements are based on IRS Regulation 1.62-2(d)(3). These requirements apply to every church and affect all

employees. They are not optional-they must be followed, or the church employee may pay significantly greater amounts of unnecessary taxes.

The IRS regulations require that business reimbursements be included on Form W-2 as taxable income to the individual unless paid through an “accountable reimbursement plan” which has been “formally” adopted by the church board. The requirements for the accountable reimbursement plan are three-fold:

- **The church may reimburse only those business expenses that an employee substantiates within 60 days of the expenditure with receipts and/or in writing as to the date, amount, place, and business nature.**
- **The employee must return any “excess” reimbursements (i.e., unused expense advances) within 120 days of the expenditure. The excess reimbursement may not be treated as a bonus or gift.**
- **Any advance must be made within 30 days of when the expense is paid or incurred.**

Form W-2 income cannot simply be reduced “after the fact.” In other words, the IRS will not allow the reimbursements to be paid through a retroactive reduction of salary. In order for reimbursements to be paid and qualify under an accountable reimbursement plan, properly substantiated expense reimbursements must be paid separately from the employee’s salary. The salary amount and the accountable reimbursement plan must be established in advance of payment. If the church establishes a dollar limit on the expense plan (instead of reimbursing 100% of expenses), any balance remaining in the expense plan at year-end should remain with the church. The payment of the balance of the employee makes all payments made to the employee under the plan during the year reportable as taxable income on Form W-2.

Income Tax Withholding

For the ministerial employee, federal (and possibly state and local) income tax may be withheld if the minister and the church enter into a voluntary arrangement.

Otherwise, the ministerial employee generally will need to file and pay estimated tax (Form 1040-ES) to cover federal income tax and Social Security/Medicare tax (SECA) obligations. If a voluntary withholding arrangement is used, **FICA taxes should never be withheld from a minister.**

For the lay employee (both full-time and part-time), the employer **MUST** withhold income tax according to the provisions of the tax law. There are fines and penalties for failing to comply. The employer must secure Form W-4 on which the employee claims any exemptions for self and dependents. The amount

withheld is then determined by using the charts provided by the IRS in Publication 15, "Circular E – Employer's Tax Guide." Care must be taken with lay employees to withhold on all taxable income.

Social Security/Medicare Tax Withholding

For the ministerial employee, the church cannot withhold for Social Security/Medicare (FICA) taxes as it does for lay employees. The law provides that payment be made directly by the ministerial employee as if self-employed. The tax is based on the current self-employment rates. This rate must be applied on taxable income (i.e., salary, cash bonuses or "love offerings," automobile or other "allowances," Social Security/Medicare tax "allowances," taxable fringe benefits) and housing allowance (whether a cash allowance or the fair market rental value of housing and utilities are provided).

For lay employees, Social Security laws changed on January 1, 1984. Since that time, ALL lay employees (both full-time and part-time) are covered automatically by Social Security/Medicare tax withholding rules under FICA. Therefore, all church employers MUST withhold FICA at the current employee rates from the lay employee's wages that are subject to Social Security/Medicare taxes (including any "salary reduction" pension contributions) and pay a matching amount from their own church funds. The total is then paid to the government for the individual. Many churches may want to give an allowance to the lay employee equal to the full amount withheld. Of course, such an allowance becomes taxable income.

Form W-4

All employees, whether part-time or full-time, should complete a Form W-4, "Employee's Withholding Allowance Certificate." That form reports the number of withholding allowances requested by the employee and is the basis upon which the amount of federal income tax to be withheld is determined. Generally, a Form W-4 remains valid until a new one is filled out or is required by the IRS. All W-4 Forms are retained by the employer. (If any employee, other than the minister, reports no tax to be withheld or claims more than 10 withholding allowances, copies of those W-4 Forms generally must be sent to the IRS by the employer.)

You should keep on file your minister's Form W-4 noting that no federal taxes are to be withheld pursuant to Section 3401(a)(9) of the Internal Revenue Code which specifically exempts a minister's wages from income tax withholding. Of course, if the minister and church have agreed to voluntary withholding of income taxes (not Social Security – FICA taxes), then the Form W-4 should indicate the correct number of withholding allowances and any amount of extra withholding requested.

Employees who had no income tax liability in the previous year, and do not expect to pay a tax in the current year, may request that no income taxes be withheld in the current year by completing the appropriate lines on Form W-4 (Note: some exceptions apply.)

On another line of Form W-4, employees may request that additional federal income tax be withheld. If your minister elects to have income taxes withheld and desires additional income tax to be withheld in order to cover the personal obligation of the Social Security/Medicare (SECA) tax payment (which must be paid at the self-employment rate), that amount should be shown on the proper line.

Deposit of Withheld Amounts

Taxes deducted from the salary checks are to be segregated into separate accounts in the treasurer's bookkeeping system. There are very specific instructions on the frequency of depositing these funds. IRS Publication 15, "Circular E – Employer's Tax Guide," explains this process in detail. Deposits must be made properly and on a timely basis to avoid late penalties. Each quarter, Form 941 must be filed to report the amounts withheld to IRS.

Form 941

You should receive Form 941 automatically each quarter from the IRS. These forms are to be used to report the taxes your congregation has withheld and which are owed for each quarter. This form is used to report both federal income taxes and FICA taxes owed.

By the last day of the month following the end of each quarter, Form 941 must be filed. There are penalties for not doing so. You may wish to file the form even if no taxes are withheld. Technically, there is no requirement to file when no tax is withheld.

As soon as you owe more than \$2,500 for employment taxes (withholding of federal income and FICA taxes, as well as the employer's FICA taxes), your congregation must pay that money by the method required by the IRS. You should automatically receive instructions for making those payments along with a supply of IRS computer-readable forms unless you must use an electronic payment process. All federal employment taxes due must be paid at least quarterly and more frequent deposits may be required.

Here are a few of the items you will report on Form 941:

On line 2, report total of all wages paid and any other compensation paid by the employer, whether or not the employer is required to withhold federal income tax or Social Security tax. Therefore, this line includes the minister's salary.

On line 3, report total federal income tax withheld from wages. (If you wish, you may indicate in the lower margin of the form the number of ministerial employees included on line 1 and their compensation you had to include on line 2 which is “not subject to withholding pursuant to IRC Section 3401(a)(9).”)

On lines 6a, 6b, 7a, and 7b, report the appropriate totals for applicable FICA wages paid and Medicare wages paid (these may not be the same amounts as reported on line 2) and the amount of tax due on those wages (employee and employer taxes). Since your ministerial employees are not subject to FICA and Medicare withholdings, do not include their compensation in these totals.

On line 11, report total taxes. This will include withheld taxes and the taxes due from the employer for both FICA and Medicare. You must also report on Form 941 (line 14) any deposits made for accumulated withholdings. A record of tax liability (not deposits) for each month of the quarter also is required (line 17). Upon filing Form 941, any taxes still due must be paid.

Form W-2

If your congregation does not receive a supply of employment tax forms before the end of the year, you will want to request them by calling the IRS (1-800-TAX-FORM). By January 31, each employee must be given Form W-2 reporting wages paid during the preceding tax year.

The IRS, in publication 517, has indicated clearly for a number of years that the church employer should provide the **minister** with a Form W-2 at the end of the tax year. This is true even though there may have been no withholding for federal income tax due to the exemption and even though the minister’s wages are not subject to withholding for Social Security/Medicare tax (FICA).

The **lay employee** must also receive Form W-2 from the church. Since the employer is required to withhold for federal income tax and any applicable Social Security/Medicare taxes, the treasurer can determine the amount withheld and the amount of taxable wages from the accounting records. Taxable wages must include the value of any housing or utilities provided.

Form W-2 requires the employer’s name, address, ZIP code, and Employer Identification Number (EIN), as well as the employee’s name, address, ZIP code, and Social Security number. In Box 1, show wages paid. In Box 2, show any federal income tax withheld. Boxes 3, 4, 5, and 6 are completed with dollar amounts only for lay employees. (For ministers, Boxes 3, 4, 5, and 6 should be left blank.) The following statements give general guidelines that apply to minister’s Form W-2 and the lay employee’s Form W-2. Specific instructions can be secured from any local IRS office, by calling 1-800-TAX-FORM, or by downloading the W-2 instruction booklet from their website at www.irs.gov.

On the minister's Form W-2, report salary (cash and noncash) paid in Box 1. Include any Social Security allowance; automobile or other "allowances" (if not paid under an "accountable reimbursement plan"); taxable fringe benefits; and church-paid "love offerings." Exclude any auto or other business reimbursements that have been paid through an accountable reimbursement plan; contributions to a 403(b) pension plan; and any designated housing allowance. If federal income tax has been withheld from a minister's wages, fill in Box 2; otherwise leave it blank. Leave Boxes 3, 4, 5, and 6 blank.

On the lay employee's Form W-2, report salary (cash and noncash) paid in Box 1 just as you did for minister. Auto and other business reimbursements paid through an accountable reimbursement plan are excluded from Boxes 1, 3, and 5. All pension plan contributions are excluded from Box 1; however, only employer-paid contributions over and above salary are excluded from Social Security/Medicare wages, Boxes 3 and 5.

Voluntary salary reduction pension contributions are included in Boxes 3 and 5 and tax withheld must be reported on these funds, Boxes 4 and 6.

Box 12 – Follow the Form W-2 instructions carefully. Any entry made should be carefully entered and labeled according to IRS codes provided in your Form W-2 instructions to avoid confusion in reporting these amounts. If more than three items need to be reported in Box 12, use a separate Form W-2. The following items may need to be considered when completing Box 12.

Group Term Life Insurance – If the church employer pays for more than an aggregate of \$50,000 of group term life insurance for an employee, the cost of the coverage over \$50,000 must be reported both in Box 12 using Code C and in Box 1 (also in Boxes 3 and 5 if a lay employee).

Deferred Compensation – Any contributions made through the church to an employee's 403(b) pension plan under a voluntary salary reduction agreement must be reported in Box 12 using Code E. This amount would not be included in Box 1 for either ministerial or lay employees. This amount would be included in Boxes 3 and 5 for a lay employee.

Moving expenses – Qualified moving expenses paid for or reimbursed to an employee do not represent taxable income. However, any nonqualified moving expenses paid for or reimbursed to an employee represent taxable income reportable in Box 1 for minister and in Boxes 1, 3, and 5 for lay employees (since these payments are subject to Social Security and Medicare tax for lay employees). Excludable moving expenses paid directly to an employee must be reflected in Box 12 using Code P. No Form W-2 reporting is required for employer payments of qualified moving expenses paid directly to a vendor for an employee.

Box 13 – One item may apply to church employees. It is “Retirement Plan.”

Retirement plan – This item must be checked if the employee is an active participant (for any part of the calendar year) in a retirement plan maintained by the church employer. All such active employees performing ministerial duties who are licensed ministers or ordained ministers, and who have served as either pastors or as full-time associates earning their full livelihood from that ministry, must have Box 13, “Retirement Plan” checked. Employers who have contributed to a 403(b) pension plan (such as the Church of God Pension Plan) on an “above salary” basis for either a minister or a lay employee must also check this item. A lay employee having a pension contribution only under a voluntary salary reduction basis would not have this item checked, since it would already be indicated in Box 12 using Code E.

Box 14 – If the church owns or leases a vehicle for an employee’s use, the value of the “personal and non-business” use of that vehicle is taxable income. The value of the use of the vehicle is established by using official tables available from the IRS (1-800-TAX-FORM or www.irs.gov). The amount of the personal and non-business use must be included in Box 1 and Box 14 (and in Boxes 3 and 5 if a lay employee). The employee must maintain a mileage log or similar records to substantiate business and personal use of the vehicle and submit this to the employer. If not substantiated, the employer must report 100 percent of the use of the vehicle as taxable income.

If the employee fully reimburses the employer for the value of the personal use of the vehicle, then no value would be reported in either Box 1 or in Box 14. You may want to refer to IRS Publication 535 for more information on vehicle usage valuation and reporting.

Form W-3

In order to transmit the W-2 Forms to the IRS, your congregation must file Form W-3, “Transmittal of Wage and Tax Statements.” Form W-3 will be provided to your congregation at year’s end with the supply of employment forms from the IRS.

The purpose of Form W-3 is to summarize for the IRS the number of W-2 Forms being transmitted. Information required includes the name, address, ZIP code, and EIN of the employer; the number of W-2 Forms being transmitted; the total amount of wages, federal income taxes withheld, Social Security/Medicare (FICA) taxes withheld, and FICA wages reported on all of the W-2 Forms. Totals on Form W-3 should balance to the aggregate of the totals reported on any 941 Forms filed for the year.

Form W-3 and all attached W-2 Forms must be submitted to the IRS by the last day of February (unless that day falls on a weekend, then by the following Monday). No money is sent with the Form W-3.

Form W-5

The Form W-5, "Earned Income Credit Advance Payment Certificate," is used by eligible employees ("low-income" employees) who elect to receive advance payments of the earned income credit. IRS Publication 15, "Circular E – Employer's Tax Guide," describes the use of the Earned Income Credit Advance Payment Certificate. If a minister is the only employee of the church and a voluntary withholding arrangement does not exist, the church is not liable for the EIC.

Form 1099-MISC

While the church generally is not required to withhold taxes from non-employees, Form 1099-MISC must be filed for payments to a self-employed person or unincorporated business if payments have been \$600 or more per year. This includes payments to independent contractors and unincorporated evangelists (excluding any housing allowance properly designated in advance, pension contributions, or reimbursed expenses). Transmit copies of Form 1099-MISC to the IRS with Form 1096.

Records

Your congregation must keep accurate records of all wages paid and taxes withheld. Keep an individual ledger sheet or computer log for each employee plus a similar summary sheet for all wages paid to all employees.

Checklist for Procedures

- 1. Employer requests Employer Identification Number (EIN) if not already assigned.**
- 2. All employees should have a valid Form W-4 on file with the employer.**
- 3. Employer withholds federal income taxes and any applicable Social Security/Medicare (FICA) taxes from each paycheck, except paychecks of the clergy in the exercise of ministry, unless the clergy and church have entered into a voluntary agreement for withholding federal income taxes.**
- 4. Employer files Form 941 by the end of the month following each quarter and pays any balance due of taxes owed.**

5. At year's end, the employer issues a Form W-2 to all employees and files Form W-3 transmittal.

6. Issue Form 1099-MISC to whom necessary and file Form 1096 with the IRS.

Social Security

Compensation received by a minister for their ministry work is self-employment income. As such, it is subject to self-employment tax (SECA). FICA social security taxes cover non-ministerial employees and in those cases the employer is required to pay one-half of the FICA tax. The only way in which a minister is not subject to SECA is if he or she has properly opted out of Social Security. FICA Social Security should never be withheld from the compensation of a qualified minister.

Calculating the portion of your income package that is subject to SECA is somewhat complicated. For example, the minister's housing allowance is exempt from federal taxes, but is taxable for social security purposes.

Many churches reimburse ministers for a portion or all of their SECA liability. This is recommended whenever possible. Such a SECA reimbursement does represent additional taxable income in the year it is paid (both for income tax and social security purposes).

Computation of the self-employment tax you must include gross income earned minus the permitted deductions. A worksheet example follows this section. Only business expenses are deductible in determining SECA income.

A minister is permitted to take an income tax deduction equal to one-half of your self-employment tax liability. This deduction is claimed against gross income on line 26 of the first page of Form 1040. You may also deduct about one-half of your self-employment tax liability in calculating your self-employment tax. You make this deduction on Schedule SE, line 4 by multiplying self-employment income by .9235.

A minister is permitted to use a voluntary withholding agreement thereby asking the church to withhold sufficient amounts to cover federal income taxes plus enough for the SECA taxes. The church must report all amounts withheld under such an arrangement as federal income taxes. The other option is the use of Form 1040-ES to estimate and pay the taxes quarterly.

Self-Employment Social Security Tax Worksheet

Items you must include

Salary paid by church (as on W-2)	\$ _____
Net profit or loss as reflected on Sch. C	_____
Housing allowance excluded from salary	_____
Fair rental value of parsonage	_____
Any Non-accountable business expenses	_____
Reimbursement of self-employment taxes	_____
Value of meals provided	_____
Total amounts included	\$ _____

Amounts you can Deduct

Unreimbursed ministerial business expenses (Deductible on Sch. A before the 2% of AGI)	\$ _____
Reimbursed business expenses that were paid Under a non-accountable plan and included as Income	_____
Total Deductions	\$ _____
<u>Net earnings from self-employment</u>	<u>\$ _____</u>

Can Ministers Opt Out of Social Security?

A Question Often Asked:

“My advisor has recommended that, as a minister, I can elect out of Social Security and put my money into an annuity program, thereby securing a better retirement. Is this true? Is it legal? What forms might be involved?”

A Law Often Misunderstood:

The Tax Code does provide a means for some ministers in some denominations to exercise an option to terminate Social Security/Medicare coverage for their ministerial earnings. IRS Form 4361 must be used and it must be filed on the correct basis of religious belief. If approved by the IRS, only earnings from ministerial services are exempt from self-employment tax. Form 4361 specifically states, “Once the exemption is approved, you cannot revoke it.”

Special Note: In 1999, Congress approved a measure permitting ministers who opted out of Social Security a limited opportunity to revoke (opt back into) their exemption. The IRS announced that ministers will use Form 2031 to revoke an exemption, and that the new form is available by calling 1 (800) TAX-FORM or download the form from the IRS website at www.irs.gov (IRS publication 553). However, this window is now closed.

Form 4361 states that the form must be filed “by the date your tax return is due including extensions, for the 2nd tax year in which you had at least \$400 of net earnings from self-employment, any of which came from services performed as a minister...” Some have misunderstood this provision to mean “two years after ordination.” However, in some church bodies a licensed minister may file taxes as a minister prior to ordination. This is often true in the Church of God. It is at this same point that the two years must begin.

The individual filing the Form 4361 must certify, by signature, that specific statements are true. The first statement is:

“I certify that I am conscientiously opposed to, or because of my religious principles I am opposed to, the acceptance (for services I perform as a minister...) of any public insurance that makes payments in the event of death, disability, old age, or retirement; or that makes payments toward the cost of, or provides services for medical care. (Public insurance includes insurance systems established by the Social Security Act).”

Under the Tax Reform Act of 1986, and effective after December 31, 1986, any minister who applies for exemption from Social Security based on conscientious opposition is required to inform the ordaining, commissioning, or licensing body of his denomination that he/she is conscientiously opposed to the receipt of “any public insurance that makes payments in the event of death, disability, old age, or retirement; or that makes payments toward the cost of, or provides services for medical care, including the benefits of any insurance system established by the Social Security Act.” The second statement deals with certifying that the applicant has informed the denomination.

The third statement certifies that the applicant has not filed Form 2031. (Before 1968, one had to sign Form 2031 to elect into Social Security. Now, all ministers are included automatically unless there is a basis for electing out.)

The fourth statement deals with the specific request for exemption and certifies an understanding as to which earnings the exemption would apply if granted.

According to the Form 4361 “General Instructions,” before your application can be approved, the IRS must again certify that you are aware of the grounds for exemption and that you want the exemption on that basis.

“When your completed Form 4361 is received, the IRS will mail you a statement that describes the grounds for receiving an exemption under Section 1402 (e). You must certify that you have read the statement and seek exemption on the grounds listed on the statement. The certification must be made by signing a copy of the statement under penalties of perjury, and mailing it to the IRS service center that issued it, not later than 90 days after the date the statement was mailed to you. If it is not mailed by that time, your exemption will not be effective until the date the signed copy is received by the service center.

If your application is approved, a copy of Form 4361 will be returned to you marked ‘approved’...

These measures are to prevent persons from seeking exemption simply on economic grounds.

A “Catch” Often Overlooked

Key words in qualifying for exemption from Social Security coverage on ministerial earnings are “religious principles” and “conscientiously opposed to the acceptance of any public insurance.” The tax regulations and court decision are quite clear. Religious principles cannot be simply the personal conviction that perhaps Social Security will not be there when you retire, or that a better retirement can be purchased through an annuity. The belief must be an integral part of your religious system of beliefs—your theology.

Further, these religious principles must be ones that would prevent you from ever asking for the benefits from such a plan based on your church salary. No basis exists for an objection to paying the taxes, or to the level of the taxes to be paid. It is as though you would be saying, "Even if I have to pay the taxes, I can never file for the benefits since my theology will never allow me to accept them."

Many local churches have a practice of reimbursing part, if not all, of the minister's Social Security/Medicare tax, as well as that of lay staff. By practice and polity there appears to be no basis for an exemption for Church of God clergy from Social Security/Medicare self-employment taxes.

Housing for Your Pastor: Parsonage or Housing Allowance?

"Should we continue to provide a parsonage and utilities or should we change to a cash housing allowance and let our pastor buy his own home?"

Across the Church of God Movement this difficult question is being asked, often out of genuine concern for the pastor's dilemma at retirement when he or she may have no real estate equity built up for a retirement home. The question becomes even more difficult to answer with the shift in the nation's economy and in each local economic situation. While there is no absolute, authoritative answer, the following list of advantages and disadvantages, which have become apparent to pastors and churches through actual experience, is offered to stimulate careful thinking and evaluations.

Pro Parsonage and Con Housing Allowance:

- 1. In some situations, there really is little choice. The parsonage may be connected to or adjoining the church building with no alternative for selling or renting. Unless used for Sunday School rooms, it remains the pastor's home.**
- 2. Churches owning a parsonage may strengthen their ability to attract the pastoral candidate of their choice who may not be able or willing to buy a home.**
- 3. In some areas, there are no property taxes due on a church-owned parsonage, which may mean less expense is involved.**
- 4. The church handles repairs and maintenance on the parsonage, thus freeing the minister from these time-consuming worries and expenses.**
- 5. Often a parsonage is nicer than what a minister could afford to buy in the community.**

- 6. Making a pastoral change is easier when moving from parsonage to parsonage, since securing temporary quarters is unnecessary for house hunting or waiting for occupancy.**
- 7. When the parsonage is sold, the church loses a traditional and meaningful way of showing love and concern for the parsonage family.**
- 8. Many ministers do not have sufficient funds for a down payment on a home.**
- 9. The church which enters the loan business to “give” the pastor the down payment often bears the cost of low interest and little or no payment on principal. There may be tax implications as well. State nonprofit corporation laws must be followed carefully. Some state may even prohibit such loans.**
- 10. The loan situation is hopefully trouble-free, but awkward situations have developed.**
- 11. Many homes appropriate for the minister’s need are out of the price range for his/her salary.**
- 12. Very often the church cannot afford a housing allowance that fully covers all expenses including real estate taxes, fire and casualty insurance, upkeep, etc. It takes constant review and appropriate board action to keep pace with these increasing inflationary costs.**
- 13. Some pastors do not have the extra time, money, and expertise to handle such a real estate investment which includes the added responsibility to maintain and repair the home.**
- 14. In some locations, real estate can move very slowly, if at all! Adequate housing may not be available for purchase when needed. Likewise, a home may not sell when it comes time for a pastoral change.**
- 15. If the minister is the one who purchases the parsonage, any difference between purchase price and appraised value may be considered taxable as ordinary income.**
- 16. Appreciation of property is assumed, but depreciation can be a reality due to natural and man-made disasters or economic conditions. Homeowners do not always sell at a profit. This potential is not a concern for the minister in a parsonage.**

Pro Housing Allowance and Con Parsonage:

- 1. A housing allowance may solve the problem of having to provide an adequate parsonage, while at the same time help the pastor plan for his/her retirement.**
- 2. With a housing allowance, some feel that compensation planning may be more flexible, easier to compare, and simpler to budget.**
- 3. Home ownership suggests permanency and may encourage longer pastorates.**
- 4. Since a homeowner pays real estate taxes, he/she has more voice in community affairs.**
- 5. A minister buying a home gets to choose the kind, style, and location.**
- 6. The minister's family may decorate as they wish – even remodel without board action.**
- 7. Home ownership becomes an important investment for the future, assuming, of course, each property appreciates in value and appropriate equity is established. This growing “earned equity” is portable as the minister relocates, allowing him/her to take full value to a new location.**
- 8. Home-owning ministers get a double tax break. Within certain limits, the housing allowance used to provide and furnish a home is nontaxable income. In addition, mortgage interest and property taxes are deductible as itemized deductions.**
- 9. A homeowner can sell his/her principal residence and may not be required to pay any tax on up to \$500,000 of profit. The exclusion can be used as frequently as every two years. To be eligible, the homeowner must have owned and occupied the home as a primary residence for at least two of the past five years before the sale. (IRS has specific regulations controlling how this may be done.)**
- 10. In the event of disability, death, or retirement, home ownership with adequate insurance generally means an immediate move is unnecessary.**

Tax Implications:

In addition to the above considerations, the local church board should insist that the tax implications be explored thoroughly before any decision is made. The following examples represent possible concerns:

- a. **Extra care should be taken when a parsonage is to be given to a minister or sold to him/her at a value below the fair market value. The church may contend this a “gift”, and not compensation. However, it is likely this would be challenged forcing the minister to pay taxes on the value of the “gift” or take the issue to tax court.**
- b. **Where the church does make such a considerable “gift” to their minister without reporting it as compensation, the church may be jeopardizing or calling into question its tax-exempt status. In order to have such status, the assets of the corporation cannot accrue to the personal benefit of an individual other than as reportable compensation. Tax exempt organizations also must be careful that they are not paying “unreasonable” compensation to employees.**
- c. **Another concern involves the sale or rental of the parsonage. The church can be subject to taxation when it receives “unrelated business income.” This possible interpretation of the tax laws should not go unexplored before a final decision is made.**

Another Alternative:

The above lists are not intended to be exhaustive. Hopefully, they will stimulate thinking in this complex area. Churches with strong financial resources may have no difficulty if they decide to sell their parsonage and provide a cash housing allowance. However, such a decision should be preceded by careful evaluation and in consultation with the church board, pastor, and tax advisor.

The church board which does not allow its minister to purchase his/her own home, but does provide an adequate parsonage and an allowance for parsonage furniture, etc. is still without an answer for their concern for the pastor’s future retirement need. But, there is another alternative if the original question is rephrased, “How can we provide the pastor with an adequate salary now and also an adequate retirement nest egg without selling the parsonage?”

This question can be answered much more easily. A local church may provide an equity allowance for their pastor by contributing additional amounts into the Church of God Pension Plan in the pastor’s name.

Equity Allowance:

- **The church can contribute and tax-shelter this compensation.**

- Interest or gain can be realized on contributions without incurring an immediate tax liability. No tax liability is incurred until funds are withdrawn by the participant.
- Withdrawals at retirement often are at a reduced tax rate or as a minister's tax-free "housing allowance."
- Numerous withdrawal options allow for maximum flexibility in retirement planning.

Housing Allowance

Introduction

A substantial tax benefit is provided to qualifying ministers based on Section 107 of the Internal Revenue Code (IRC). It consists of only one sentence which currently states that:

In the case of a minister of the gospel, gross income does not include- 1) the rental value of a home furnished to him as part of his compensation; or 2) the rental allowance paid to him as a part of his compensation, to the extent used by him to rent or provide a home and to the extent such allowance does not exceed the fair rental value of the home, including furnishings and appurtenances such as a garage, plus the cost of utilities.

The basis of this exclusion from taxable income is deeply rooted in our nation's tax history. Also interesting to note is the fact that prior to 1954, the sentence was shorter since before that time a minister could not exclude the "cash" rental allowance paid in lieu of a provided dwelling. As recently as the Clergy Housing Allowance Clarification Act 2002, Congress reinforced and clarified the provisions by adding language to the code about the fair rental value.

Eligibility

Tax regulations limit the housing allowance exclusion to the amounts paid for the home provided "as remuneration for services which are ordinarily the duties of a minister of the gospel."

Bi-vocational ministers can have a housing allowance, but only from their ministerial income. Generally, secular employers cannot give an employee a tax-free housing allowance, even if the employee is a minister.

Advance Designation

No advance designation of housing values is required where the minister lives in a church-provided parsonage. This is also generally held to be true where the church has a stated policy of paying 100 percent of the parsonage utilities. The very act of paying the full amount is designation. However, ministers living in church-provided parsonages may have part of their cash compensation designated as a tax-free housing allowance to cover the cost of furniture purchase and repair, as well as other expenses related to the maintenance of the home which are not reimbursed by the church employer. Such an amount must be *designated in advance* as discussed below.

Tax regulations specify that for the housing allowance to be excluded from federal income taxes it must be *designated in advance* of payment by official action of the employing church or integral agency. The designation must be in writing and may be contained in the minutes of the church board or finance committee, if appropriate. The designation does not need to be attached to the tax return or reported to the IRS except upon specific inquiry.

It is recommended that the wording of the resolution be “open ended” so that the designation would be effective from that point forward until it is revised by the church board. Suggested resolutions follow:

A. For a minister in a church-provided parsonage:

“Compensation for Rev. _____ will include a church-provided parsonage and the actual cost of utility expenses. For the purpose of covering additional housing-related expenses, \$ _____ per year is designated as housing allowance. This designation shall be effective until modified by the church board.”

B. For a minister purchasing his home or renting:

“The compensation for Rev. _____ shall include \$ _____ per year designated as housing allowance. This designation shall be effective until modified by the church board.”

C. For an evangelist:

“Compensation for Rev. _____, as evangelist, will include \$ _____ designated as housing allowance.”

How Much of the Minister’s Compensation Can Be Designated as Housing Allowance?

The Tax Code contains no specific percentage or dollar limitation as to how much can be designated as housing allowance. In the case of bivocational ministers and supply pastors, a reasonable designation may be up to 100

percent of the cash compensation. However, it should be note that a minister's cash housing allowance cannot exceed "reasonable compensation." This would apply only where a minister was performing very little service for the church and was receiving compensation disproportionate to the amount of service provided.

How Much Housing Allowance Can Be Excluded?

Up to 100 percent of compensation can be "designated" as housing allowance, but this does not necessarily mean that this is the amount which can be excluded from income taxes. IRS Publication 517 provides a definition of how much parsonage allowance can be excluded for ministers:

"If you own your home and you receive as part of your pay a housing or rental allowance, you may exclude from gross income the smallest of the following:

The amount actually used to provide a home

The amount officially designated as a rental allowance, or

The fair rental value of the home, including furnishings, utilities, etc.

You must include in gross income the amount of any rental allowance that is more than the smallest of your reasonable pay, the fair rental value of the home plus utilities, or the amount actually used to provide a home."

Thus, it can be seen that the church employer cannot cause the minister to exclude "too much" by over-designating the amount of housing allowance, but can cause the minister to pay substantially more taxes than required by under-designating.

The liability for determining the appropriate amount of housing allowance that can be excluded is the minister's. The church has no responsibility beyond determining that the compensation is reasonable for the services performed. The minister is responsible to determine any excess designated housing allowance and to report that amount as taxable income on the annual tax return.

When ministers pay off their mortgages, they can still have a housing allowance but it cannot exceed the actual cost of maintaining the home. Some ministers who have paid off their homes try to exclude the "fair rental value" of their homes as housing allowance. This practice is not legal.

What Expenses Can Be Used to Justify the Housing Allowance Exclusion?

Generally, any expense to provide or maintain the home can be used to justify the housing allowance exclusion. Regulations do specifically state that expenses

for groceries, paper products, personal toiletries, personal clothing, and maid service cannot be used. You may legitimately include the following:

- 1. rent, principal payments, or down payments plus the cost of buying a home;**
- 2. taxes and mortgage interest (even if these are includable as itemized deductions);**
- 3. utilities (heat, electric, basic telephone, water, etc.);**
- 4. the purchase of furniture, appliances, dishes and cookware, and decorating items including rugs, pictures, curtains, bedspreads, sheets, towels, etc.;**
- 5. insurance on the home and contents; and**
- 6. miscellaneous expenses including improvements, repairs and upkeep of the home and its contents, snow removal, lawn mowing, light bulbs, cleaning supplies, etc.**

Reporting Requirements and Taxes Saved

Qualifying payments for a housing allowance are excluded from federal income tax. (However, these amounts are included in the computation of Social Security/Medicare taxes (SECA) at the self-employment tax rate unless the minister is retired.) Generally, housing allowance payments are also exempt from state income tax.

The minister's Form W-2 should not include any portion of the church-designated housing allowance. Housing expense details, receipts, and records are not to be submitted to the employer. They are handled differently than professional business expenses and remain confidential. It is the individual minister's obligation to determine how much of the designation can actually be excluded and to report any unused portion of the designated amount as additional taxable income on the annual tax return.

It is recommended that the church treasurer provide a separate written notice at year's end to the minister indicating how much has been paid as designated cash housing allowance. This will be useful to the minister when he computes his Social Security/Medicare taxes (SECA) at the self-employment tax rate. A copy of the notification should be maintained in the church's file.

Retired ministers will receive a Form 1099-R for their pension distributions. When reporting pension payments made as “housing allowance,” the Form 1099-R will indicate “taxable amount not determined” since it is the individual minister’s responsibility to determine the amount qualifying as an exclusion from taxes.

Conclusion

The proper designation of a cash housing allowance can result in significant tax savings for the qualifying minister. Here are the recommended steps for the minister to take in order to maximize the exclusion:

- 1a. If in a parsonage with utilities paid in full, estimate the anticipated expense to maintain the home above what is provided by the church. Remember, this amount will need to meet the guidelines as outlined in IRS Publication 517.**
- 1b. If no parsonage is provided, compute the fair market rental value of your home plus utilities. You can include any fair market rental value of your furnishings.**
- 2. Request the church to designate the amount determined in 1a or 1b above as housing allowance.**
- 3. Maintain accurate records of appropriate expenses throughout the year to justify the housing allowance exclusion.**
- 4. At the end of the tax year, determine if the housing allowance designated has been spent for the appropriate expenses. If not, then the difference between the amount designated and the amount spent must be included as additional taxable income when you fill out your federal income tax forms. Of course, this assumes the excluded amount does not exceed the “fair rental value,” as discussed above.**

Auto and Other Business Expense

Importance of Full Reimbursement

Tax rules make it very important for full reimbursement of business transportation, travel, and other business and professional expenses. Any unreimbursed expenses you wish to deduct from federal income taxes may be lost since they are deductible only to the extent they exceed 2 percent of Adjusted Gross Income (AGI) and to the extent that all itemized deductions on Schedule A exceed the Standard Deduction. Also, the IRS states you may deduct only those expenses your employer specifically refuses to reimburse. If you are entitled to an expense reimbursement but do not request it, you cannot take a deduction for unreimbursed business expenses.

Furthermore, ministers may not deduct unreimbursed business expenses to the extent that they are allocable to a tax-exempt housing allowance. Many ministers with nonaccountable expense reimbursement plans are not allocating business expenses under this concept and therefore are underpaying their income taxes. The allocated expenses are still deductible for Social Security (SECA) tax purposes.

The use of an accountable expense reimbursement plan is the best solution for ministers and other church employees.

IRS Regulations

Requirements for business expense reimbursements are based on IRS Regulation 1.62-2(d)(3). These requirements apply to every church and affect all employees. They are not optional—they must be followed or the church employee may pay significantly greater amounts of unnecessary taxes.

The IRS regulations require that business reimbursements be included on Form W-2 as taxable income to the individual *unless* paid through an “accountable reimbursement plan” which has been “formally” adopted by the church board. The requirements for the accountable reimbursement plan are three-fold:

1) The church may reimburse only those business expenses that an employee substantiates within 60 days of the expenditure with receipts and/or in writing as to the date, amount, place and business nature.

2) *The employee must return any “excess” reimbursements (i.e., unused expense advances) within 120 days of the expenditure. The excess reimbursement may not be treated as a bonus or gift.*

3) *Any advance must be made within 30 days of when the expense is paid or incurred.*

Form W-2 income cannot simply be reduced “after the fact.” In other words, the IRS will not allow the reimbursement to be paid through a retroactive reduction of salary. In order for reimbursements to be paid and qualify under an accountable reimbursement plan, properly substantiated expense reimbursements must be paid separately from the employee’s salary. The salary amount and the accountable reimbursement plan must be established in advance of payment. If the church establishes a dollar limit on the expense plan (instead of reimbursing 100% of expenses), any balance remaining in the expense plan at year-end should remain with the church. The payment of the balance to the employee makes all payments made to the employee under the plan during the year reportable as taxable income on Form W-2.

Transportation, Travel, and Other Business and Professional Expenses

Most church employees incur business transportation and travel expenses while conducting the ministry of the local church. Many churches are careful to reimburse their employees in full for these expenses, properly recognizing them as local church operating expenses.

Often, church employees also incur business and professional expenses in their ministry. Examples include:

- **Business-related entertainment**
- **Professional books and magazines**
- **Memberships and dues in professional organizations**
- **Stationery and supplies**
- **Other ministry expenses**

Normally, the church board recognizes these as necessary for the work of the church and views them as local church expenses. The employee should be reimbursed in full. If these expenses are paid properly through an accountable reimbursement plan, the IRS says they are not reportable as income.

For example, reimbursable phone expenses may include long-distance calls, a second line, special equipment, and services such as call-waiting if there is a business relationship. Basic local service charges (including taxes) for the first line in the home are not considered a business expense.

Another example is entertainment expenses for church business. Only 50 percent of meals and entertainment as a business expense is deductible on Form 2106 (of Form 2106-EZ) and Schedule A. However, if the business meals and entertainment are presented to the church with proper documentation under an accountable reimbursement plan, then 100 percent may be reimbursed. This illustrates how important it is for every church employee to utilize an accountable reimbursement plan.

Likewise, qualifying educational expenses may be reimbursed in full under an accountable reimbursement plan. Typical expenses include tuition, books, supplies, transportation away from your hometown, meals, lodging (if necessary to be away from home overnight to attend classes), and correspondence courses. Qualifying educational expenses are those incurred to meet the requirements of your church to keep your present position, or to maintain or improve skills in your present employment. Expenses do not qualify, even though these requirements are met, if the education is required for you to meet the minimum educational requirements of your occupation, or part of a program of study that will qualify you for a new occupation. For example, a minister who has

not been gainfully employed as a minister will not be able to count his seminary education. However, a pastor who is obtaining additional education likely will qualify. You must not be absent from your profession for more than a year. The IRS considers it a career change if you work a secular job for more than a year while obtaining additional education. Also travel costs claimed as a “form of education” (i.e., a trip to the Holy Land) do not qualify. However, enrollment in a formal course of study overseas may qualify.

The Automobile “Allowance” Method

Probably the largest business expense for a minister is the auto expense. Some churches continue to provide a nonaccountable “car allowance.” However, the IRS says such nonaccountable “allowances” are to be reported as income on Form W-2. The ministerial employee may or may not benefit by using Form 2106 (or Form 2106-EZ) to document the expenses and the “allowance” paid, thereby deducting the unreimbursed expenses as itemized deductions on Schedule A. Such an “allowance” method provides no dependable tax benefits.

The Automobile Reimbursement Method

A good plan is for the church board to adopt an accountable reimbursement plan and include auto expense reimbursement on a business mileage basis. Actual auto expenses may be reimbursed. However, the simplicity of using the Standard Mileage Rate is compelling.

If you account to your church for all your business miles and are reimbursed at the Standard Mileage Rate, the reimbursement is not included as income on Form W-2. You need to provide records of evidence for business miles to your church treasurer to support the reimbursement. The IRS can supply details about accounting and record keeping for reimbursements. (1-800-TAX-FORM or www.irs.gov)

Employees who are reimbursed the Standard Mileage Rate or less per mile are not required to make any report on their tax return of the reimbursement unless they want to try to deduct any business auto expenses not fully reimbursed.

If the reimbursement exceeds the Standard Mileage Rate, then the entire amount of the reimbursement should appear on Form W-2 as taxable income. This means any tax benefit may be lost under the deductibility rules mentioned earlier. (You may want to request a copy of IRS Publication 463, “Travel, Entertainment, Gift, and Car Expenses,” for more details. 1-800-TAX-FORM or www.irs.gov)

The simplest method to handle auto expenses is to receive full reimbursement at the Standard Mileage Rate allowed by the IRS for all business miles.

The Church-Owned Automobile

Some churches provide some or all of their staff with the use of a church-owned vehicle. When an employee uses a church-owned vehicle for both business and personal use, certain procedures are required for tax purposes. (Personal use generally includes commuting between home and the church.)

The employee must keep adequate records of the business use miles for which the church-owned car is driven. The records for business miles should indicate date, purpose, destination, and miles for all business transportation/travel. It is not enough to just keep personal use miles. The total miles the car is driven during the year should be determined based on odometer readings at the beginning and end of the year. Total miles driven less business miles provides the personal miles on which to determine personal use value.

If the employee fully reimburses the employer for the “value” of the personal use of the vehicle, then no “value” would be reported as taxable income on Form W-2. Otherwise, the “value” of personal use of a church-owned vehicle is a taxable benefit to the employee and must be included on an employee’s Form W-2. Income tax is not required to be withheld for lay employees as long as the employer advises all employees that no withholding will be done for the “value” of the benefit. Notification must be made by January 1 of the year in which no withholding will be done. FICA Social Security taxes must be withheld on the full amount of the “value added” for each staff member affected who is not ordained or licensed.

The “value” of the availability of a church-owned vehicle to be added to Form W-2 (or reimbursed to the employer by the employee) is the cost to the employee of renting or leasing a comparable vehicle. The IRS has standard tables that determine the Annual Lease Value of a vehicle based on the vehicle’s Fair Market Value. The “value” of the fuel used is another benefit that must be added if the church pays for all the fuel. An employer should contact the IRS (1-800-TAX-FORM or www.irs.gov) and request the most recent information when determining these values for tax income reporting purposes (IRS Publication 535, “Business Expenses”).

Likewise, the church board and staff of any church providing vehicles to employees for both personal and business use will want to work closely with their personal tax advisors to make certain the “value” of the benefit is determined and reported properly.

Documentation of Mileage

Regardless of the method in which auto expenses are handled, accurate and detailed written records are essential to document the following: the amount of expense and /or mileage, the time and place of transportation/travel, and the

business purpose. The taxpayer is required to have “adequate records” or “sufficient evidence” to support the taxpayer’s own statement. The best method is to keep a detailed daily log.

Depreciation Restrictions

Rules governing depreciation deductions for automobiles continue to change. Certain transition rules may be applicable to some situations. If you are using depreciation under the actual expense auto deduction rules, work closely with your personal tax advisors.

All business and professional expenses should be reimbursed in full to each employee through an accountable reimbursement plan adopted by the church board that results in the proper substantiation to the church of all reimbursements. This method is the easiest for the church and employee to use with regard to record keeping and tax forms. It is the least costly in taxes. And, it is an IRS approved method.

The Accountable Reimbursement Plan

Requirements for business expense reimbursements are based on IRS Regulation 1.62-2(d)(3). These requirements apply to every church and affect all employees. They are not optional – they must be followed, or the church employee may pay significantly greater amounts of unnecessary taxes.

The IRS regulations require that business reimbursements be included on Form W-2 as taxable income to the individual unless paid through an “accountable reimbursement plan” which has been “formally” adopted by the church board. The requirements for the accountable reimbursement plan are three-fold:

- 1) *The church may reimburse only those business expenses that an employee substantiated within 60 days of the expenditure with receipts and/or in writing as to the date, amount, place, and business nature.***
- 2) *The employee must return any “excess” reimbursements (i.e., unused expense advances) within 120 days of the expenditure. The excess reimbursement may not be treated as a bonus or gift.***
- 3) *Any advance must be made within 30 days of when the expense is paid or incurred.***

Form W-2 income cannot simply be reduced “after the fact.” In other words, the IRS will not allow the reimbursements to be paid through a retroactive reduction of salary. In order for reimbursements to be paid and qualify under an accountable reimbursement plan, properly substantiated expense reimbursements must be paid separately from the employee’s salary. The salary

amount and the accountable reimbursement plan must be established in advance of payment. If the church establishes a dollar limit on the expense plan (instead of reimbursing 100% of expenses), any balance remaining in the expense plan at year-end should remain with the church. The payment of the balance to the employee makes all payments made to the employee under the plan during the year reportable as taxable income on Form W-2.

What the Church Could Do

Obviously, most churches will want to make sure that church employees are fully reimbursed for all their business-related expenses through an accountable reimbursement plan, since the IRS recognizes these reimbursements as nontaxable to the employee for income tax and Social Security/Medicare tax purposes. When this is done, the employee's salary can remain whole.

If a church finds that it simply cannot afford to reimburse all the business-related expenses that its employees are incurring, it can still attempt to minimize the income tax for the employee. The church board may wish to consider the following plan:

- 1) The church board will want to consider first how many of these expenses it can begin to fully reimburse now through a board-adopted accountable reimbursement plan. (It will also want to develop a plan whereby it can begin reimbursing any remaining expenses as soon as possible.)**
- 2) The church board, in working with the church employee, will want to determine how much of the present salary is actually being spent for unreimbursed business-related expenses. Together they can then arrive at a new "salary" figure that truly reflects the actual cash compensation the church board is paying to the individual.**
- 3) The difference between the two figures (that is, the amount that is being paid out of personal salary for these unreimbursed expenses) should now be designated in the budget for the reimbursement of these expenses.**
- 4) The newly determined actual salary to be paid weekly or monthly in regular amounts should be recognized in a separate action by the Board. It would be reported on Form 941. The salary would not be adjusted "after the fact" to reflect local church expenses.**
- 5) A portion of the business expense reimbursement amount would be advanced to the employee (e.g., \$100 or \$200) as a business expense petty cash fund. As the employee incurs business-related expenses, receipts and/or mileage statements would be kept to be turned in to**

the treasurer. When they are turned in, the amounts are refunded to the employee's business expense petty cash fund, bringing it back up to the original advance amount. Ultimately, any unused portion of the advance needs to be returned to the church employer.

By following these procedures, the actual salary is clearly separated from the business expense reimbursements that do not need to be reported on Form W-2. The employee does not need to worry about deducting these business expenses or substantiating them on his annual tax return. Since the amount is not reported as income nor deducted on the tax return, the return is greatly simplified and less likely to be audited. If the return is audited, there will generally be no complicated justification of business expenses since they were substantiated to the treasurer with receipts and/or mileage statements according to IRS regulations when they were reimbursed.

Summary

In minimizing taxes for all church employees, proper handling of tax-free employee benefits and reimbursements for business transportation/travel and other business and professional expenses is vital. However, these require careful planning and proper board action. Specific guidelines and accounting standards are available from the IRS (1-800-TAX-FORM or www.irs.gov).

Those employee benefits that can be considered tax-free should be paid directly by the church and not reimbursed. All business transportation/travel and all other business and professional expenses should be reimbursed in full to each employee through an accountable reimbursement plan adopted by the board which results in the proper substantiation to the church of all business and professional expense reimbursements.

Health Reimbursement Arrangements

Paying medical insurance premiums to protect against catastrophic medical expenses is a commonly accepted practice. But even the best medical insurance policies generally do not pay all of the insured's medical expenses. These unpaid medical expenses are usually in the form of noncovered items or expenses subject to a deductible or coinsurance (or co-payment) clause in the health insurance policy. So...

Getting braces for you or your children is no fun. But the real sting often comes after the dental procedures are done – when you find out how much of the bill your health insurance won't cover. Or, it may be the appendectomy which, after applying the 70/30 percent co-payment provision, left you with a sizeable "patient responsibility."

You may try to comfort yourself with the memory that medical expenses that are not eligible for reimbursement under a health insurance plan are deductible on Schedule A as itemized deductions for federal income tax purposes. Beware of the next sting...

For most taxpayers, receiving an itemized deduction benefit from unreimbursed medical expenses is more a dream than a reality. There are two major barriers to deducting medical expenses. First, many ministers and other church employees use the standard deduction instead of itemizing deductions on Schedule A. This may be especially true for ministers who live in church-provided housing. Second, even for those taxpayers who do itemize their deductions, there is a limitation of 7.5 percent of adjusted gross income.

Example: If adjusted gross income is \$30,000 and unreimbursed medical expenses are \$2,000, none of these expenses are beneficial in calculating itemized deductions on Schedule A because of the limitation of 7.5 percent of adjusted gross income is \$2,150 (7.5% x \$30,000).

For many years, some larger churches have tried to help their employees cope with the above “painful” financial realities by providing Flexible Spending Accounts (FSAs). However, FSAs have some limitations. Maintained through pre-tax employee salary-reduction contributions to cover that portion of medical expenses not covered by medical insurance, FSAs require employee contributions and impose an annual “use it-or-lose it” rule. Another alternative is a Health Reimbursement Arrangement (HRA).

The Benefits of an HRA

First of all, direct financial help is offered to the employees by the local church which establishes an HRA since the plan is funded entirely by the church.

Furthermore, a reimbursement from an HRA is like getting a tax-free raise. HRA payments to a church employee under Section 105(b) of the Internal Revenue Code escape federal (usually 15 percent or 27 percent) and state (often 5 percent or so) income tax and social security tax (15.3 percent for ministers and 7.65 for non-minister employees). The tax savings can run 40 percent or more of medical expenses covered under such a plan.

Example: The church has established an HRA with an annual limit of \$2,500 per employee. The minister’s daughter gets braces costing \$2,400 and the minister submits the unpaid bills to the church (or the minister pays the portion not covered by the insurance carrier and submits the documentation for the minister’s share to the church). The church pays the \$2,400. If the employee is in the 27 percent federal income tax bracket, the 5 percent state income tax bracket and is liable for the 15.3 percent self-employment Social Security tax, the net savings is 47.3 percent times \$2,400 or \$1,135.

Additionally, the minister could submit documentation for medical expenses up to another \$100 since the annual limit is \$2,500 for this plan. The claim for the last \$100 could even be made in a future year.

The Key Elements of an HRA

The establishment of a plan. The starting point for an HRA is the preparation of a formal plan document. Although tax regulations do not require a written plan, it is highly preferable to use a written plan to eliminate any doubt regarding the existence of a plan or the date it was instituted.

IRS policy (IRP 80,600) states that employer reimbursements made prior to the adoption of a plan are not excludable from gross income by the employee. In order for there to be a plan, the employer “must be committed to certain rules and regulations governing payments. These rules must be made known to employees as a definite policy and must be determinable before the employee’s medical expenses are incurred.”

Additional guidance for establishing an HRA was issued by the Internal Revenue Service in Notice 2002-45 and Revenue Ruling 2002-45.

Eligible participants: An HRA may only reimburse employees, former employees (including retirees) or their tax dependents for qualified medical care expenses.

Limitation on annual coverage: An HRA must provide a maximum dollar amount of coverage for the employee or for the family (including the employee). For example, a plan could provide that all full-time employees will have benefits up to a maximum of \$2,000 per year and that any employees with dependents (family coverage) will have benefits up to a maximum of \$4,000 per year. (The \$2,000 and \$4,000 in this example are simply illustrations. The plan may set the amounts as high or as low as they wish. Of course, the ceiling probably will be subject to the church’s financial ability to pay the benefit.)

Funding source: An HRA is funded solely with employer contributions and can not be salary-reduction elections.

The relationship of the plan to the compensation package: The salary level of the employee and amount of medical expenses that potentially may be reimbursed under an HRA are two entirely separate issues. The church establishes the maximum reimbursement under an HRA. The law does not permit a church to establish a combined salary and HRA amount with the portion of the HRA amount that is not spent for medical expenses to be reflected as compensation on an employee’s Form W-2.

Determination of church funding level for an HRA: A church should commit to the amount it will fund an HRA (for each employee) prior to the beginning of the plan year. If the amount of church funding is not the same for each employee, the church should first review the nondiscrimination rules.

Money left in the plan at year end: Any money left in an employee's HRA account on December 31 of each year (or the end of the plan's year) may be carried forward to increase the maximum reimbursement dollar amount in subsequent periods in the following situations (Revenue Ruling 2002-41):

- 1) Retirees or those otherwise terminating employment. An HRA may include a provision that reimburses a former employee for medical care expenses up to an amount equal to the unused reimbursement amount remaining at retirement or other termination of employment. For example, an individual who retired or otherwise terminated employment and had a balance of \$500 in an HRA account could submit medical expense documentation to the employer for the plan year for up to \$500 or could submit the documentation for a year following the plan year.**

If an HRA plan does not provide for payments to be made after the retirement or termination of an employee, a retirement or severance "bonus" related to an employee's maximum reimbursement amount remaining in an HRA at that time is not allowed. If done, it will disqualify the HRA.

- 2) Continuing employment. Account balances may be carried forward to increase the maximum reimbursement amount in subsequent coverage periods. For example, an individual who has not retired or otherwise terminated employment has a balance of \$500 in an HRA account at the end of a plan year. The maximum annual reimbursement available to the employee is \$2,000. The individual is eligible to carry forward the unused \$500 from the previous plan year and submit documentation for medical expenses for reimbursement up to \$2,500 for the new plan year.**

Qualified medical expenses are submitted to the church for reimbursement: When an employee is billed for a qualifying health care expense that isn't covered by the employee's health insurance plan, the employee submits the receipt to the church. The church writes a check to reimburse the employee or pay the expense directly to the health care provider.

Annual reporting is required in certain situations: An HRA constitutes a welfare benefit plan subject to ERISA and its reporting requirements. However, there is an exemption from filing a Form 5500 (5500-C or 5500-R) if the plan is unfunded (e.g., benefits are paid from the employer's general assets) and has fewer than 100 participants at the beginning of a particular plan year. Most HRAs established by churches would be unfunded and therefore qualify for this Form 5500 reporting exemption. There is also a Form 5500 filing exemption for a welfare benefit plan that is unfunded and is provided for a select group of staff or highly compensated employees which meets certain requirements.

Application of the nondiscrimination rules: When churches pay health care costs from church funds, nondiscrimination rules apply. Generally, these rules require that the plan not discriminate in favor of highly compensated individuals with regard to either the eligibility to participate or the amount of benefits. Specifically, the nondiscrimination rules applicable to HRAs defines a highly compensated individual as any individual among the highest paid 25 percent of all employees (with certain exclusions). Therefore, it is difficult to avoid the impact of the nondiscrimination rules if some employees in a class are provided greater benefits than other employees in the same class. However, a distinction in eligibility to participate and amount of benefits may be made between classes of employees, such as between full-time and part-time employees.

If a self-insured plan is discriminatory, then the church is generally required to report some or all of the church's reimbursements to highly compensated individuals as taxable income.

If your church is providing HRA benefits for some but not all of the church employees, professional assistance may be helpful to gain a full understanding of the application of the nondiscrimination rules.

Expenses eligible for reimbursement: An out-of-pocket medical expense can be reimbursed under an HRA. These expenses may relate to your medical plan's deductible, coinsurance or noncovered items.

Health insurance premiums are eligible for reimbursement under an HRA. However, health insurance premiums may be paid or reimbursed to employees on a tax-free basis without utilizing an HRA.

Any medical expense that is allowable as a medical expense deduction on Schedule A or your income tax return (Section 213 of the Internal Revenue Code) may be covered under an HRA. The IRA defines medical expense as amounts you paid for "diagnosis, cure, mitigation, treatment, or prevention of diseases."

You are eligible to include money paid to doctors, dentists, hospitals, nursing homes or other medical providers, and prescription drugs in an HRA to the extent you weren't reimbursed by a health insurer. You may even include payments to a chiropractor, as well as the cost of prescription eyeglasses, hearing aids, crutches, and ambulance service.

Certain non-insurance arrangements, often called "newsletter" plans, are modeled on the old assessment-type insurance arrangements that were popular at the turn of the 20th century. Since such plans typically make strong claims about not being insurance (in order to escape regulation by State Insurance Commissioners), the payments by a church to these plans (or to reimburse a church employee's payments to these plans) is a fully taxable benefit reportable on the employee's Form W-2. Such expenses may not be paid under the HRA plan.

Since newsletter plans do not constitute health insurance, payments that you have received from a newsletter-type plan are not considered medical reimbursements. Therefore, medical expenses that are not reimbursed under a health insurance plan are eligible for deduction as medical expenses on Schedule A or for reimbursement under an HRA, even though you have received payments from a newsletter plan related to these expenses.

Type of expenses eligible for HRA reimbursement include:

- **Transportation costs. Transportation expenses to and from medical appointments are includible – even in the town where you live. If you drive directly without running other errands, you're allowed a standard medical mileage rate announced by the IRS annually.**
- **If you or your spouse travel out-of-town for medical care, you may deduct up to a set amount per night for lodging (cf. IRS rules). If the ailing spouse can't travel alone, you may each deduct up to the set amount per night.**
- **Dependent's medical expenses.**
- **Co-payments for doctor visits and prescriptions.**
- **Prescription eyeglasses, eye exams, and contact lenses.**
- **Extra cost of a private hospital room.**
- **Laser correction eye surgery.**
- **Chiropractic expenses beyond active treatment of injury.**

- **Dental care and orthodontia.**
- **Hearing devices and batteries, and special equipment for the deaf.**
- **Weight-loss programs.** If a physician diagnoses a patient as obese, then the patient's participation in a weight-loss program as treatment for obesity is reimbursable under an HRA. Additionally, if a patient is directed by a physician to lose weight as treatment for another condition, such as hypertension, the treatment is also eligible for reimbursement under an HRA. If participation in a weight-loss program is merely to improve general health and appearance, then the fees are not amounts that may be reimbursed under an HRA. The cost of purchasing reduced-calorie diet foods, because the food is merely a substitute for the food an individual would normally consume, is not eligible for reimbursement.
- **Insurance.** Reimbursement for insurance ("newsletter" plans do not constitute insurance) covering medical care expenses are allowable HRA reimbursements, including amounts paid for premiums for accident or health coverage.
- **Other items.** If you have allergies, you may be able to include the cost of an air conditioner in a window – but probably not for installing central air conditioning throughout your home. Your doctor may suggest that you join a health club, take swimming lessons, or take vitamins, but such expenses are not allowed by the IRS. The IRS definition of medical expenses generally doesn't include expenses for "solely cosmetic reasons" or for procedures that "are merely beneficial to one's general health."
- **Free list.** For a free list of allowable health care deductions, check IRS Publication 502. "Medical and Dental Expenses" (available from the IRS by calling 1-800-TAX-FORM or on the web at www.irs.gov/formspubs/pubs).
- **Right to receive cash.** If any person has the right to receive cash or other benefit under the HRA other than the reimbursement of medical care expenses, currently or in a future year, the entire HRA is disqualified.

Summary of Difference Between Fringe Benefit Plans

Section 125 cafeteria plan. A Section 125 plan may include benefits that are excludable from an employee's gross income as follows:

- **Group-term life insurance (up to \$50,000 coverage)**
- **Qualified group legal services**
- **Dependent-care assistance (\$5,000 limit per year)**
- **Accident or health plan**
- **Long-term disability benefits**

Additionally, a Section 125 cafeteria plan can offer certain after-tax (taxable) benefits, such as: group-term life insurance in excess of \$50,000 face amount; dependent life insurance; benefits under group legal services; car insurance; or other personal insurance programs on a group basis.

Section 125 health flexible spending accounts (FSAs). Health flexible spending accounts, also called FSAs, may include benefits that are excludable from an employee's gross income as follows:

- Health care expenses (but not health care insurance premiums)

The following features apply to Section 125 FSAs.

- **The employee decides how much goes into a health FSA and the amount directly reduces the employee's taxable compensation.**
- **Unused elective contributions or plan benefits cannot be carried from one plan year to another plan year.**
- **The maximum amount of reimbursement must be available at all times during the coverage period.**
- **There is a mandatory 12-month period of coverage.**
- **Medical expenses must generally be incurred during the period of coverage.**

Health reimbursement arrangement (HRAs). An HRA may include benefits that are excludable from an employee's gross income as follows:

- **Health care expenses**
- **Health care insurance premiums (long-term care insurance premiums are not eligible for reimbursement)**

HRA's are established under the following guidelines:

- **The employer decides how much will be available for each employee in an HRA. This amount is generally the same for all eligible employees because of the nondiscrimination rules.**
- **Employees must not have a right to receive cash or any other benefit other than reimbursement for medical expenses.**
- **The maximum reimbursement amount for a coverage period (not including amounts carried forward from previous coverage periods) need not be available at all times during the coverage period.**
- **An HRA may specify a coverage period for a reimbursement amount that is less than a 12-month period.**
- **Although claims incurred during one coverage period may be reimbursed at a later coverage period, an unreimbursed claim may be reimbursed at a later coverage period only if the individual was covered under the HRA when the claim was incurred.**
- **The maximum reimbursement amount credited under the HRA in the future (not including amounts carried forward from previous coverage periods) may be increased or decreased.**

SAMPLE HEALTH REIMBURSEMENT ARRANGEMENT (HRA)

Whereas, _____ Church of God desires to provide medical care benefits relating to expenses not covered under a medical policy;

Resolved, the church establishes a Health Reimbursement Arrangement (HRA) effective _____, 200_ for the benefit of all full-time employees (working at least 30 hours or more per week) and their dependents (employee's spouse and minor children) under Section 105(b)(e) of the Internal Revenue Code.

Resolved, Health reimbursement accounts shall be maintained for each full-time employee from which covered expenses (as defined in Section 213 of the Internal Revenue Code) for the employee or their dependents shall be reimbursed. Church-funded reimbursement to an employee shall not exceed \$_____ during one calendar year. Church-funded reimbursement to an employee with dependents shall not exceed \$_____ during one calendar year.

Resolved, The submission of medical expenses must be in a form and in sufficient detail to meet the requirements of the church. Expenses may be submitted until March 31 for the previous calendar year.

Resolved, The plan shall be administered in a nondiscriminatory manner (as defined in Section 150(h) of the Internal Revenue Code) and shall remain in effect until modified or terminated by a later resolution.

Resolved, The plan shall reimburse former employees for medical care expenses up to an amount equal to the unused reimbursement amount remaining at retirement or other termination of employment.

One of the many responsibilities that church boards face is that of minimizing income taxes for their church employees by appropriately structuring their compensation package. IRS tax rulings not only make this possible but also make it very important. Unfortunately, some church employees pay additional income taxes simply because of the way their church employer has established their salary structure. Changing IRS regulations and current rulings make it all the more important for church boards to periodically review the salary structure of all their employees.

This review is also important from the standpoint that IRS procedures require the church employer to issue annual Wage and Tax Statements, Form W-2, to all church employees, both lay and ministerial. The church treasurer's bookkeeping accounts should be set up to carefully reflect the amounts that should and should not be reported on the annual Form W-2's.

Tax-Free Employee Benefits

In addition to “cash” salary, an employee usually receives some benefits that are paid for by the employer. Many of these benefits are “tax-free” to the employee if paid directly by the employer (not reimbursed). Unfortunately, some church employees are paying for these “benefits” out of their pocket with after-tax dollars and are therefore losing a legitimate tax advantage simply because of the manner of payment. Some examples of employee benefits which may be provided by the employer for the employee on a tax-free basis include: health insurance, dental insurance, group term life insurance, the Church of God Pension Plan, disability insurance, and accidental death and dismemberment insurance.

Business Transportation, Travel, and Related Expenses

Most church employees incur business transportation and travel expenses in the course of conducting the ministry of the local church. Many churches are careful to reimburse their employees in full for these expenses. In recognition of the fact that these are business expenses and not personal expenses, the IRS allows these reimbursements to be provided tax-free to the employee if they are paid through an accountable reimbursement plan. Unfortunately, sometimes reimbursements are insufficient to cover actual expenses. In such cases, employees find themselves paying out of their own salary what is recognized as a local church operating expense. However, careful planning can ensure that your church employee’s salary is actually theirs to spend.

In the past, an employee used Form 2106 to deduct unreimbursed expenses from income taxes. However, the Tax Reform Act of 1986 changed the procedures for using form 2106 to the extent that many employees may not be able to claim the deductions. This makes it even more important that all business transportation, travel, and related expenses are fully reimbursed. Full reimbursement for automobile mileage should be either on a dollar-for-dollar basis for business expenses incurred or on a cents-per-mile basis at the standard mileage rate. It is necessary to maintain accurate records of business mileage and/or expenses. However, instead of using the records to support a deduction on tax forms, they should be supplied to the church treasurer as substantiation for the reimbursements.

Other Business and Professional Expenses

Not only do church employees incur business transportation and travel expenses, but often they incur other business expenses along with “professional” expenses in the course of their ministry. Examples of such items include:

- **business-related entertainment,**

- **professional books and magazines,**
- **memberships and dues in professional organizations,**
- **stationery and supplies, and other ministry expenses.**

Normally, the church board recognizes that these are necessary for the ongoing work of the church and as such they are viewed as local church expenses. The employee should be reimbursed in full for such expenses. If the reimbursements are paid properly through an accountable reimbursement plan, the IRS recognizes these reimbursements as tax-free. When a church employee incurs this type of expense and is not reimbursed in full, the situation becomes a bit more complicated.

At one time, the ministerial employee used IRS Schedule C to report the income and expenses related to the work as a local church employee. By this means, all of his unreimbursed business and professional expenses were exempted, dollar for dollar, from the “salary” and therefore, from income tax. In this situation, the ministerial employee, while having to pay the expense out of his own pocket, at least did not need to suffer a tax loss. But the IRS has eliminated the use of Schedule C by the ministerial employee in relation to church salary; therefore, both the ministerial employee and the lay employee suffer when they incur unreimbursed business and professional expenses.

The ministerial or lay employee may be able to treat a portion of the unreimbursed business and professional expense (if proper substantiation is provided) as a tax *deduction*. As such, it would be claimed on Schedule A, Itemized Deductions, when the annual tax return is filed. By using this means, some employees may be able to deduct a portion of their expenses, but many will lose the tax break. This is because in order to claim these items as deductions, the expenses must exceed 2 percent of adjusted gross income and the individual employee must file an itemized return and have more deductions than the standard deduction. If all itemized deductions do not exceed the standard deduction, the unreimbursed business and professional expenses will simply be absorbed and lost in the standard deduction amount. The Tax Act of 1993 limited the deductibility of many entertainment expenses to 50 percent of value. Therefore, 50 percent of these types of unreimbursed business expenses cannot be deducted even if all other conditions are met.

Whether the unreimbursed business expenses are taken as a tax deduction or are lost in the standard deduction amount for income tax purposes, there still remains the question of Social Security/Medicare taxes. Either way, the ministerial employee could avoid self-employment taxes (SECA-Social Security/Medicare taxes) on the total of unreimbursed business expenses, since many of those expenses remain exempt from SECA taxes. However, the lay

employee would not be able to recover any FICA taxes withheld nor would the church be able to recover their portion of FICA taxes paid.

Ministerial Compensation

Strategies for Structuring Ministerial Compensation

A review of the patterns of ministerial compensation over several decades would indicate that significant changes have taken place. Because of many social changes, gone are the days when the majority of ministers received a large portion of their compensation in the form of food and clothing supplied by members of the congregation. The implications of the 1986 Tax Reform Act and subsequent IRS regulations also are among the reasons causing these changes.

The Impact of the 1986 Tax Reform Act

The 1986 Tax Reform Act was the most significant change in tax law since its last major overhaul in 1954. Along with many other things for which it is blamed, the Act's revisions made it much more difficult for ministers to avoid paying income taxes on unreimbursed business expenses. For example, unreimbursed automobile expenses no longer can be deducted dollar for dollar from compensation, but must be deducted as a part of itemized deductions on Schedule A. With the new higher standard deduction allowance, many parsonage families find it impossible to itemize deductions. The result is an increase in income tax for those ministers who can no longer deduct unreimbursed automobile expenses.

The same problem applies to many of the business and professional expenses a minister incurs in the exercise of ministry. In addition to the higher standard deduction allowance, these expenses must also exceed 2 percent of the adjusted gross income reported on the federal tax return. Entertainment expenses that had previously been 100 percent deductible were changed to 80 percent deductible and now are only 50 percent deductible if not reimbursed. Such changes have caused many ministers to reevaluate their compensation structuring.

IRS Regulations for Business Expense Reimbursements

Requirements for business expense reimbursements are based on IRS Regulation 1.62-2(d) (3). **These requirements apply to every church and affect all employees. They are not optional-they must be followed, or the church employee may pay significantly greater amounts of unnecessary taxes.**

IRS Regulations require that business reimbursements be included on Form W-2 as taxable income to the individual unless paid through an "accountable

reimbursement plan” which has been “formally” adopted by the church board. The requirements for the accountable reimbursement plan are three-fold:

- 1. The church may reimburse only those business expenses that an employee substantiates within 60 days of the expenditure with receipts and/or in writing as to the date, amount, place and business nature.**
- 2. The employee must return any “excess” reimbursements (i.e., unused expense advances) within 120 days of the expenditure. The excess reimbursement may not be treated as a bonus or gift.**
- 3. Any advance must be made within 30 days of when the expense is paid or incurred.**

Form W-2 income cannot simply be reduced “after the fact.” In other words, the IRS will not allow the reimbursements to be paid through a retroactive reduction in salary. In order for reimbursements to be paid and qualify under an accountable reimbursement plan, properly substantiated expense reimbursements must be paid separately from the employee’s salary. The salary amount and the accountable reimbursement plan must be established in advance of payment. If the church establishes a dollar limit on the expense plan (instead of reimbursing 100% of expenses), any balance remaining in the expense plan at year-end should remain with the church. If the balance is paid to the employee, all other plan payments made to the employee during the year become reportable as taxable income on Form W-2.

The Cost of a Minister vs. The Cost of Ministry

For too long, churches and ministers have lumped together into a single concept the “cost of a minister” and the “cost of ministry.” These are actually two distinct concepts. For proper planning and church budgeting they must be kept separate.

The “cost of ministry” includes those costs related to the work of the minister and is properly a part of local church expenses. Among these are the expenses that will be incurred without regard to which minister is serving the congregation at a particular time.

On the other hand, the “cost of a minister” relates to those items that are directly and indirectly related to compensating the particular pastor serving the church at the current time. These costs include the general categories of employee benefits and actual salary.

The least advantageous way for a minister to be paid is to be given a lump sum amount out of which the minister must provide for professional expenses, employee benefits, and cash salary. Unfortunately, in most situations where

these are lumped together, both the local church and the minister assume that the total amount of the “package” is compensation. In reality, part is for the “cost of ministry” and another part is for the “cost of a minister.”

What is the Cost of Ministry?

The following list includes business and professional expenses that are identified with the “cost of ministry.” They should be recognized and budgeted as local church expenses, not compensation.

When the minister is expected to pay for these items out of the amount provided in the church’s “package,” it will result in the parsonage family having to pay higher taxes on money they used to operate the local church’s ministry.

However, when these items are “reimbursed” through an accountable reimbursement plan (even if it means dividing the minister’s previous “package” into two distinct amounts), it will usually result in lower taxes, a more accurate reflection of the minister’s real compensation, and a simpler tax return to file.

The cost of maintaining ministry includes the following business and professional expense reimbursements:

- Automobile,
- continuing education,
- convention,
- hospitality,
- pastor’s professional library,
- dues to professional organizations,
- church supplies (birthday cards, postage, etc.),
- pastor’s gifts “expected” to be given to members (wedding, baby, etc.)

What is the Cost of a Minister?

The “cost of a minister” is made up of appropriate employee benefits, provision for housing, and the actual cash salary paid. Some of the items that are related to these are not discretionary since the minister and family have no choice as to how the money is spent. The items of a nondiscretionary nature include most of the employee benefits listed below. The list includes the type of basic employee benefits that should be provided in a well-balanced compensation plan:

- Social Security,

- tax-sheltered Annuity (pension),
- health insurance,
- dental insurance,
- group term life insurance,
- long-term disability insurance,
- accidental death & dismemberment insurance,
- cash bonuses,
- paid holidays,
- vacation

The “cost of a minister” also includes the provision for housing: a cash housing allowance, a parsonage plus utilities, or a combination of the two. Many churches provide a parsonage and utilities. Therefore, in most cases, the minister has no discretion as to how that part of compensation will be spent. The minister cannot voluntarily choose to live in a less expensive home and thereby free up income to cover other personal needs. Also, the minister cannot build equity for retirement housing. The church board should recognize that when the minister leaves the church, a significant portion of the compensation that has been “paid” is left behind in the form of the parsonage. Fortunately, many churches are now recognizing their obligation to assist the minister in preparing for retirement by depositing a monthly amount into the minister’s pension fund on a tax-advantaged basis. This is an essential part of the compensation package.

The remaining item in the “cost of a minister” is the cash salary. This is the amount that the minister and family use to meet living expenses and over which they have some discretion in spending. Among the factors that many church boards consider when determining their minister’s cash salary are the following:

- ***the job requirements,***
- ***the individual’s professional qualifications,***
- ***educational background,***
- ***personal experience and expertise,***

- ***the socioeconomic factors affecting the pay scale in the local community, and such subjective factors as merit pay for a job well done.***

Cost of living adjustments should be considered in each annual salary review of all church employees.

Structuring Ministerial Compensation

Ministers and churches are realizing the need to differentiate between the “cost of having a ministry” and the “cost of compensating a minister.” More and more churches are recognizing that their “package” approach does not provide nearly as much true cash salary as they had thought. They are making efforts to reimburse above the “package” amount for business and professional expenses.

Other churches are financially unable to increase above the amount committed to their “package.” However, they can still help the minister by differentiating between these two kinds of costs and by allowing the minister to re-categorize the total amount provided by the church into these two distinct expense categories. The result of this restructuring costs the church no additional funds, but does provide a legitimate opportunity for the minister to reduce the potential impact of taxes.

Key Resources Suggested by the Pension Board

This is such an important area in the life of the church. The Board of Pensions suggests the following resources which can help church leaders and the minister in the area of compensation planning and proper benefits.

The Compensation Handbook for Church Staff

Updated annually, this outstanding publication provides national survey findings for churches of various sizes and demographics. It can be ordered from:

Christian Ministry Resources
P.O. Box 1098
Matthews, N.C. 28106

Or call: (704) 841-8066 FAX (704) 841-8039

Hey Lay Leader...Let's Talk Some Hard-nosed Business

This narrative pamphlet is written by Jeff Jenness, Executive Secretary for the Board of Pensions of the Church of God. It is directed in a heartfelt way from one lay leader to another as to the responsibility of churches to provide proper salary and benefits.

Contact the Board: (800)844-8983
(765)642-3880

e-mail: info@cogpension.org

Church of God Compensation Guidelines

Updated annually, this is a general guide to stimulate lay-leaders and church board members in their thinking relative to compensation packages for ministers.

*Contact the Board: (800)844-8983
(765)642-3880*

e-mail: info@cogpension.org

Retirement

Retirement planning is an extremely important financial area for clergy. All too often persons who have committed their life to ministry make additional sacrifices in the area of finances. It is important for ministers, and especially their lay-leaders, to recognize the importance of proper retirement preparation.

The Old Testament story of Joseph illustrates a strategy for financial planning. Joseph knew there would be seven years of good harvest followed by seven years of no harvest. He had to set aside a significant amount of grain during the good years in order to ensure provision during the bad years. This story illustrates the reality that we all have productive years followed by years in which our economic productivity will be reduced or cease. This will most likely occur when we retire. Therefore, it is necessary to set aside "the grain" during the good years for those times in retirement when our earned income will decrease or cease.

Many financial planners recommend that their clients plan to build retirement assets sufficient to replace 70% to 90% of their pre-retirement earnings. In the Church of God, the Board of Pensions recommends that ministers target the replacement of nearly all of their pre-retirement earnings as it is not uncommon for clergy to travel and serve in new and unique ways during retirement. Their expenses in retirement may be quite similar to their working years.

The Board of Pensions of the Church of God recommends that employers pay in 11% of salary and that the minister pay in additional amounts as soon as they are able. By beginning at an early point in ministry, time and compounding increase the probability of having sufficient assets for retirement.

The church has created a pension plan that is organized under section 403 (b) of the Internal Revenue Code. This plan is entitled the Church of God Pensions Plan and is administered by the Board of Pensions of the Church of God. Under the plan, ministers (along with missionaries and lay-workers) are permitted to make tax-deferred contributions. The amounts that are permitted to be contributed in any given year are quite high and are usually much more than can be done via an IRA or in some other retirement vehicles. One of many

remarkable features of a church sponsored plan like this is the ability of the Plan to designate distributions in retirement as “housing allowance” thereby potentially saving significant amounts in taxes for the member.

The Church of God Pension Plan and the Board of Pensions provide a wide variety of services for ministers as this agency of the church bears the assignments of retirement planning, tax information assistance, compensation information assistance and other guidance areas relative to clergy.

The tax laws also provide the ability for ministers who have ministered for a number of years and are behind in contributions to their retirement account the privilege of making larger contributions under “catch-up” provisions. A minister can contact the Board of Pensions for more information on this.

It is important for a minister, regardless of where they are in the timeline of their ministry, to take a look at several key exercises. They are:

**Estimate how much will be needed in retirement
Manage spending and debts carefully**

Have adequate knowledge of Social Security

Make wise investment choices on retirement assets

**When retirement comes, make good decisions on distribution
methods**

Monitor your retirement plan once you are retired

For those who plan carefully, retirement can be a time of tremendous freedom where the individual can follow the Lord’s leading. For those who have inadequately planned, it is likely freedom will be restrained as the need to continue work or the need to scale back cost of living will occur.

Many tools for planning and assistance can be obtained from the Board of Pensions of the Church of God. You may contact them at (800) 844-8983 or locally at (765) 642-3880.

The major of this block was taken directly from the 12 memo created by the Board of Pensions of the Church of God. Used with their permission.

BLOCK C

APPENDIX

IRS FORMS

a Control number		22222		Void <input type="checkbox"/>		For Official Use Only ▶ OMB No. 1545-0048	
b Employer identification number				1 Wages, tips, other compensation		2 Federal income tax withheld	
c Employer's name, address, and ZIP code				3 Social security wages		4 Social security tax withheld	
				5 Medicare wages and tips		6 Medicare tax withheld	
				7 Social security tips		8 Allocated tips	
d Employee's social security number				9 Advance BC payment		10 Dependent care benefits	
e Employee's first name and initial		Last name		11 Nonqualified plans		12a See instructions for box 12	
f Employee's address and ZIP code				13 Foreign income		12b	
				14 Other		12c	
						12d	
15 <small>ssa</small> Employer's state ID number		16 State wages, tips, etc.		17 State income tax		18 Local wages, tips, etc.	

Form **W-2** Wage and Tax Statement

2004

Department of the Treasury—Internal Revenue Service
For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D.

Copy A For Social Security Administration — Send this entire page with Form W-3 to the Social Security Administration; photocopies are not acceptable.

Cat. No. 10134D

Do Not Cut, Fold, or Staple Forms on This Page — Do Not Cut, Fold, or Staple Forms on This Page

DO NOT STAPLE OR FOLD

a Control number		33333		For Official Use Only ▶ OMB No. 1545-0008	
b Kind of Payer ▶	<input type="checkbox"/> 941	<input type="checkbox"/> Military	<input type="checkbox"/> 943	1 Wages, tips, other compensation	2 Federal income tax withheld
	<input type="checkbox"/> CT-1	<input type="checkbox"/> H-hold emp.	<input type="checkbox"/> Medicare govt. emp.	<input type="checkbox"/> Third-party sick pay	3 Social security wages
c Total number of Forms W-2		d Establishment number		5 Medicare wages and tips	6 Medicare tax withheld
e Employer identification number				7 Social security tips	8 Allocated tips
f Employer's name				9 Advance EIC payments	10 Dependent care benefits
.....				11 Nonqualified plans	12 Deferred compensation
				13 For third-party sick pay use only	
g Employer's address and ZIP code					
h Other EIN used this year					
15 State	Employer's state ID number			16 State wages, tips, etc.	17 State income tax
				18 Local wages, tips, etc.	19 Local income tax
				Contact person	
Email address		Fax number ()			

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature ▶ Title ▶ Date ▶

Form **W-3 Transmittal of Wage and Tax Statements** **2004** Department of the Treasury Internal Revenue Service

Send this entire page with the entire Copy A page of Form(s) W-2 to the Social Security Administration. Photocopies are not acceptable.

Do not send any payment (cash, checks, money orders, etc.) with Forms W-2 and W-3.

An Item To Note

Separate Instructions. See the 2004 Instructions for Forms W-2 and W-3 for information on completing this form.

Purpose of Form

Use this form to transmit Copy A of Form(s) W-2, Wage and Tax Statement. Make a copy of Form W-3, and keep it with Copy D (For Employer) of Form(s) W-2 for your records. Use Form W-3 for the correct year. File Form W-3 even if only one Form W-2 is being filed. If you are filing Form(s) W-2 on magnetic media or electronically, do not file Form W-3.

When To File

File Form W-3 with Copy A of Form(s) W-2 by February 28, 2005.

Where To File

Send this entire page with the entire Copy A page of Form(s) W-2 to:

Social Security Administration
Data Operations Center
Wilkes-Barre, PA 18769-0001

Note: If you use "Certified Mail" to file, change the ZIP code to "18769-0002." If you use an IRS-approved private delivery service, add "ATTN: W-2 Process, 1150 E. Mountain Dr." to the address and change the ZIP code to "18702-7997." See Circular E (Pub. 15), Employer's Tax Guide, for a list of IRS approved private delivery services.



Do not send magnetic media to the address shown above.

For Privacy Act and Paperwork Reduction Act Notice, see back of Copy D of Form W-2.

Cat. No. 10159Y



9595 VOID CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.		1 Rents \$	OMB No. 1545-0115 2004 Form 1099-MISC		Miscellaneous Income
		2 Royalties \$			
		3 Other income \$	4 Federal income tax withheld \$	Copy A For Internal Revenue Service Center File with Form 1096.	
PAYER'S Federal identification number	RECIPIENT'S identification number	5 Fishing boat proceeds \$	6 Medical and health care payments \$		
RECIPIENT'S name		7 Nonemployee compensation \$	8 Substitute payments in lieu of dividends or interest \$		For Privacy Act and Paperwork Reduction Act Notice, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.)		9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale <input type="checkbox"/>	10 Crop insurance proceeds \$		
City, state, and ZIP code		11 	12 		
Account number (optional)	2nd TIN not <input type="checkbox"/>	13 Excess golden parachute payments \$	14 Gross proceeds paid to an attorney \$		
15		16 State tax withheld \$	17 State/Payer's state no.	18 State income \$	

Form 1099-MISC Cat. No. 14425-J Department of the Treasury - Internal Revenue Service
Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

VOID CORRECTED

PAYER'S name, street address, city, state, and ZIP code		1 Gross distribution \$	OMB No. 1545-0119 2004 Form 1099-R		Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
		2a Taxable amount \$			
		2b Taxable amount not determined <input type="checkbox"/>	Total distribution <input type="checkbox"/>		Copy 1 For State, City, or Local Tax Department
PAYER'S Federal identification number	RECIPIENT'S identification number	3 Capital gain (included in box 2a) \$	4 Federal income tax withheld \$		
RECIPIENT'S name		5 Employee contributions or insurance premiums \$	6 Net unrealized appreciation in employer's securities \$		
Street address (including apt. no.)		7 Distribution code(s)	IRA/SEP/SIMPLE <input type="checkbox"/>	8 Other \$ %	
City, state, and ZIP code		9a Your percentage of total distribution %	9b Total employee contributions \$		
Account number (optional)		10 State tax withheld \$	11 State/Payer's state no.	12 State distribution \$	
		13 Local tax withheld \$	14 Name of locality	15 Local distribution \$	

Form 1099-R Department of the Treasury - Internal Revenue Service

Form 1096 Department of the Treasury Internal Revenue Service		Annual Summary and Transmittal of U.S. Information Returns					OMB No. 1545-0040 2004						
FILER'S name													
Street address (including room or suite number)													
City, state, and ZIP code													
Name of person to contact					Telephone number ()								
Email address					Fax number ()								
1 Employer identification number			2 Social security number		3 Total number of forms		4 Federal income tax withheld \$	5 Total amount reported with this Form 1096 \$					
Enter an "X" in only one box below to indicate the type of form being filed.						If this is your final return, enter an "X" here . . . <input type="checkbox"/>							
W-2G 32	1099 91	1099-E 84	1099-T 89	1099-A 88	1099-B 79	1099-C 95	1099-CAP 72	1099-DIV 91	1099-G 96	1099-INT 71	1099-MISC 82	1099-LTC 82	1099-R 95
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1099-MSA 94	1099-OD 86	1099-PATR 87	1099-Q 91	1099-R 93	1099-S 75	5498 28	5498-ESA 72	5498-MSA 27					
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>					

Return this entire page to the Internal Revenue Service. Photocopies are not acceptable.

Under penalties of perjury, I declare that I have examined this return and accompanying documents, and, to the best of my knowledge and belief, they are true, correct, and complete.

Signature ▶

Title ▶

Date ▶

Instructions

Purpose of form. Use this form to transmit paper Forms 1099, 1098, 5498, and W-2G to the Internal Revenue Service. Do not use Form 1096 to transmit electronically or magnetically. For magnetic media, see Form 4904, Transmission of Information Returns Reported Magnetically; for electronic submissions, see Pub. 1220, Specifications for Filing Forms 1099, 1098, 5498, and W-2G Electronically or Magnetically.

Who must file. The name, address, and TIN of the filer on this form must be the same as those you enter in the upper left area of Forms 1099, 1098, 5498, or W-2G. A filer includes a payer; a recipient of mortgage interest payments (including points) or student loan interest; an educational institution; a broker; a barter exchange; a creditor; a person reporting real estate transactions; a trustee or issuer of any individual retirement arrangement, a Coverdell ESA, an Archer MSA (including a Medicare+Choice MSA); certain corporations; and a lender who acquires an interest in secured property or who has reason to know that the property has been abandoned.

Preaddressed Form 1096. If you received a preaddressed Form 1096 from the IRS with Package 1099, use it to transmit paper Forms 1099, 1098, 5498, and W-2G to the Internal Revenue Service. If any of the preprinted information is incorrect, make corrections on the form.

If you are not using a preaddressed form, enter the filer's name, address (including room, suite, or other unit number), and TIN in the spaces provided on the form.

When to file. File Form 1096 with Forms 1099, 1098, or W-2G by February 28, 2005. File Form 1096 with Forms 5498, 5498-ESA, and 5498-MSA by May 31, 2005.

Where To File

Send all information returns filed on paper with Form 1096 to the following:

If your principal business, office or agency, or legal residence in the case of an individual, is located in

Use the following Internal Revenue Service Center address

Alabama, Arizona, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Texas, Virginia

Austin, TX 73301

Arkansas, Connecticut, Delaware, Kentucky, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virginia

Cincinnati, OH 45999

Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Tennessee, Wisconsin

Kansas City, MO 64999

Form W-4 (2004)

Purpose. Complete Form W-4 so that your employer can withhold the correct Federal income tax from your pay. Because your tax situation may change, you may want to refigure your withholding each year.

Exemption from withholding. If you are exempt, complete only lines 1, 2, 3, 4, and 7 and sign the form to validate it. Your exemption for 2004 expires February 16, 2005. See Pub. 505, Tax Withholding and Estimated Tax.

Note. You cannot claim exemption from withholding if: (a) your income exceeds \$800 and includes more than \$250 of unearned income (e.g., interest and dividends) and (b) another person can claim you as a dependent on their tax return.

Basic Instructions. If you are not exempt, complete the Personal Allowances Worksheet below. The worksheets on page 2 adjust your withholding allowances based on itemized

deductions, certain credits, adjustments to income, or two-earner/two-job situations. Complete all worksheets that apply. However, you may claim fewer (or zero) allowances.

Head of household. Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See line E below.

Tax credits. You can take projected tax credits into account in figuring your allowable number of withholding allowances. Credits for child or dependent care expenses and the child tax credit may be claimed using the Personal Allowances Worksheet below. See Pub. 910, How Do I Adjust My Tax Withholding? for information on converting your other credits into withholding allowances.

Nonwage income. If you have a large amount of nonwage income, such as interest or dividends, consider making estimated tax payments using

Form 1040-ES, Estimated Tax for Individuals. Otherwise, you may owe additional tax.

Two earners/two jobs. If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 for the highest paying job and zero allowances are claimed on the others.

Nonresident alien. If you are a nonresident alien, see the instructions for Form 8233 before completing this Form W-4.

Check your withholding. After your Form W-4 takes effect, use Pub. 919 to see how the dollar amount you are having withheld compares to your projected total tax for 2004. See Pub. 910, especially if your earnings exceed \$125,000 (Single) or \$175,000 (Married).

Recent name change? If your name on line 1 differs from that shown on your social security card, call 1-800-772-1213 to initiate a name change and obtain a social security card showing your correct name.

Personal Allowances Worksheet (Keep for your records.)

A Enter "1" for yourself if no one else can claim you as a dependent **A** _____

B Enter "1" if:
 • You are single and have only one job; or
 • You are married, have only one job, and your spouse does not work; or
 • Your wages from a second job or your spouse's wages (or the total of both) are \$1,000 or less. **B** _____

C Enter "1" for your spouse. But, you may choose to enter "-0-" if you are married and have either a working spouse or more than one job. (Entering "-0-" may help you avoid having too little tax withheld.) **C** _____

D Enter number of dependents (other than your spouse or yourself) you will claim on your tax return **D** _____

E Enter "1" if you will file as head of household on your tax return (see conditions under Head of household above) **E** _____

F Enter "1" if you have at least \$1,500 of child or dependent care expenses for which you plan to claim a credit **F** _____
 (Note: Do not include child support payments. See Pub. 503, Child and Dependent Care Expenses, for details.)

G Child Tax Credit (including additional child tax credit):
 • If your total income will be less than \$52,000 (\$77,000 if married), enter "2" for each eligible child.
 • If your total income will be between \$52,000 and \$84,000 (\$77,000 and \$119,000 if married), enter "1" for each eligible child plus "1" additional if you have four or more eligible children. **G** _____

H Add lines A through G and enter total here. Note: This may be different from the number of exemptions you claim on your tax return. **H** _____

For accuracy, complete all worksheets that apply.
 • If you plan to itemize or claim adjustments to income and want to reduce your withholding, see the Deductions and Adjustments Worksheet on page 2.
 • If you have more than one job or are married and you and your spouse both work and the combined earnings from all jobs exceed \$35,000 (\$25,000 if married) see the Two-Earner/Two-Job Worksheet on page 2 to avoid having too little tax withheld.
 • If neither of the above situations applies, stop here and enter the number from line H on line 5 of Form W-4 below.

----- Cut here and give Form W-4 to your employer. Keep the top part for your records. -----

Form W-4 Department of the Treasury Internal Revenue Service		Employee's Withholding Allowance Certificate Your employer must send a copy of this form to the IRS if: (a) you claim more than 10 allowances or (b) you claim "Exempt" and your wages are normally more than \$200 per week.		OMB No. 1545-0010 2004
1 Type or print your first name and middle initial		Last name		2 Your social security number
Home address (number and street or rural route)				3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. Note: If married, but legally separated or spouse is a nonresident alien check the "Single" box.
City or town, state, and ZIP code				4 If your last name differs from that shown on your social security card, check here. You must call 1-800-772-1213 for a new card. <input type="checkbox"/>
5 Total number of allowances you are claiming (from line H above or from the applicable worksheet on page 2)				5 _____
6 Additional amount, if any, you want withheld from each paycheck				6 \$ _____
7 I claim exemption from withholding for 2004, and I certify that I meet both of the following conditions for exemption: • Last year I had a right to a refund of all Federal income tax withheld because I had no tax liability and • This year I expect a refund of all Federal income tax withheld because I expect to have no tax liability. If you meet both conditions, write "Exempt" here				7 _____
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate, or I am entitled to claim exempt status.				
Employee's signature (Form is not valid unless you sign it.) _____ Date _____				
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.)			9 Office code (optional)	10 Employer identification number (EIN)

Deductions and Adjustments Worksheet

Note: Use this worksheet only if you plan to itemize deductions, claim certain credits, or claim adjustments to income on your 2004 tax return.

- 1 Enter an estimate of your 2004 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes, medical expenses in excess of 7.5% of your income, and miscellaneous deductions. (For 2004, you may have to reduce your itemized deductions if your income is over \$142,700 (\$71,350 if married filing separately). See Worksheet 3 in Pub. 919 for details.) 1 \$ _____
- 2 Enter: $\left\{ \begin{array}{l} \$9,700 \text{ if married filing jointly or qualifying widow(er)} \\ \$7,150 \text{ if head of household} \\ \$4,850 \text{ if single} \\ \$4,850 \text{ if married filing separately} \end{array} \right\}$ 2 \$ _____
- 3 Subtract line 2 from line 1. If line 2 is greater than line 1, enter "-0-". 3 \$ _____
- 4 Enter an estimate of your 2004 adjustments to income, including alimony, deductible IRA contributions, and student loan interest. 4 \$ _____
- 5 Add lines 3 and 4 and enter the total. (Include any amount for credits from Worksheet 7 in Pub. 919). 5 \$ _____
- 6 Enter an estimate of your 2004 nonwage income (such as dividends or interest). 6 \$ _____
- 7 Subtract line 6 from line 5. Enter the result, but not less than "-0-". 7 \$ _____
- 8 Divide the amount on line 7 by \$3,000 and enter the result here. Drop any fraction. 8 _____
- 9 Enter the number from the Personal Allowances Worksheet, line H, page 1. 9 _____
- 10 Add lines 8 and 9 and enter the total here. If you plan to use the Two-Earner/Two-Job Worksheet, also enter this total on line 1 below. Otherwise, stop here and enter this total on Form W-4, line 5, page 1. 10 _____

Two-Earner/Two-Job Worksheet (See Two earners/two jobs on page 1.)

Note: Use this worksheet only if the instructions under line H on page 1 direct you here.

- 1 Enter the number from line H, page 1 (or from line 10 above if you used the Deductions and Adjustments Worksheet). 1 _____
- 2 Find the number in Table 1 below that applies to the LOWEST paying job and enter it here. 2 _____
- 3 If line 1 is more than or equal to line 2, subtract line 2 from line 1. Enter the result here (if zero, enter "-0-") and on Form W-4, line 5, page 1. Do not use the rest of this worksheet. 3 _____

Note: If line 1 is less than line 2, enter "-0-" on Form W-4, line 5, page 1. Complete lines 4-9 below to calculate the additional withholding amount necessary to avoid a year-end tax bill.

- 4 Enter the number from line 2 of this worksheet. 4 _____
- 5 Enter the number from line 1 of this worksheet. 5 _____
- 6 Subtract line 5 from line 4. 6 _____
- 7 Find the amount in Table 2 below that applies to the HIGHEST paying job and enter it here. 7 \$ _____
- 8 Multiply line 7 by line 6 and enter the result here. This is the additional annual withholding needed. 8 \$ _____
- 9 Divide line 8 by the number of pay periods remaining in 2004. For example, divide by 26 if you are paid every two weeks and you complete this form in December 2003. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck. 9 \$ _____

Table 1: Two-Earner/Two-Job Worksheet

Married Filing Jointly			Married Filing Jointly			All Others	
If wages from HIGHEST paying job are—	AND, wages from LOWEST paying job are—	Enter on line 2 above	If wages from HIGHEST paying job are—	AND, wages from LOWEST paying job are—	Enter on line 2 above	If wages from LOWEST paying job are—	Enter on line 2 above
\$0 - \$40,000	\$0 - \$4,000	0	\$40,001 and over	31,001 - 38,000	6	\$0 - \$6,000	0
	4,001 - 8,000	1		38,001 - 44,000	7	6,001 - 11,000	1
	8,001 - 17,000	2		44,001 - 50,000	8	11,001 - 18,000	2
	17,001 and over	3		50,001 - 55,000	9	18,001 - 25,000	3
				55,001 - 65,000	10	25,001 - 31,000	4
\$40,001 and over	\$0 - \$4,000	0	65,001 - 75,000	11	31,001 - 44,000	5	
	4,001 - 8,000	1	75,001 - 85,000	12	44,001 - 55,000	6	
	8,001 - 15,000	2	85,001 - 100,000	13	55,001 - 70,000	7	
	15,001 - 22,000	3	100,001 - 115,000	14	70,001 - 80,000	8	
	22,001 - 25,000	4	115,001 and over	15	80,001 - 100,000	9	
	25,001 - 31,000	5			100,001 and over	10	

Table 2: Two-Earner/Two-Job Worksheet

Married Filing Jointly		All Others	
If wages from HIGHEST paying job are—	Enter on line 7 above	If wages from HIGHEST paying job are—	Enter on line 7 above
\$0 - \$60,000	\$470	\$0 - \$30,000	\$470
60,001 - 110,000	780	30,001 - 70,000	780
110,001 - 150,000	870	70,001 - 140,000	870
150,001 - 270,000	1,020	140,001 - 320,000	1,020
270,001 and over	1,090	320,001 and over	1,090

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. The Internal Revenue Code requires this information under sections 3402(b)(2)(A) and 5109 and their regulations. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; providing fraudulent information may also subject you to penalties. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, to cities, states, and the District of Columbia for use in administering their tax laws, and using it in the National Directory of New Hires. We may also disclose this information to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time to Recordkeeping, 46 min.; Learning about the law or the form, 13 min.; Preparing the form, 59 min. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send Form W-4 to this address. Instead, give it to your employer.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB

2004 Form W-5



Department of the Treasury
Internal Revenue Service

Instructions

Purpose of Form

Use Form W-5 if you are eligible to get part of the EIC in advance with your pay and choose to do so. See **Who Is Eligible To Get Advance EIC Payments?** below. The amount you can get in advance generally depends on your wages. If you are married, the amount of your advance EIC payments also depends on whether your spouse has filed a Form W-5 with his or her employer. However, your employer cannot give you more than \$1,563 throughout 2004 with your pay. You will get the rest of any EIC you are entitled to when you file your tax return and claim the EIC.

If you do not choose to get advance payments, you can still claim the EIC on your 2004 tax return.

What Is the EIC?

The EIC is a credit for certain workers. It reduces the tax you owe. It may give you a refund even if you do not owe any tax.

Who Is Eligible To Get Advance EIC Payments?

You are eligible to get advance EIC payments if all three of the following apply.

1. You expect to have at least one qualifying child. If you do not expect to have a qualifying child, you may still be eligible for the EIC, but you cannot receive advance EIC payments. See **Who Is a Qualifying Child?** below.

2. You expect that your 2004 earned income and AGI will each be less than \$30,338 (\$31,338 if you expect to file a joint return for 2004). Include your spouse's income if you plan to file a joint return. As used on this form, earned income does not include amounts inmates in

penal institutions are paid for their work, amounts received as a pension or annuity from a nonqualified deferred compensation plan or a nongovernmental section 457 plan, or nontaxable earned income.

3. You expect to be able to claim the EIC for 2004. To find out if you may be able to claim the EIC, answer the questions on page 2.

How To Get Advance EIC Payments

If you are eligible to get advance EIC payments, fill in the 2004 Form W-5 at the bottom of this page. Then, detach it and give it to your employer. If you get advance payments, you must file a 2004 Federal income tax return.

You may have only one Form W-5 in effect at one time. If you and your spouse are both employed, you should file separate Forms W-5.

This Form W-5 expires on December 31, 2004. If you are eligible to get advance EIC payments for 2005, you must file a new Form W-5 next year.

TP You may be able to get a larger credit when you file your 2004 return. For details, see **Additional Credit** on page 3.

Who Is a Qualifying Child?

Any child who meets all three of the following conditions is a qualifying child.

1. The child is:

- Your son, daughter, adopted child, stepchild, or a descendant of any of them (for example, your grandchild); or

- Your brother, sister, stepbrother, stepsister, or a descendant of any of them (for example, your niece or nephew), whom you cared for as you would your own child; or

- A foster child (any child placed with you by an authorized placement agency whom you cared for as you would your own child).

(continued on page 3)

▼ Give the bottom part to your employer; keep the top part for your records. ▼

..... Detach here

Form W-5 Department of the Treasury Internal Revenue Service	Earned Income Credit Advance Payment Certificate	OMB No. 1545-1342
	▶ Use the current year's certificate only. ▶ Give this certificate to your employer. ▶ This certificate expires on December 31, 2004.	2004
Print or type your full name		Your social security number

Note: If you get advance payments of the earned income credit for 2004, you must file a 2004 Federal income tax return. To get advance payments, you must have a qualifying child and your filing status must be any status except married filing a separate return.

1 I expect to have a qualifying child and be able to claim the earned income credit for 2004, I do not have another Form W-5 in effect with any other current employer, and I choose to get advance EIC payments . . . Yes No

2 Check the box that shows your expected filing status for 2004:
 Single, head of household, or qualifying widow(er) Married filing jointly

3 If you are married, does your spouse have a Form W-5 in effect for 2004 with any employer? . . . Yes No


Under penalties of perjury, I declare that the information I have furnished above is, to the best of my knowledge, true, correct, and complete.


Signature ▶



Date ▶




Cat. No. 10227P

Questions To See if You May Be Able To Claim the EIC for 2004

 You cannot claim the EIC if you plan to file either Form 2555 or Form 2555-EZ (relating to foreign earned income) for 2004. You also cannot claim the EIC if you are a nonresident alien for any part of 2004 unless you are married to a U.S. citizen or resident, file a joint return, and elect to be taxed as a resident alien for all of 2004.

- 1 Do you expect to have a qualifying child? Read **Who Is a Qualifying Child?** that starts on page 1 before you answer this question. If the child is married, be sure you also read **Married child** on page 3.
 - No.**  You may be able to claim the EIC but you cannot get advance EIC payments.
 - Yes.** *Continue.*

 If the child meets the conditions to be a qualifying child for both you and another person, see **Qualifying child of more than one person** on page 3.
- 2 Do you expect your 2004 filing status to be married filing a separate return?
 - Yes.**  You cannot claim the EIC.
 - No.** *Continue.*

 If you expect to file a joint return for 2004, include your spouse's income when answering questions 3 and 4.
- 3 Do you expect that your 2004 earned income and AGI will each be less than: \$30,338 (\$31,338 if married filing jointly) if you expect to have 1 qualifying child; \$34,458 (\$35,458 if married filing jointly) if you expect to have 2 or more qualifying children?
 - No.**  You cannot claim the EIC.
 - Yes.** *Continue.* But remember, you cannot get advance EIC payments if you expect your 2004 earned income or AGI will be \$30,338 (\$31,338 or more if married filing jointly) or more.
- 4 Do you expect that your 2004 investment income will be more than \$2,650? For most people, investment income is the total of their taxable interest, ordinary dividends, capital gain distributions, and tax-exempt interest. However, if you plan to file a 2004 Form 1040, see the 2003 Form 1040 instructions to figure your investment income.
 - Yes.**  You cannot claim the EIC.
 - No.** *Continue.*
- 5 Do you expect that you, or your spouse if filing a joint return, will be a qualifying child of another person for 2004?
 - No.** You may be able to claim the EIC.
 - Yes.** You cannot claim the EIC.

Note: An adopted child is always treated as your own child. An adopted child includes a child placed with you by an authorized placement agency for legal adoption even if the adoption is not final. An authorized placement agency includes any person or court authorized by state law to place children for legal adoption.

2. At the end of 2004, the child is under age 19, or under age 24 and a full-time student, or any age and permanently and totally disabled.

3. The child lives with you in the United States for over half of 2004.

Exception to "Time Lived With You" Condition. The child does not have to live with you for over half of 2004 if either of the following applies.

1. The child was born or died during the year and your home was this child's home for the entire time he or she was alive in 2004.

2. The child is presumed by law enforcement authorities to have been kidnapped by someone who is not a family member and the child lived with you for over half of the part of the year before he or she was kidnapped.

Note: Temporary absences, such as for school vacation, medical care, or detention in a juvenile facility, count as time lived at home. Members of the military on extended active duty outside the United States are considered to be living in the United States.

Married child. A child who is married at the end of 2004 is a qualifying child only if you may claim him or her as your dependent, or the following Exception applies to you.

Exception. You are the custodial parent and would be able to claim the child as your dependent, but the noncustodial parent claims the child as a dependent because—

1. You signed Form 8332, Release of Claim to Exemption for Child of Divorced or Separated Parents, or a similar statement, agreeing not to claim the child for 2004 or

2. You have a pre-1985 divorce decree or separation agreement that allows the noncustodial parent to claim the child and he or she gives at least \$600 for the child's support in 2004.

Other rules may apply. See Pub. 501, Exemptions, Standard Deduction, and Filing Information, for more information on children of divorced or separated parents. **Qualifying child of more than one person.** If the child meets the conditions to be a qualifying child of more than one person, only one person may treat that child as a qualifying child for 2004. If you and the other person(s) cannot agree on who will treat that child as a qualifying child for 2004, special rules apply to determine who may do so. For details, see the 2003 revision of Pub. 596, Earned Income Credit (EIC). However, these rules do not apply if the only other person is your spouse and you plan to file a joint return for 2004.

Reminder. A qualifying child must have a social security number unless he or she was born and died in 2004.

What if My Situation Changes?

If your situation changes after you give Form W-5 to your employer, you will probably need to file a new Form W-5. For example, you must file a new Form W-5 if any of the following applies for 2004.

• You no longer expect to have a qualifying child. Check "No" on line 1 of your new Form W-5.

• You no longer expect to be able to claim the EIC for 2004. Check "No" on line 1 of your new Form W-5.

• You no longer want advance payments. Check "No" on line 1 of your new Form W-5.

• Your spouse files Form W-5 with his or her employer. Check "Yes" on line 3 of your new Form W-5.

Note: If you get the EIC with your pay and find you are not eligible, you must pay it back when you file your 2004 Federal income tax return.

Additional Information

How To Claim the EIC

If you are eligible, claim the EIC on your 2004 tax return. See your 2004 tax return instruction booklet.

Additional Credit

You may be able to claim a larger credit when you file your 2004 Form 1040 or Form 1040A because your employer cannot give you more than \$1,563 throughout the year with your pay. You may also be able to claim a larger credit if you have more than one qualifying child. But you must file your 2004 tax return to claim any additional credit.

Privacy Act and Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the United States. Internal Revenue Code sections 3507 and 6109 and their regulations require you to provide the information requested on Form W-5 and to give it to your employer if you want advance payment of the EIC. As provided by law, we may give the information to the Department of Justice and other Federal agencies. In addition, we may give it to cities, states, and the District of Columbia so they may carry out their tax laws. We may also disclose this information to other countries under a tax treaty or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism. Failure to provide the requested information may prevent your employer from processing this form; providing false information may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is: Recordkeeping, 6 min.; Learning about the law or the form, 12 min.; and Preparing the form, 25 min.

We welcome comments on forms. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Products Coordinating Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send Form W-5 to this address. Instead, give it to your employer.

Block C3

Pastoral and Leadership Ethical Practices

The local congregation is a place that embodies the complexities of everyday life. Pastors and other church leaders are called to provide the kind of leadership and witness that honors God. This chapter attempts to provide practical guidance for pastors and leaders in their vocation of ministry to the church. However, ethics of leadership this chapter promotes arise out of the specific character of the Church. Pastors primarily are called by the community to whom they serve. First, it is necessary to provide a brief discussion of the basis for making ethical decisions. Then, specific focus will be given only to areas of conduct that appear to cause the greatest moral challenge for pastors, ministers, and other church leaders. Note that emphasis is given in this chapter to pastors and ministers. However, a considerable amount of this information would apply equally well to other church leaders in the congregation.

A. Ethical Action Is A Function of Character

“What should I do?” “What decision is the right one?” These are questions many Christians in general and pastors in particular repeatedly face. These questions are so important to living the Christian life. Yet, there is a question that even precedes the questions above: “What kind of person am I called to be?” This question reminds you that what you do comes from the kind of person you are. Of course, there are criteria Christians sometimes use, like justice, fairness, equity, and so forth, that are shared and understood by the society as a whole. While there are certainly similarities, how Christians think, talk, and act come from our participation in the very life of Jesus Christ through the body of Christ, the church.

Character in a Christian sense is discussed in the literature in many ways. A biblical passage that centers on character is Galatians 5:22, the fruit of the Spirit. Paul in this passage commands the Christian and the Christian community to embody the character of Jesus Christ, which is the fruit that the Holy Spirit brings to the life of the Christian community.

Decisions and actions are important, or this chapter would be of little interest to you. Yet, decisions and actions must be viewed within the context of one's character. Character names the settled nature of our lives that provide motivations and virtues for consistent living. A Christian's identity and ethical formation are crucial in directing one's life in conformity with the life of Christ.

If this were not so, pastors and leaders may be ever so competent and skilled, and still exemplify an immoral lifestyle. Skilled sermon preparation, visionary leadership, charismatic personality, and astute business acumen, mean little in

terms of honoring Christ and the church, if one's character is suspect or judged immoral. Christian witness includes, then, the display of Christian character in all areas of your life.

In your life as a Christian, practice discipline in hearing and obeying God's word, being with and loving the neighbor, praying with and for others, and nurturing and growing in the faith. Do not sacrifice this kind of life just to make decisions that promise to be expedient for the moment—securing your name and/or position. Let us turn now to some areas of ethical challenge that face pastors and leaders.

B. Integrity

Integrity is an attribute much like character. A kinship word of integrity is integer. An integer is a whole number. Anything less than a whole number is a "fraction." A person who acts with integrity mirrors consistency of word and deed. In many decisions that pastors and leaders make, they may be accused of "saying one thing" and "doing another." Pastors and leaders can lose credibility with the congregation when others judge their actions as less than those of integrity.

Some professions appear to place less emphasis on this way of looking at the moral life. A skillful brain surgeon, for example, can perform the most intricate brain operation by day, then go home and lie on his or her tax return. It appears this is possible since one's performance in one area seems to bear no relevance to performance in the other. In ministry, though, the pastoral vocation to which you are called also assumes that one possesses the virtue of truthfulness. The vocation of ministry does not and should not tolerate complacency or insensitivity to truth telling or any other *Christian* virtue.

Integrity of the pastor or leader indicates that her decisions and actions model consistency with a profession of faith in Jesus Christ. The pastor's actions or way of life must be "whole." That is, it is to be a life lived by faith in all situations in which pastors and leaders find themselves. When you live your life in this way, your public witness cannot be labeled as "fraction," or less than whole. You may model an exemplary life on Sunday morning, but less than a commendable one on Monday at the council meeting or on Tuesday at the local restaurant. This is clearly a lifestyle that promises to disrupt the authority of a leader and breed distrust throughout the congregation.

Integrity penetrates therefore many areas of the pastor's life: sermon preparation and delivery, writing letters of reference for others, counseling, financial dealings, relationship with members of the congregation, and even owning up to a difference between what you really believe theologically and what you preach and teach to your congregation. In sermon preparation, for example, do you give proper credit for the use of others' works—an illustration, a poem, or a borrowed outline? In writing letters of reference, do you weigh carefully what your moral obligations are to the person requesting you to provide a reference letter and the

person who will rely on your comments? This is not a casual or matter-of-fact activity. Circumstances naturally will dictate specific concerns you must consider, but always remember that as a disciple of Jesus you are called to be a truth-teller.

As a pastor and leader, then, you should be prepared to know when and what to speak. It is not only that you speak, but also that you speak in love. Love need not be destroyed by truth. But hypocrisy and deception can weave entanglements that snare you way into the future. A helpful question may be, “Am I being true to the gospel?” Are you truthful about your yearbook statistics? Do you give in to the fear of having your so-called failures made public by making your church attendance figures reflect more than you know they are? Let these questions serve as specific examples to get you thinking about the central role integrity plays in displaying one’s character and one’s ethical decision making. Further discussions below will address integrity in more indirect ways.

C. Misconduct

Misconduct is a broad word in that it covers many areas of ethical action. The words “sexual” or “financial” often qualify it. You, of course, do not need to limit your focus only to these. This section, however, will provide basic guidelines to the areas of sexual and financial misconduct.

1. Sexual Misconduct

This is a very serious matter among pastors and ministers. While our church and congregations hold pastors and ministers to higher moral expectations, sexual misconduct is an offense against the Christian community. William Willimon reminds us that “because pastors are placed in positions of power over people, including many people in great need, it is more onerous when they use such positions to prey upon others for their own sexual gratification, and the community is correct in taking grave offense.”⁵⁹⁶ There are specific steps that congregations should take. However, the steps outlined in this section provide the pastor and leaders with guidelines to orient their ethical behavior in the area of sexual immorality. The pastoral vocation must be taken with utmost seriousness, which should lead the church to question the suitability for ministry any pastor or minister whose faithfulness to marriage vows and trespassing of boundaries are commonplace. Rebekah Miles offers these helpful ground rules:⁵⁹⁷

⁵⁹⁶ William H. Willimon, *Calling & Character: Virtues of the Ordained Life* (Nashville: Abingdon Press, 2000), 77, quoting from Rebekah L. Miles, *The Pastor As Moral Guide* (Minneapolis: Fortress Press, 1999), p. 111.

⁵⁹⁷ Rebekah L. Miles, *The Pastor As Moral Guide* (Minneapolis: Fortress Press, 1999), as quoted in Willimon, *Calling & Character*, 77, 79. In this section on Sexual Misconduct, I am quoting substantially from Willimon’s wonderful discussion on the matter.

- a. It is never appropriate to have sexual contact with parishioners.
- b. It is always the pastor's responsibility to keep the appropriate boundaries.
- c. Pastors and other leaders are also responsible for setting up and following procedures to hold pastors accountable.
- d. No pastor or church is free from the risks of misconduct. The only responsible path is to be aware of the problem, vigilant about prevention, and tenacious in accountability.

In the area of sexual misconduct it is crucial that you know warning signs and that you be watchful for problems. The following are warning signs or potential problems that pastors and ministers must be on guard about:

- 1. Establish procedures of accountability for yourself:
 - a. Make rules about interactions with others.
 - b. Watch for warning signs.
 - c. Find responsible ways to be intimate with others.
- 2. Be aware of your own tendencies when forming close friendships with parishioners.
 - a. Identify those who appear healthy and spiritually mature.
 - b. Know the risks involved in forming close relationships with parishioners and respond accordingly. These relationships are not evil, but require the exercise of wisdom when differences in authority and power exist.
 - c. Locate an accountability partner with whom you can talk openly about your attraction to someone or when facing other problems. Be sure the partner shares your moral assumptions about faithfulness and sexual boundaries.
 - d. [Counseling concerns will be addressed later.]

2. Financial Misconduct

How one deals with money is an aspect of Christian discipleship. Stewardship includes your use of money, but is not limited to this. Money is not evil in itself. It is necessary to life in these times. Rather, it is the spirit or love attached to money that embodies enormous ethical challenges for all Christians. Pastors and leaders are not exempt from these challenges.

a. Financial dealings with the congregation

Pastors and ministers must operate in ways that do not give the impression that they are preoccupied with finances. Finances are important for pastors and their families. Congregations are to be ethical in their compensation packages for their ministers, so that pastors and leaders do not feel the necessity to push for equitable compensation. Pastors however must deal in good faith with their congregations in this area.

Apart from salary questions, pastors and ministers need not directly handle the church's finances. Seek out knowledgeable persons in your congregation who are mature Christians who can take this on as a ministry. There are serious dangers for pastors to have check signing authority, especially if only one signature is required. One signatory is not recommended in any case. Pastors may be tempted in such cases, or, at least, may experience increased probability that questions of impropriety might be raised against them among certain constituencies in the congregation. The pastor, rather, should be free to focus on preaching, teaching, visioning, and so on. This recommendation is not intended to prevent necessary pastoral input or pastoral knowledge about the budgeting process and general knowledge of income and expenditures.

b. Financial dealings outside the congregation

How ministers' handle their finances say much about their character and integrity. It is difficult to expect trust with church finances if one has demonstrated failure in their financial dealings outside the church—in the world. Avoid, to the extent possible, borrowing money from parishioners or from the congregation. This is not to say that parishioners may not really want to help a financially strapped minister. Rather, the consequences of doing so may be a price too high to pay. Doing effective ministry in these circumstances may be compromised or, at worst, undermined. Paying bills promptly will insure credit worthiness, Christian witness, and less personal and family stress.

c. Seeking financial help, if necessary, from credible sources

Many persons have encountered life circumstances that threaten their financial security. Pastors and ministers who find themselves in serious financial troubles should not hesitate to seek out expert help from persons or organizations that can help them sift through their finances. Such gifted persons can aid you in making necessary adjustments and to maintain your sense of dignity in the process. This is much better than letting things go and making decisions that undermine your ministry and the witness of the congregation, too.

D. Minister-to-Minister, Minister-to-Congregation, Church-to-Church Protocol

1. Minister-to-Minister

An operative principle between and among ministers on the same staff is to remember that all are members of the body of Christ. Just how relationships are structured in any given setting depends a lot on that given context. Some congregations have totally paid staff, others have all volunteer staff (except the pastor, maybe), and still others have a combination of paid and volunteer staff. Biblical justice and love should determine the nature of relationships on the staff. Here are some thoughts to guide you in this most significant dimension of a congregation's life.

a. “Can't we all just get along?” [Relationship within the staff ministry]

- 1) Realize that each of you is not separate from the people you are called to serve. Functionally, there is some separation there for purposes of leading the people in the worship of God. Yet, to think that there is a hard and fast separation between the clergy and laity is to deny the biblical concept of the *whole* people of God.
- 2) Realize that your particular ministry is not independent from the ministry of others on the staff. Interdependence is crucial to a sense of teamwork. This sense of shared mission not only contributes to the health of the staff, but also to that of the congregation.
- 3) Promote open and truthful communication at all times, and mutual respect for all members of the pastoral and leadership staff. Conversations can be serious and truthful, and still seasoned with salt. That is, your communication serves the purpose of ultimately honoring God.

b. “I'm the Senior Pastor. Then why don't I feel in charge?”

- 1) Model and expect moral integrity among all members of the pastoral staff.
- 2) Instruct staff on the appropriateness of maintaining confidences. Loose talk among the staff can be dangerous, if the talk about parishioners is not for the purpose of prayer and edification. When staff members operate in different settings other than the staff meetings, they are still obligated to keep shared confidences.
- 3) Value “effective” ministry—personally and as a staff. Pastoral and ministerial calling is not to be distorted by insincere efforts in ministry. You are not there simply to collect a check or to build your resume for the next big move in your ministry.

- 4) Address promptly any staff problems that threaten the ministry to the congregation. Dispel the notion that ignoring the problem makes it go away. Relationships generally do not operate in this way. You might be a person who dislikes any confrontation. It is a strength to be honest about such matters. As a leader, however, you must seek to develop your ability to love another, even if that means confronting them with the truth, or devoting time to facilitate reconciliation.
- 5) Be willing to train or mentor younger and inexperienced staff persons. Senior Pastors should be persons of broad experience and wisdom. You should take the time or provide opportunities for mentoring more inexperienced members of your staff. It may be possible that another pastor, even a retired one, may treasure the privilege of pouring their life into another.
- 6) Be a good witness in the community. Respect is best assured when it is earned.

c. "I alone lead this ministry. What responsibility do I have as a member of the pastoral and ministerial staff?"

- 1) Nurture trust among each other on the staff. Do not insist on promoting your own agenda at all costs. Nothing undermines ministry any more than an atmosphere of distrust among members of the pastoral staff. Also, guard your tongue. What you say cannot be unsaid. Gossip and innuendoes, for example, quickly erode people's confidence in pastoral leadership.
- 2) Assume the necessity to be mutually accountable to others. The church is not just a collection of individuals, each seeking their own individual desires, but the church is the body of Christ. Therefore, you are members one of another.
- 3) Promote and maintain appropriate boundaries. Each person should acknowledge his or her limits. Power should be wisely used in doing the will of God. As previously discussed, pastor and leaders must exercise appropriate limits with persons of the opposite sex. In addition, do not use language or tell jokes that are inherently offensive to another race, ethnic group, or gender.

d. "I am a new/younger inexperienced staff person. What responsibility do I have?"

- 1) Be willing to learn from others and to develop your gifts as an ongoing aspect of your discipleship.

- 2) Support the pastor in his or her overall accountability to the congregation. This does not mean a “rubber stamp” mentality, where you simply okay everything the pastor or duly recognized authority says or does. However, you should never position yourself in open opposition to authority simply because you do not agree. It is a wise thing to get an understanding. Request a face-to-face meeting to clarify or air differences in the spirit of Matthew 18:15ff.
- 3) Understand and apply established guidelines regarding office procedures, dress code, report deadlines, interaction with office personnel and with parishioners, and so on.
- 4) Keep communication channels open at all times. Many problems can be avoided with good and effective communication with the pastor and any other persons who benefit from knowing what you do and how you feel.
- 5) Serve within the accountability structure. You honor others when you properly acknowledge their place in the chain of communication. End runs are detested in the corporate world, and much more should they be shunned in the church. However, if you experience tenacious resistance, you may have no choice but to seek help from another.
- 6) Promote the overall effectiveness of the congregation’s ministry—not yours. When one feels they own a ministry, then situations arise where you must secure that ownership in less than Christian ways.
- 7) Be a good witness (i.e., live uprightly) in the community. The church is not a walled off stronghold, but a compelling witness for Christ in the midst of the world.

2. Minister-to-Congregation

Congregations inherit obligations to their ministers. Two crucial issues that have sometimes created ethical challenges involve ministers in search of a “Call” and ministers serving as “Interim” pastors of congregations. Consider the following:

a. Ministers in search of a call

- 1) Exercise integrity at every step in this process. Experiencing a good tenure in a congregation is often a function of how we begin. Make up your mind early on that your pursuit of a pastoral position will not compromise your personal integrity or the integrity of the process established for calling a pastor.
- 2) An ethical process should insure that one leaves a state assembly or ministerial assembly in good standing. As much as possible, a pastor in

search of another pastoral position also should not keep his or her present congregation ignorant about his or her ultimate intentions.

- 3) An ethical process also should require that the new state ministerial assembly be fully informed of the congregation's interest and a potential pastor's interest. Licensing and ordination remind us that we are connected to others in ministry. Do not give in to the independent spirit of going it alone. A Lone Ranger approach is sure to backfire in the long run. Informing others who really need to know demonstrates respect and fosters trust that will serve you well in the end.
- 4) Encourage truthful communication between you and the congregation's pastoral search committee. Honest communication in all phases of mutual interest creates the possibility that any decision reached will honor God.

b. Ministers serving as Interim Pastors

- 1) Keep in mind: You are not the fulltime, permanent pastor. There may be times you are tempted to act as though you are. You may even be tempted to pursue the pastorate for yourself. If you believe, however, that you have any interest in serving as fulltime pastor or leader, it probably is more ethical not to accept the interim pastor's or minister's position. Doing so may create ill will and an unequal opportunity for you to the detriment of the congregation and of other legitimate prospects. Also, you must be on guard for parishioners who really appreciate your ministry and gifts, and would seek, without your approval, to initiate a movement within the congregation to secure your services as their next pastor. It seems appropriate, once you discover this, to make it clear to all that you will entertain no designs to pursue the position fulltime. Any move to the contrary, while flattering, is not ethical or in accord with the best interests of the congregation or yourself.
- 2) Agree before hand on mutual expectations: duties, compensation, expectations and boundaries for counseling, weddings, funerals, and so on.
- 3) Insist on periodic feedback sessions, in order to hear from the congregation and/or their leadership, and to be heard by them.

3. Church-to-Church Relations

In your relationships outside the congregational setting, you should be aware of and respect the authority structures of other church groups and congregations. Consider the following general guidelines:

- a. Be sensitive in overt efforts to evangelize members of other congregations or in areas directly served by those congregations. By all means, do what God leads you to do. Yet, nothing is gained by unnecessarily offending other brothers and sisters in Christ through well meaning efforts that undermine what they are attempting to do.
- b. In accepting invitations to other congregations, keep in mind that you are there at their invitation. So act in ways that honor, to the extent possible, their theological commitments about dress or other areas, as long as it really does not matter to the work of the kingdom of God.
- c. It is always ethical to practice hospitality to other churches and congregations, as this makes visible the unity of the body of Christ. This is an ongoing challenge for all Christians.

E. Counseling

Comments in this section will be brief. The sections addressing “Clergy and the Law” and “The Church and the Law” include significant dimensions of pastor’s legal and moral responsibilities in this area. However, consider the following:⁵⁹⁸

1. If you counsel parishioners, take advantage of regular supervision with a licensed supervisor. In our highly litigious society, this is just a wise move. The church can pay for this.
2. Establish your office and counseling procedures to protect yourself from misconduct or even the appearance of misconduct. Leave the door unlocked. Counsel when others are in the building. Can you think of other safeguards?
3. If you must counsel outside your office, select a public space. If a parishioner comes to your home (and this should be rare), make sure your spouse or a trusted church member is in the next room.
4. If you need to visit individuals at their homes and have reason to be uncomfortable, take another parishioner with you.
5. If a situation feels wrong or strange, trust your gut instincts and keep very strict boundaries. Be willing to refer to another counselor. Remember that you may not be qualified to handle all counseling situations.
6. Refrain from touch, if you are uncomfortable doing so or sense that the other person is uncomfortable.

⁵⁹⁸ Willimon, 79-80. Willimon draws extensively here from Miles, *Pastor As Moral Guide*, pp. 112-113. As you can tell, Miles' work can be a valuable resource for pastors and congregations.

7. Be cautious about some discussions of sex.
8. Know and follow the procedures of your denomination or church.
9. Know that you cannot avoid all risks in a fallen world. Use wisdom. Yet avoid insulating yourself so much that you are not open to your members.

F. Concluding Strategies for Nurturing Moral Formation and Ethical Practices

1. Participate faithfully in worship and practice diligently the spiritual disciplines (prayer, bible study, Sabbath rest, relax and relieve stress).
2. Live your life in the fullness of the Holy Spirit.
3. Forgive each other. Forgiveness is a lifestyle.
4. Develop godly friendships with others—especially with staff members.
5. Establish and maintain appropriate boundaries (e.g., sex, finances, and relationships).
6. Nurture intimacy with your spouse, your family, or other appropriate kinds of intimacy.
7. Be attentive to the particulars around you—in your world.

Living a Christian life involves living an ethical life in your calling as a pastor or ministerial leader in congregational life. The information provided in this section is not intended to be exhaustive, for that would require a book in itself. Please use the resources suggested below. The hope is that the guidelines offered here will stimulate you to think more seriously and live more faithfully in your vocation of ministry and leadership.

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Block D1

Risk Management and the Church

A. Definition

Risk management within the church community can be defined as a concerted effort to reduce potential liability in the day to day operations of the church. Also, the administration of a system to organize and implement all efforts to protect the church:

- ❖ Religious organizations are no longer off limits when it comes to lawsuits and liability injuries.
 - ❖ Courts now recognize that results from a church's negligence is no less painful, disabling or financially damaging and large court awards attest to their equal status in today's legal arena.
 - ❖ There are four ways a church can cope with potential liabilities, (eliminate, lower, accept, and shift) ...
1. Eliminate the risk: Church leadership must take aggressive action and take potential hazards seriously (i.e. hazardous walkways, low clearances, slippery surfaces, exposed steam pipes, broken stairs, etc.).

NOTE: Some youth activities pose especially high risks and are not recommended for churches. These include sky diving, hang gliding, rock climbing, the use of trampolines, or the use of all terrain vehicles.

2. Lower the risk: Take a close, critical look at your church buildings and grounds to determine possible hazards. Hallways need to be free of obstacles and having a good policy regarding the issuing of keys is a beginning example.

Regardless of the risk management techniques used, an associated goal is to manage risks through both *loss prevention and loss control*.

Loss prevention

Loss prevention focuses on the steps that a church can take to reduce the frequency of loss. The goal of loss prevention is to intervene before the loss occurs. Loss prevention is dependent upon identifying potential risks and to take appropriate action to prevent them.

Loss control

Loss control focuses on the steps that a church can take to reduce the severity of a loss. The goal of loss control is to intervene after the peril has occurred to limit its impact and to prevent additional losses from occurring. Having a proper response strategy in place is a critical component of risk management. Loss control is dependent upon advance planning and upon training people on how to respond to specific types of loss.

3. Accept the risk: Self-insurance is a thing of the past. It is no longer practical.

Intentional

Leaders may decide to retain certain risks for financial reasons. The deductible amount in a property insurance policy represents a retained risk.

The lack of money can also lead leaders to retain certain risks, often unwisely. In addition to financial factors, ministry also plays an important role in the decision to retain certain risks. Faith convictions and ministry goals often compel church leaders to retain some risks as a part of the cost of ministry.

Unwitting retention might include hazards present but leadership is unaware of the potential because inspections are never done. Likewise, force retention might be necessary due to insurance not being available or limited regardless of proper procedures and inspections being set in place.

4. Shift the risk: The most common method to shift the risk is to purchase insurance coverage. Secure appropriate insurance through a reputable agent. When buying insurance, you agree to absorb smaller, periodic losses in the form of premiums in exchange for avoiding larger uncertain claims.

Risks can also be shifted in ways other than through insurance. For example, some churches will use *hold harmless agreements* or *indemnity agreements* as a means of risk transfer.

Hold harmless agreements

A church may use a hold harmless agreement to protect itself from a potential lawsuit. For example, adult participants on a foreign mission's trip may sign a hold harmless agreement whereby, while on the trip, they assume certain risks that are detailed in the agreement. In essence they agree not to bring any legal claims against the church based on the nature of the contract. Hold harmless agreements should be used only with adults and not with minors. A church that

plans to use a hold harmless agreement should seek the assistance of an attorney.

Indemnity agreements

An indemnity agreement has two contractual parties, an indemnitor and an indemnitee. The indemnitor agrees to pay the indemnitee if a specific loss should occur. For example, an outside group may borrow church equipment and sign a contractual agreement to pay the cost of replacing the equipment if it should become damaged. Obviously, the value of the indemnity agreement depends upon the capacity of the indemnitor to fulfill the contractual obligation if a loss should occur.

B. Development of Risk Management Strategy & Committee:

- ❖ Strategy Development: The heart of a strategy is to provide checklists to guide inspections of potential problem areas. The checklist strategy lacks any transforming power to bring about change in the life of a church unless those in the management of the church affairs *know what to do and are motivated to follow through with implementation.*
- ❖ Risk management programs are more likely to succeed when churches place primary emphasis upon creating caring and safe environments for children, youth, and all other people who attend church programs or use church facilities.
- ❖ Success is dependent upon committed leadership who oversees an implementation strategy that is intentional, systematic, and sustained.

Leadership

Leadership plays a critical role in the implementation of any risk management program. Without the support and input of leaders, a program is not likely to last long. Clearly, the church board must be behind the effort.

An effective risk management strategy within a church must flow out of core values and expressions of faith. Churches need to care for their members, for the weak and vulnerable, and for those with special needs. The church should be a good steward of all that God has entrusted to its care.

Risk management is an outgrowth of care-giving leadership.

- ❖ Committee Development: Most congregations will also benefit by forming a risk management or a safety committee to design and oversee the implementation of the program. One person can be

designated as the church safety officer, who serves as the spokesperson for the congregation regarding safety issues. These individuals provide formal oversight to the risk management program. Normally, their responsibilities will include identifying needs, selecting risk management techniques, implementing congregational wide efforts including conducting inspections, leading training events, monitoring the process, and making reports to congregational leaders.

One critical factor is church size. As size increases, so does the complexity of implementation of a risk management strategy. A rural or small town setting creates a different environment and set of perspectives than an urban or suburban setting. Ethnicity and culture also impact the implementation process. Another important factor is congregational structure and governance. Finally, and perhaps the most important factor of all is the availability, skill, knowledge, and commitment of the people responsible for implementing the program.

The model is based upon two components:

1. The formation of a team, committee, or task force to oversee the risk management process; and
2. The appointment of a safety officer who provides leadership to the committee and who embodies the essence of the program to the church.

The two components emerge from several considerations:

- a. The task of risk management in a church is too large a job for one person.
- b. Risk management requires a broad range of expertise and input. A team approach draws upon the knowledge and skills of a number of people. One purpose of the committee is to create a division of labor to make the process more manageable and effective.
- c. The team approach integrates risk management more deeply into the life of the church. Rather than being a top down administrative approach, it arises out of the shared interests and concerns of the congregation.
- d. The appointment of a safety officer provides leadership and symbolism. The role of the safety officer can vary widely depending upon the individual's knowledge, expertise, and time available to devote to the position. One purpose of the role is to personalize the

issue of safety within the church. The person becomes both a spokesperson and a symbol of safety.

Establishing a risk management committee helps to move away from an informal approach to risk management to one that is more structured, organized, and, in the end, more effective. The goal is to establish a team of qualified individuals who, following clear policies and procedures, engage in regular and thorough risk management practices. For this to occur, attention must be given to authorizing the work of the committee clarifying its task getting it staffed, and equipping it for action.

The risk management committee should be formally established and empowered by action of the governing board as a standing committee of the church. In turn, the committee should also report to the board.

The church board, more so than the risk management committee must take leadership concerning liability issues. First, the basis for liability often flows out of the actions and decisions of board members. Second, the board is responsible for the general formulation and oversight of policy.

The risk management committee, more so than the board, must take leadership to correct unsafe property conditions.

Tasks of the committee

Once the committee is authorized, its mission should be clarified. This model proposes that the risk management committee should complete the following tasks:

1. Prepare a written risk management plan:
The plan should briefly touch upon each of the eight tasks (described in 2-9 below) the committee is responsible for. The plan should describe how the committee fits into the overall organizational structure of the church and the relationship between the committee and the board. The plan should clarify who is responsible for overseeing the risk management process; the lines of authority; the scope of authority; and communication between the committee and the board. The plan should also include a list of organizations and individuals that can provide assistance.
2. Establish a protocol for safety inspections and selecting risk management techniques: Many checklists are suggested in this manual. Insurance companies are another source of checklists.
3. Establish and maintain a regular schedule for inspections:

To develop effective loss prevention and loss control measures, a congregation must engage in regular and thorough inspections. The committee should establish an inspection schedule for each protocol listed. The frequency of inspections will depend upon the nature of the risk. Once a risk management program is in place, church staff members and congregational members can be trained and motivated to conduct their own informal inspections and provide ongoing feedback to the committee.

4. Recruit inspectors:

To the extent possible, members of the risk management committee should be capable of conducting the needed inspections. Outside assistance may be required and a list of organizations/consultants should be maintained.

5. Review insurance coverage to see that it is adequate:

One important task of the risk management committee should be to examine the church's existing coverage including policy limits, deductibles, exclusions, riders and any excess coverage that exists. Attention should also be given to the service and support that the insurance company and agent provide.

Insurance Checklist

Type of Insurance	Purchase	Do Not Purchase
	Property Insurance	
Fire	_____	_____
Windstorm	_____	_____
Hail	_____	_____
Smoke	_____	_____
Explosion	_____	_____
Vandalism	_____	_____
Water damage	_____	_____
Glass	_____	_____
Liability Insurance	_____	_____
<i>Workman's Compensation</i>	_____	_____
<i>Business Interruption</i>	_____	_____
Dishonesty		
Fidelity	_____	_____
Robbery	_____	_____
Burglary	_____	_____
Comprehensive	_____	_____
Stain Glass	_____	_____
Earthquake	_____	_____
Tornado	_____	_____
Flood	_____	_____
Personal		
Health	_____	_____
Life	_____	_____
Key personnel	_____	_____
Misconduct	_____	_____

6. Provide training to staff, members, and members about risk management practices: One goal is to equip both paid staff members and congregational members to identify and report potential problems that post a risk.
7. Motivate congregational members with respect to the risk management goals: Proper motivation is dependent upon involving congregational members in the early stages of forming risk management strategies, and then providing training and ongoing communication about the church's efforts.
8. Provide feedback to leaders and members concerning risk management needs and developments: Leaders should be updated at least monthly or quarterly.
9. Develop contingency plans for crisis management: Contingency planning can help a church or school reduce confusion, clarify roles, and control losses. One task of the risk management committee is to identify potential crises that might impact the church or school and to develop a contingency plan for each one.

Staffing the committee

Recruit qualified members to serve on it. The makeup and function of the committee will vary based on factors such as size, location, available funds and people involved. The typical committee will have anywhere from 3-8 members and one key appointment is the selection of a Safety Officer.

The Safety Officer should be someone who cares deeply about providing safe environments for both children and adults and who is willing to champion the cause of risk management. The Safety Officer takes on not only a leadership role for the committee, but also becomes a symbol for safety within the church.

The Safety Officer may serve as the chairperson of the risk management committee. Some responsibilities could include the following:

- ❖ Speaking to children and adults about safety
- ❖ Addressing the congregation about safety issues
- ❖ Writing articles for bulletins and newsletters
- ❖ Having his/her picture used as a part of a campaign
- ❖ Motivate others concerning safety
- ❖ Be a symbol of safety to the congregation
- ❖ Recruit members for the risk management committee

Selecting committee members could be done by the board in conjunction with the Safety Officer or could be done by the Safety Officer and ratified by the board. Ideally, people with backgrounds in insurance, fire fighting, law enforcement, transportation, building security, law, child care, and building trades (carpenters, electricians, plumbers, roofers, heating/ac) would be asked to serve on the risk management committee.

Equipping the committee is providing members with adequate orientation. The orientation should help members understand the purpose and role of the committee, clarify expectations, review the schedule of activities, examine protocols, clarify lines and scope of authority, and respond to any questions a member may have.

Communication plays a vital role within the risk management committee and for the congregation. Several methods can be followed:

- ❖ Written agendas for each committee meeting
- ❖ Inspection forms and checklists prepared
- ❖ Newsletter & bulletin articles
- ❖ Posters, signs, and symbols
- ❖ Activity reports and an Annual report

(Some information for this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

C. Proper Inspections

An easy way to begin your safety program is by making a walk-through inspection of the building and grounds. Make a list of potential hazards as you go. Risk identification should be a systematic process that takes into account specific risks that are associated with people, property, and liability.

The following methods are used to identify risks:

- ❖ Inspections. These are one of the best ways to identify many risks, especially visual inspections. It is recommended that two people do the inspections at least twice in areas representing the biggest hazards.
- ❖ Solicit the input of professionals. Invite someone from the local fire department to assist you in identifying fire hazards. Contact the police department to assist with crime prevention and security. Have a qualified electrician check the wiring and have the heating and air conditioning units properly maintained and serviced at least twice a year.
- ❖ Be thorough and systematic. Examine every room and do a complete inspection of the outside of the building as well as the property and grounds. Include parking lots, sidewalks, driveways, utility poles, landscaping, playgrounds and athletic fields.
- ❖ Use a written checklist. Do not leave your inspection protocol to memory. Prepare written guidelines that conform to the order in which the property is inspected.
- ❖ Prepare a written list of needed corrections. Again, do not leave things to memory. Once a problem is recognized, write it down on your list. The use of a standardized form is recommended.
- ❖ Devote extra attention to hazardous areas. Areas such as a furnace room or kitchen normally reflect higher levels of risk.
- ❖ Appraisals. A second technique in assessing risk is to have the property appraised periodically.
- ❖ Financial records and other documents. Receipts and other financial records can assist. Records can determine the value of some church property and financial statements can help leaders assess how much money is available to fund risks.
- ❖ Environmental trends and changes. Monitor environmental developments. Property values, for example, can change as the result of neighborhood developments.
- ❖ Insurance audits. An annual insurance review should be conducted to make sure the coverage is what is needed.

Once risks have been identified, the next step is to assess their scope and potential impact. There are two separate risk factors to be examined.

1. Frequency: Frequency indicates how often a particular risk is likely to occur. It also affects the total impact of a particular risk. As the frequency increase, the accumulative impact may become significant.
2. Severity: Severity is a key starting point for analysis. One approach is to classify severity based on a church's ability to pay for losses.
 - ❖ Low risk would be a church van has a tire go flat and the treasurer writes a check for a new tire.
 - ❖ Moderate risk would be vandals spray paint slogans on the church building and the clean up moneys would be taken from savings.
 - ❖ High risk would be the church's sanctuary is destroyed and insurance pays all but the deductible.

Another dimension of risk is personal pain and suffering, plus the perception or reaction of the church family to the loss. Thus, to be adequately prepared, leaders should consider all personal injuries, regardless of frequency, as potential high severity losses requiring insurance coverage and a crisis management plan.

Two important issues surface with regard to insurance and risk management. First, is the deductible set at the proper level and the second, are the limits adequate.

(Some information in this section was quoted from Risk Management Booklet & Forms by Church Mutual Insurance Company)

D. Reporting

A risk management program needs to be monitored on an ongoing basis. That involves staying informed on what is being done, evaluating the outcomes, and providing feedback so that improvements can occur.

Staying informed: Activity reports should be provided to the leadership on a regular basis. At a minimum, the committee should provide an annual written report that summarizes the risk management activities of the preceding year and identifies current needs. Oral reports should be given several times during the year.

Evaluation: Risk management is not always easy to evaluate. Two approaches are used to evaluate risk management. One is based on *activity standards* and the other is based on *outcomes*.

- ❖ *Activity standards* provide an objective, quantitative basis for evaluating the risk management practices of the church. For example, one standard may be to conduct a criminal background check on each paid employee as part of the hiring process.
- ❖ *Outcome* is based on losses rather than on the practice of risk management. For example, if a church is sued for negligent selection of an employee who molests a child. A jury determines the church not liable because the criminal background check had been performed.

Church leaders should focus on both areas – outcomes and activity standards – to obtain a more complete and accurate picture of risk management practice within the church.

Feedback is needed at all levels of congregational life: A structured approach to feedback is needed. Pulpit and bulletin announcements, articles in newsletters, posters, oral and written reports, and training sessions all provide opportunities to share information that can keep people up-to-date on ways and means to enhance safety throughout the church. At it best, risk management is part of the life and fabric of a congregation.

The following checklists may help: These are only suggestions. Your risk management committee may develop more on an as needed basis. The important thing is to recognize that an accident is as likely to occur in a church building as in any other public building.

Personal Tour Checklist

Begin your safety program by making a walk-through inspection of the building and grounds. Make a list of potential hazards as you go. Then you can set priorities for getting things fixed.

OK	FIX
_____	_____ Inspect wiring, looking for frayed or worn spots and exposed wires that could be fire hazards. If you find any doubtful conditions, consult an electrician.
_____	_____ Check plumbing and pipes for cracks or leaks.
_____	_____ Look for leaks and broken vents on your furnace. They can be hazardous, and energy-wasters, as well. Furnaces and heating equipment must be serviced annually by a professional heating contractor.
_____	_____ Be sure all exits are clearly marked with lighted signs.
_____	_____ Make sure all exits are clear, with no obstructions to hamper emergency exit. Doors should swing outward.
_____	_____ If your church has a belfry, check all ropes, cables, and fixture, especially the access ladder.
_____	_____ Check for grease accumulation in kitchen exhaust system. Filters and vents should be cleared periodically, according to use.

Preventing Falls Check List

Falls are by far the number one cause of injury in church buildings. Fortunately, they are also among the easiest accidents to prevent. This checklist can help prevent many common falls.

OK	FIX
_____	_____ Keep all stairways and hallways well lighted.
_____	_____ All stairways with four or more risers should have a substantial handrail. Make sure handrails are secure.
_____	_____ See that stairs and entryways have non-skid safety surfacing. Repair or replace unsafe steps and worn surfacing.
_____	_____ Keep entryways clean and dry. In winter or bad weather, keep a mop handy to clean floors and needed. (Good idea for the kitchen, too.)
_____	_____ Post signs to mark freshly waxed floors. Use approved non-skid wax only.
_____	_____ Inspect carpets and rugs for wear. Re-tack, if needed, or secure with a heavy-duty double-faced tape.
_____	_____ Keep light switches easily accessible. Glow-in-the-dark type switch plates can help.
_____	_____ Keep aisles, hallways, and cloakrooms free of obstructions and foreign objects. You can slip on a pencil as well as on a roller skate.
_____	_____ Mark large plate glass doors or windows with tape or safety dots, for greater visibility. Place interior planters or furniture by large plate glass panels.
_____	_____ Keep all walkways free of ice and snow during the winter. Shovel and use salt, or keep a sand bucket handy.
_____	_____ Look for potholes and cracks in paved

areas...sidewalks and parking lots.

Keep your parking lot well lighted at night for security as well as safety.

Children and Safety Check List

Children are the most active, inquisitive members of the congregation. They are also the most vulnerable to accidents and injury. Take extra care when looking over your children's facilities, and be sure to think of safety when planning activities for children. A small investment of time here will pay big dividends in the safety and happiness of your church's children.

OK	FIX
_____	_____ Provide careful adult supervision for every activity. More than one person for groups larger than fifteen and more supervision for young children.
_____	_____ Select activities and equipment well suited to the children's age group. For instance, use blunt safety scissors around small children.
_____	_____ If the church has playground equipment, make sure it is securely anchored to prevent tipping. Playground supervisors should keep an eye out for broken or worn equipment.
_____	_____ Keep playground areas free of rocks and broken glass.
_____	_____ Don't use rooms for other than intended use. Sunday school classrooms aren't gyms---don't let them be used as such.
_____	_____ Keep poisons out of reach and well marked. "Mr. Yuk" stickers, available free from the Red Cross, will help discourage even toddlers from poisonous substance. Keep the number of your local hospital or Poison Control Center handy.
_____	_____ Get rid of loose paint chips. In older churches particularly, these can be deadly poison.
_____	_____ Plug all electrical sockets not in use. You can obtain these inexpensive plastic plugs at most hardware stores.
_____	_____ Have participants in athletic activities take an appropriate physical exam.

If your church participates in athletics, keep all equipment in good working order. Replace worn equipment regularly.

Volunteer Safety Check List

Almost every church depends on volunteers for necessary maintenance and repair work, as well as cooking and cleaning for church functions. Members of the congregation are often good hearted enough to attempt tasks they wouldn't think of doing in their own homes, just because "it's for the church."

You can prevent many accidents simply by cautioning volunteers not to overextend themselves. If a job requires special experience or skills---such as roofing or plumbing---make certain workers are fully qualified, or hire a professional. Don't let the church members take an unnecessary risk. If a job requires physical exertion, such as moving furniture or shoveling snow, choose volunteers who are fit for the work. As always, a well-lighted, well-ventilated working environment provides extra protection, too.

- | OK | FIX |
|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> Keep all tools and safety equipment in good repair. Faulty equipment is worse than having none. Be sure that all electrical equipment is properly grounded when used. |
| <input type="checkbox"/> | <input type="checkbox"/> Provide goggles, gloves, and hard hats for workers. |
| <input type="checkbox"/> | <input type="checkbox"/> Have instructions on hand for use of all power tools---saws, drills, snow blowers, lawn mowers, etc. |
| <input type="checkbox"/> | <input type="checkbox"/> Place warning stickers and safety posters in an appropriate place like workshops. These important materials are available from the Red Cross or the National Safety Council. |
| <input type="checkbox"/> | <input type="checkbox"/> Keep fully charged fire extinguishers in workshops, tool sheds, kitchens, or anyplace where there is danger of fire. Purchase the proper type for each use: codes are indicated on the side of the extinguisher. |
| <input type="checkbox"/> | <input type="checkbox"/> Check in storage closets for obsolete or unnecessary combustible items. |
| <input type="checkbox"/> | <input type="checkbox"/> Store paints and other flammable material in a safe place. Use only well ventilated areas. |
| <input type="checkbox"/> | <input type="checkbox"/> Don't store gasoline or gasoline powered |

equipment - such as lawn mowers and snow blowers - inside the church building. Keep them in a garage or shed, away from the main building.

- _____ _____ Check ladders for durability. Extension ladders should have non-skid safety shoes.
- _____ _____ When using ladders, station one person to steady the ladder. Don't try to "walk" ladders for extended reach – get off and move it.
- _____ _____ Post emergency phone number (police, fire, and ambulance) in workshop and kitchen areas.
- _____ _____ Make a list of standard safety procedures including location of first aid kits, etc., and distribute to all workers.
- _____ _____ Make certain all kitchen volunteers are familiar with your appliances. Some may not be used to commercial type equipment, if available.
- _____ _____ Provide hot pads and mitts for cooks and helpers.
- _____ _____ Install smoke detectors in the kitchen and workshop areas especially – throughout the church, if possible.
- _____ _____ Keep sharp kitchen utensils and tools stored in a secure place, safe from children.
- _____ _____ Be careful with knives, meat slicers, and other cutlery. Use extra care with electric implements.

IF AN ACCIDENT SHOULD OCCUR

You can set up your own emergency procedure and distribute it within the church. This way, if an accident or injury should occur, everyone will know what to do. The victim will receive help as quickly as possible. In serious accidents, gaining even a few extra minutes can save a life.

1. First, make the victim as comfortable as possible. DO NOT ATTEMPT TO MOVE THE VICTIM. Keep him/her warm. Administer first aid only if you have the proper training.
2. Next, call an ambulance and police or fire departments as necessary. It's best to call directly, rather than dialing the operator. Don't forget to give the address clearly and distinctly.
3. Get the names and telephone numbers of any witnesses.
4. Notify the victim's family. Avoid undue panic – explain the situation calmly. Tell the family that you have called an ambulance and that help is on the way. If the ambulance has already arrived, tell the family which hospital the victim is being taken to.
5. Cooperate with police and fire department investigators. If you are a witness, you can answer questions about the accident. Provide investigators with your list of witnesses.
6. As soon as possible after the victim has been provided for, and preliminary investigation has been made, inform your insurance agent of the accident. Tell what happened simply and factually. Provide the names of any witnesses. This will facilitate fast, equitable settlement of claims for those injured.

For additional safety information, contact: Church Mutual's Loss Control Department, the National Safety Council, the U.S. Department of Labor, your local chapter of the American Red Cross, or your local police and fire departments. In most cases, information is free.

- ❖ First aid first: Every church should have at least one fully equipped first-aid kit. Make sure everyone is aware of the kit's location. Every church should have a member or members that have had first aid or CPR training. It could save a life.

Every church should have a first-aid-training program. In many towns, the Red Cross sponsors free or low-cost first-aid training.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

E. Nursery safety

The Consumer Product Safety Commission targeted eight product areas with potential safety hazards. The areas under study included cribs, soft bedding, playground surfacing maintenance, child safety gates, window blind cords, drawstrings in children's clothing, and recalled children's products. The finding revealed the following:

- ❖ 38% of children wearing clothing with drawstrings
- ❖ 27% playground surfaces were not maintained adequately
- ❖ 24% did not have safe playground surfacing.
- ❖ 26% had loops on window blind cords
- ❖ 19% had cribs containing soft bedding
- ❖ 13% did not use child safety gates where needed
- ❖ 8% had cribs that did not meet safety standards
- ❖ 5% had unsafe products that had been recalled

Major hazards in church nurseries:

Cribs pose the single greatest hazard to infants.

It is estimated that a crib has a useful life of 25 years. When buying a crib, look for a certification safety seal. Each crib located in the nursery should be inspected for the following:

- ❖ Mattress and bedding – the mattress should fit snugly in place. Use the two-finger test. If the space between the side of the mattress and the crib is large enough to slide two fingers between, the mattress is too small. Do not cover a mattress with a plastic bag. Research findings indicate that babies are at higher risk for sudden infant death syndrome (SIDS) if their heads get covered by soft bedding while sleeping. Babies should always be put to bed on their backs on a firm mattress that fits snugly in the crib. If a blanket is used, it should be thin and tucked around the mattress.
- ❖ Bumper pads should only be used with infants who cannot move to a standing position in a crib. If bumper pads are used, they should go around the entire mattress and be tightly secure in six positions.
- ❖ Crib hardware should be checked and missing or broken parts replaced. All bolts and screws should be tight and secure.
- ❖ Headboards and footboards should not contain openings.
- ❖ Corner posts should be no more than 1/16 of an inch higher than the headboard or footboard.
- ❖ Slats should be secure. The main problem is slats become dislodged from the side of the crib. The gap between the slats should be less than 2-3/8 inches (60mm). Larger spacing poses a danger of head entrapment and strangulation.
- ❖ Paint use only lead-free paint to refinish a crib.

- ❖ Side rails, when in a raised position, should be at least 26 inches above the top of the mattress support. The child should not be capable of releasing the latch or lock to lower the side rail.
- ❖ Used cribs should be avoided. When buying a new crib, inspect it based upon the above criteria.
- ❖ Never locate a crib near window blinds or drapes. Do not hang a mobile or any other object above the crib where a child could become caught in it.

Changing tables should have safety straps and they should be used.

Water is another hazard. Infants and toddlers can quickly drown in a few inches of water at the bottom of a bucket, in a sink, or in a toilet. If children are bathed or cleaned in a tub or sink, use the least amount of water necessary, and they should NEVER be left unattended. If the nursery has a bathroom, keep the door closed.

Baby gates with the new accordion-style that have v-shaped openings no more than 1-1/2 inches wide are recommended. Anything larger than that should not be used. Other alternatives to gates are mesh screen or ones with a straight top with rigid bars.

High chairs should be stable and the straps should be adequate. Two straps are needed. First, the high chair should have a waist strap. NEVER use the tray as a substitute. Second, the high chair should have a strap that goes between the legs and prevents the child from slipping under the tray. Children should never be allowed to stand in the high chair.

Playpens should ensure that a warning label is present on all mesh playpens, and the sides should remain up at all time. Young infants can get their heads caught in the loose mesh and suffocate. When buying new playpens, purchase one with tight woven mesh with openings smaller than the buttons found on infant clothing – ¼ inch or less. Regularly check the mesh for tears, fraying, loose threads, or if it is coming loose. Churches should not use the playpen or travel crib with rotating hinges in the center of the top rail. Children have died when the hinges were not securely locked in place and the playpen collapsed, trapping the child's neck.

Several other hazards exist with playpens – wooden slats. Wooden slats should be no more than 2 3/8 inches wide. Do not tie anything across the corner, side, or top of a playpen. Do not put large toys, bumper pads, or other items into the playpen that a child will use as a step to climb out of the playpen.

Like the crib mattress, the playpen mattress should fit snugly.

Toy injuries most common are lacerations, contusions, and abrasions to the face and head. Riding toys such as wagons and tricycles account for the largest single group of injuries. Choking on a balloon is the most common cause of death. All toys should be checked periodically for sharp edges, splinters, rusted parts, hinges that can pinch, tears, protrusions, broken glass or plastic, and exposed wires that may be used, for example, in a stuffed toy to give it shape

Toy chests present two main concerns. First, children can be seriously injured if the lid of an open toy chest falls on them. Second, when children climb into a toy chest to hide or sleep – suffocation can occur.

Diaper pails should **NEVER** be where a child can gain access to it.

Electrical outlets should be covered with safety plugs.

Carbon monoxide is more injurious to a child than to an adult. Install a carbon monoxide detector in the church nursery if the church uses gas heat or any other form of fossil fuel. Do not use kerosene heaters.

Pacifiers must never be tied around the neck of a child. Pacifiers should come with a shield that should be too large to fit into a baby's mouth and should have air holes.

Walkers present the number one hazard of all nursery products. When a child uses a walker, he/she must always remain in the visible presence of an adult with special precautions taken. Walkers should only be used in areas with smooth surfaces. Walkers should not be used in a room with hot surfaces that a child can touch. One alternative to a walker is an activity center that is stationary or has limited mobility.

Strollers and carriages should not be used as a substitute for a crib. The hand rest should be able to be closed when the stroller is used in a reclined position as a carriage. The brakes should be secure. Keep children away from a stroller when it is being folded or unfolded and do not allow them to be used as a toy. Do not use pillows or blankets as a mattress in a carriage.

Bassinets and cradles should have snug fitting mattresses without folds or wrinkles. Pillows should never be used in either a bassinet or a cradle. Bassinets and cradles should have a wide base and all bolts and screws should be checked periodically to make sure they are tight and not protruding.

Safety latches and locks should be kept on the bottom drawer of cabinets. Never store medications, cleaning supplies, or any other poisonous materials in reach of a child.

Window blinds should be checked for looped cords. If a blind or drapery uses a continuous looped cord, the cord should have a non-detachable cord tension device that is secured to the wall or floor and that holds the cord tightly in place.

Clothing drawstrings around the neck can get caught on playground equipment and furnishings inside. Instruct parents not to use jackets and hooded sweatshirts that use drawstrings. Rather, use clothing with snaps, Velcro, or zippers.

Rocking chairs and gliders are often used in a church nursery to rock children. A danger exists that a child may put hi/her fingers under a rocker while the chair is in use. Some gliders have open sides and present an amputation risk to children. The gliding mechanism must be enclosed.

Audiovisual carts should not be stored in areas that small children use. Only adults should move an audiovisual cart.

Walk-in freezers, refrigerators, and coolers should not be stored at the church unless the door has been removed. If the door will not come off, disable the latch or secure the door with a chain and lock so that it cannot be opened. Walk-in freezers should be able to be opened from the inside and should contain an alarm to signal for help. Store coolers in safe locations where children cannot gain access.

Poisons such as cleaning solvents, gasoline, kerosene, mineral spirits, furniture polishes, pine oil, paraffin wax, and adhesives can cause serious injuries to children. **NO POISONS SHOULD BE STORED UNDER SINKS, ON COUNTER TOPS OR DISPOSED OF IN TRASHCANS THAT CHILDREN HAVE ACCESS TO.**

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

F. PLAYGROUNDS

The Consumer Product Safety Commission stated over 200,000 children are treated annually in hospital emergency rooms from injuries sustained on playground. The single biggest problem is falling off equipment onto the ground. Approximately one-third of playground injuries are fractures. Other problems include collisions with moving and stationary equipment, and contact with sharp edges, protrusions, pinch points, hot surfaces, and debris left on the ground. Children also become entangled or entrapped in ropes and opening; clothing can catch on slides; and equipment can tip over.

The Consumer Product Safety Commission's Handbook for Public Playground Safety provides safety specifications that are used by communities across the United States. Every church should obtain a copy and use it to evaluate its own playground.

Surface under and around playground equipment: Concrete, asphalt, dirt, and grass surfaces are not recommended for use under and around any playground equipment. All four surfaces have poor shock absorbing qualities. The CPSC recommends two types of surfaces for playgrounds: (1) those that use unitary materials made of some form of rubber or something similar to rubber, and (2) those that use loose-fill materials such as sand, gravel, shredded wood products, and shredded tires. A key factor in evaluating a unitary material is to know its "Critical Height." Critical Height is defined as "the fall height below which a life-threatening head injury would not be expected to occur." To make a proper evaluation, you must also know on what surface the unitary material will be installed. While unitary materials are sometimes installed over a hard surface, loose-fill materials should never be installed over concrete or asphalt.

THE CPSC HANDBOOK GIVES ALL THE REQUIREMENTS FOR PLAYGROUND & EQUIPMENT REGULATIONS- A MUST FOR EVERY CHURCH RISK MANAGEMENT LIBRARY.

The chart below will help show the various depths of surfaces used under playground equipment. When choosing a surface, take into consideration the

heights of all the equipment you plan to install. Remember the idea is to reduce the degree of injury on impact.

Material	<u>Uncompressed Depth of Materials</u>			<u>Compressed Depth</u>
	<u>6 inches</u>	<u>9 inches</u>	<u>12 inches</u>	<u>12 inches</u>
	Critical Height in feet			Critical Height
Wood Chips	7 feet	10 feet	11 feet	10 feet
Double Shredded Bark Mulch	6 feet	10 feet	11 feet	7 feet
Engineered Wood Fibers	6 feet	7 feet	>12 feet	6 feet
Fine Sand	5 feet	5 feet	9 feet	5 feet
Coarse Sand	5 feet	5 feet	6 feet	4 feet

Use zones

Each piece of equipment has its own use zone that includes an area under and around the equipment. The use zone varies for different types of playground equipment. The recommended use zone is a minimum of 6 feet completely around the perimeter of the equipment.

Slides: the use zone is divided into two areas. The first area is directly in front of the slide's exit. The second area is everywhere else around the perimeter of the slide. The second area requires a minimum of 6 feet of protective surface (except for an embankment slide which follows the contour of the ground and at no point is the bottom of the chute – the inclined sliding surface – more that 12 inches above the ground). The use zone in front of the slide's exit should never overlap with any other piece of equipment.

Single-axis swings (to and fro swings): Children like to get a swing in motion and jump off. As a result, the use zone in front and back of the swing, should be twice the distance from the height of the connecting pivot point on the support structure to the protective surface directly below. The use zone in front and behind the swing should not overlap any other use zone. The use zone for the other areas of the swing should be a minimum of 6 feet.

The use zone for tot swings is measured slightly differently. Rather than measuring from the connecting pivot point to the protective surface, measure down only to the lowest point of the swing's seating surface. Then use twice that

height for in front of and behind the swing. The perimeter areas remain the same 6 feet.

Multi-axis swings (e.g., tire swings): To determine the use zone, start by measuring the length of the suspending members. The use zone is the area that extends out in any direction from a point on the protective surface directly below the pivot point for a distance of length plus 6 feet. This zone should not overlap any other use zone.

Merry-go-rounds: The use zone is a minimum of 6 feet away from the perimeter of the platform and should not overlap the use zone of any other equipment.

Spring rockers: The use zone is a minimum of 6 feet away from the “at rest” perimeter of the equipment.

The design and layout of the playground:

Four factors should be taken into account in the design and layout of a playground:

1. **The site:** Attention should be given to hazards or obstacles and to slope and drainage. The maximum number of users for the playground at one time should be based on a calculation of 75 square feet per child.
2. **The location of playground equipment:** One of the first steps is to separate active areas from open and passive areas. A clear line of sight should exist across the playground so supervisors can monitor the entire site.
3. **The separation of equipment based on age:** Playground equipment should be age appropriate based on physical skills, judgment, and abilities. Pre-school age children should have their own area which is clearly separated by some barrier. The CPSC recommends that the following equipment NOT be used for preschool-age children:
 - chain or cable walks
 - free standing arch climbers
 - fulcrum seesaws/teeter totters
 - log rolls
 - long spiral slides
 - overhead rings

parallel bars
swinging gates
track rides
vertical sliding poles

4. **The playground supervision** should receive training on playground safety. Supervisors should inspect the equipment for potential hazards and instruct children on appropriate play.

All equipment should be inspected for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism. The ground should also be inspected for broken glass, anthills, and other debris. A more formal, detailed inspection should also be conducted on a regular basis. Use the following checklists created by Dr. James Cobble to help with the inspection:

Playground area:

- ❖ Check that the playground area is free of holes.
- ❖ Inspect the ground for broken glass, anthills, and other debris that could cause an injury or an accident.
- ❖ Inspect sidewalks and pathways to see they are smooth without sudden, irregular surfaces.
- ❖ Remove all trash from the ground.
- ❖ Cover trash cans.
- ❖ Check that trash cans are emptied on a regular basis.
- ❖ Check that supervisors have a clear, unobstructed view of the playground.

Arch Climbers:

- ❖ Check that the rungs on arch climbers are at least 9 inches apart to avoid an entrapment hazard.
- ❖ Check to see that the equipment is completely secure and stable.
- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the equipment for protrusions or projections.
- ❖ Check equipment for sharp edges, corners, and points.
- ❖ Check wooden pieces of equipment for splinters and rough edges.
- ❖ Inspect the equipment for peeling paint.
- ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.

- ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
- ❖ Check that any steps and rungs are evenly spaced.
- ❖ Check that all rungs are secure and do not turn.
- ❖ Determine that children can easily grasp and hold on to rungs.
- ❖ Check that all footings and anchoring devices are completely below the protective surface.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

Balance Beams:

- ❖ Check that balance beams for preschool-age children are no higher than 12 inches and no more than 16 inches for school children.
- ❖ Check to see that the balance beam is completely secure and stable.
- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the equipment for protrusions or projections.
- ❖ Check equipment for sharp edges, corners, and points.
- ❖ Check wooden pieces of equipment for splinters and rough edges.
- ❖ Inspect the equipment for peeling paint.
- ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.
- ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
- ❖ Look for entrapment hazards – there should be no openings between 3.5 inches to 9 inches in diameter.
- ❖ Check that all footings and anchoring devices are completely below the protective surface.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

Chain, rope, and tire climbers:

- ❖ Check that anchoring devices are installed completely below the ground (the base of the protective surface).
- ❖ Check to see that the equipment is completely secure and stable.
- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the equipment for protrusions and projections.
- ❖ Check equipment for sharp edges, corners, and points.
- ❖ Check wooden pieces of equipment for splinters and rough edges.
- ❖ Inspect the equipment for peeling paint.

- ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.
- ❖ Check nuts, bolts, hooks, rungs, and other connecting devices for tightness.
- ❖ Conduct a detailed inspection of moving parts to see that they are in good condition.
- ❖ Check to see that the moving parts of playground equipment are shielded or enclosed.
- ❖ Look for entrapment hazards – the playground should be free of equipment that has openings between 3.5 inches or 9 inches in diameter.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.
- ❖ Check that all cables, wires, and ropes are highly visible.

Climbing ropes:

- ❖ Check that climbing ropes are secured at both ends and taut enough so that they cannot be looped back on themselves creating a loop of more than 1.5 inches in diameter.
- ❖ Check to see that the equipment is completely secure and stable.
- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the rope and its supports for protrusions or projections.
- ❖ Check for sharp edges, corners, and points.
- ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
- ❖ Check that all footings and anchoring devices are completely below the protective surface.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

Horizontal ladders and overhead rings:

- ❖ Check that the rungs of all overhead ladders that preschool children use are between 9 and 12 inches apart.
- ❖ Check that the rungs of all overhead ladders that school-age children use are between 9 and 15 inches apart.
- ❖ Check that the initial rung is located away from the mounting platform, thus reducing the potential impact if a fall should occur.
- ❖ Check that the maximum height of a horizontal ladder or rings above the protective surface is no more than 60 inches for preschool-age children and 84 inches for school-age children.
- ❖ Check to see that the equipment is completely secure and stable.

- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the equipment for protrusions or projections.
- ❖ Check equipment for sharp edges, corners, and points.
- ❖ Check wooden pieces of equipment for splinters and rough edges.
- ❖ Inspect the equipment for peeling paint.
- ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.
- ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
- ❖ Conduct a detailed inspection of moving parts to see that they are in good condition.
- ❖ Check to see that the moving parts are shielded or enclosed.
- ❖ Look for entrapment hazards – the playground should be free of equipment that has openings between 3.5 inches to 9 inches in diameter.
- ❖ Check that steps and rungs on the equipment are evenly spaced.
- ❖ Check that all rungs secure and do not turn.
- ❖ Determine that children can easily grasp and hold on to rungs.
- ❖ Check that all footings and anchoring devices are completely below the protective surface.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

Merry-go-rounds:

- ❖ Check that the underside of the merry-go-round is at least 9 inches above the protective surface to avoid entrapment.
- ❖ Check that all parts of the merry-go-round are contained within the perimeter of the platform.
- ❖ If an opening should exist between the axis of the merry-go-round and the periphery, check that it is less than 5/16 of an inch.
- ❖ Check that the merry-go-round goes no more than 13 feet per second.
- ❖ Check that the merry-go-round is stable, and does not oscillate up and down.
- ❖ Check that the merry-go-round is located in a corner or along the edge of a playground.
- ❖ Check to see that the equipment is completely secure and stable.
- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the equipment for protrusions or projections.
- ❖ Check equipment for sharp edges, corners, and points.
- ❖ Check wooden pieces of equipment for splinters and rough edges.
- ❖ Inspect the equipment for peeling paint.

- ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.
- ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
- ❖ Conduct a detailed inspection of moving parts to see that they are in good condition.
- ❖ Check to see that the moving parts of playground equipment are shielded or enclosed.
- ❖ Look for entrapment hazards – the playground should be free of equipment that has openings between 3.5 inches or 9 inches in diameter.
- ❖ Check that all footings and anchoring devices are completely below the protective surface.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

Seesaws/teeter totters:

- ❖ Replace fulcrum seesaws with spring-centered seesaws.
- ❖ If fulcrum seesaws are used, prohibit their use by preschool-age children.
- ❖ If fulcrum seesaws are used, check that they have some shock absorbing material, such as part of an old tire, secured on the underside of the seats or embedded in the ground to cushion the impact.
- ❖ Check that the maximum angle for fulcrum seesaws is 25 degrees.
- ❖ Check that the handholds on the seesaw extend no further than to the sides of the seat.
- ❖ Check to see that the equipment is completely secure and stable.
- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the equipment for protrusions or projections.
- ❖ Check equipment for sharp edges, corners, and points.
- ❖ Check wooden pieces of equipment for splinters and rough edges.
- ❖ Inspect the equipment for peeling paint.
- ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.
- ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
- ❖ Conduct a detailed inspection of moving parts to see that they are in good condition.
- ❖ Check to see that the moving parts of the equipment are shielded or enclosed.

- ❖ Look for entrapment hazards – the playground should be free of equipment that has openings between 3.5 inches to 9 inches in diameter.
- ❖ Check that all footings and anchoring devices are completely below the protective surface.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

Slides:

- ❖ Check that all freestanding slides have a platform that is at least 22 inches long and at least as wide as the slide.
- ❖ Check that the slide platform has either a guardrail or a protective barrier, including handholds, at the chute entrance.
- ❖ Check that the platform fits flush against the chute.
- ❖ Check that the slope on all slides is less than 50 degrees.
- ❖ Check that the sides of the slide along the chute have a minimum height of 4 inches.
- ❖ Check that the final 11 inches of the chute leading to the exit are flat and parallel to the ground.
- ❖ If a slide is no more than 4 feet high, check that the exit is no more than 11 inches above the protective surface.
- ❖ If the slide is over 4 feet high, check that the exit is at least 7 inches but no more than 15 inches above the protective surface.
- ❖ Check that embankment slides, which follow the contour of the ground, are no more than 12 inches off the ground.
- ❖ Check that the edge of the slide exit is rounded or curved.
- ❖ Check that slides are located in shaded areas.
- ❖ If the slide spirals in circles, prohibit small children from using spiral slides that have more than one 360-degree turn.
- ❖ Check to see that the slides are completely secure and stable.
- ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
- ❖ Inspect the slides for protrusions or projections.
- ❖ Check slides for sharp edges, corners, and points.
- ❖ Check wooden pieces of equipment for splinters and rough edges.
- ❖ Inspect the equipment for peeling paint.
- ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.
- ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
- ❖ Look for entrapment hazards – the playground should be free of slides that have openings between 3.5 inches to 9 inches in diameter.
- ❖ Check that steps and rungs on slides are evenly spaced.

- ❖ Check that the space between rungs is less than 3.5 inches or more than 9 inches.
- ❖ Check that all rungs secure and do not turn.
- ❖ Determine that children can easily grasp and hold on to rungs.
- ❖ Check that all footings and anchoring devices are completely below the protective surface.
- ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

Swings:

- ❖ Check that swing hangers are spaced at least 20 inches apart.
- ❖ Check that swing supports are secured in concrete footings that are below the base of the protective surface.
- ❖ Check that swings are located away from other playground equipment to reduce the risk that a child will run in front of a moving swing.
- ❖ Check that a safety zone exists around the perimeter of the swing that does not overlap the use zone of any adjacent piece of playground equipment.
- ❖ Check that swing seats hold only one person at a time.
- ❖ Check that swing seats are made of a soft, lightweight, flexible material such as rubber or plastic.
- ❖ Check that the edge of the swing seat is rounded or smooth.
- ❖ Check that the seat is located at least 1 foot above the protective surface for preschool-age children and at least 16 inches for school-age children.
- ❖ Check that tot swings, which are especially designed for children under four years of age, are at least 2 feet above the protective surface to reduce the risk that an unsupervised child will become stuck in one.
- ❖ Check that tot swings provide full support around the child.
- ❖ Check the openings in tot swings to see that they do not present an entrapment hazard.
- ❖ Check that tire swings (or multi-axis swings) use three suspension cables connected to a swivel mechanism.
- ❖ Check that tire swings stand apart from other playground equipment.
- ❖ Check that tire swings are not large heavy tires, such as from semi-trucks.
- ❖ If steel belted radial tires are used, check that the steel belts are not exposed.
- ❖ Check that drainage holes have been made on the underside of the tire.
- ❖ Prohibit the use of the following swings:
 - a. Animal figure swings that have a rigid metal framework and pose a risk of impact injuries;

- b. Multiple occupancy swings that are intended for more than one user;
 - c. Free swinging ropes which present a strangulation risk;
 - d. Swinging exercise rings and trapeze bars on long chains which are considered athletic equipment rather than playground equipment.
- ❖ Check to see that the swing support structures are completely secure and stable.
 - ❖ Check for potential hazards that can be caused by corrosion, rot, insects, weathering, wear and tear, or vandalism.
 - ❖ Inspect the swing sets for protrusions or projections
 - ❖ Check swing sets for sharp edges, corners, and points.
 - ❖ Check wooden pieces of equipment for splinters and rough edges.
 - ❖ Inspect the equipment for peeling paint.
 - ❖ Inspect all caps and plugs that cover the exposed end of tubing to see if they are on secure enough so they can only be removed with a tool.
 - ❖ Check nuts, bolts, hooks, rungs and other connecting devices for tightness.
 - ❖ Look for entrapment hazards – the playground should be free of equipment that has openings between 3.5 inches to 9 inches in diameter.
 - ❖ Check that all footings and anchoring devices are completely below the protective surface.
 - ❖ Check that retaining walls or forms used to contain loose-fill protective surfaces are highly visible.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

G. Recreational activities:

Fellowship and recreation play an important role in the life of every church. Sharing together, interacting, and having fun contribute to nurturing and sustaining community. Thus, a growing number of churches plan recreational activities for every age group from preschoolers to senior citizens. Some general guidelines exist that can reduce accidents associated with recreational programs. For example, risks can be significantly reduced by promoting the use of proper gear and equipment; by routinely inspecting equipment, facilities and grounds; by using an adequate number of trained supervisors; and by understanding the risks associated with each activity and taking the proper steps to reduce them.

Water safety: Reducing risks associated with swimming are critical because of the risk of drowning or severe brain damage. Slippery surfaces also contribute to slips and falls.

Swimming guidelines: Have a signed parental permission slip that authorizes minor to participate in swimming activities. Test each child for his/her swimming ability. Only experienced swimmers should be permitted in the deep end.

Pools: A pool and other water hazards should be enclosed by a fence, a wall, or some other barrier. The barrier should be at least 5 feet high with the bottom no more than 3-1/2 inches off the ground. A child should not be able to slip through the slats.

Pool drains: No person should ever sit on a pool or spa drain due to the risk of disembowelment. Drains should be equipped with a dome shaped cover. Drains create powerful suction.

Boating, water skiing, and swimming: Always make sure that an adequate number of life vests are on the boat, including a throw line and a life preserver. Never dive off a boat into shallow water, or into any location where hazards may exist such as rocks or trees below the surface. If water skiing or tubing is taking place, the boat needs both a driver and a spotter. Provide safety instructions before departing the dock.

Adults must closely supervise water and swimming activities. One adult should be designated to be the “watcher.” Youth leaders should learn CPR. Emergency equipment, including a telephone, should be available by the pool. Supervisors should know how to shut off the pump in an emergency.

Baseball and softball: Three preventative measures can greatly reduce the number of injuries associated with baseball and softball. They include using helmets with a face guard, substituting softer baseballs and softballs for the standard ones, and using modified safety bases.

Soccer: Soccer continues to increase in popularity. The major hazard is the moveable goals that tip over or the “homemade” goals. Few accidents occur during soccer games. Rather, the accidents tend to happen during times when children are playing on their own and climbing on goals or improper use of goals. It is important to store moveable soccer goals properly when they are not in use. Teach children the dangers associated with the goals and keep them anchored properly as well as stored properly. Use the following checklist by Dr. James Cobble to inspect soccer fields and equipment:

- ❖ Check that all hazards or obstacles have been removed from the field.
- ❖ Check that the play area is free of holes.
- ❖ Check that soccer goals are properly secured so they will not tip over if children climb on them.
- ❖ Check that soccer goals are properly stored using one of the following methods when not in use:
 - a. Locked to a fence;
 - b. Stored in a building
 - c. Locked face-to-face to another goal;
 - d. Disassembled and stored;
 - e. Locked face down to the ground.
- ❖ Remove the net when storing the goals for any extended time.
- ❖ Install warning labels on each crossbar that climbing or hanging is prohibited.
- ❖ Check that the goals are located on a flat, level field.
- ❖ If you use movable goals, check that they have been professionally designed and constructed.
- ❖ Check that the goals have been anchored according to the manufacturer's instructions.
- ❖ Use only trained adults to move the goals. Children should not be permitted to move goals. Serious injuries can occur if a goal tips and falls on a child.

Bicycling: Bike injuries rank second among all injuries associated with recreational activities. Some of the main problems include:

- ❖ not stopping at a stop sign or traffic signal;
- ❖ turning left into oncoming traffic;
- ❖ swerving into traffic that is approaching the rider from behind;
- ❖ riding against the flow of traffic.

Churches that sponsor bicycle trips or use bicycles as part of any activity should require all participants to wear a helmet that meets CPSC standards. Other safety considerations include:

- ❖ **fluorescent and brightly colored clothing;**
- ❖ **all bikes should have a reflector; bikes used at night should have a headlight and a taillight;**
- ❖ **have riders check to see that nuts and bolts are tight;**
- ❖ **inspect tires and brakes;**
- ❖ **ride with the traffic, not against traffic;**
- ❖ **stay in a single file to the far right of the road;**
- ❖ **obey the same laws for motorized vehicles;**
- ❖ **never assume a driver of a car sees you;**
- ❖ **warn pedestrians before you pass them;**
- ❖ **be especially careful when descending hills;**
- ❖ **when stopping for a break, move to a safe location;**
- ❖ **keep bikes locked when not in use.**

Skiing, sledding and snowboarding: Adult supervisors who lead church youth groups on ski trips should wear helmets. Skiers should also be encouraged to wear wristbands. Wrist injuries often occur. Sledding also requires careful supervision.

Basketball: Secure padded mats on the wall under each basket to cushion collisions with the wall. Use breakaway rims. A rim restrainer should also be used with glass backboards, which keeps the rim attached to the backboard if the glass does shatter. If the church has any hoops with chain nets they should be replaced with a soft net. For outdoor courts, the pole support for the backboard should be located outside the playing area, including distance for a safety buffer. This can be accomplished by using either a gooseneck support or a double-poled backstop. Weatherproof padding should also be put around the pole.

When dividing up teams, try to maintain a balance between skill and size. Have children remove any jewelry such as rings, bracelets, or watches that could cut. Participants should wear shoes designed for basketball. Protective eye gear and mouth guards are recommended for organized basketball. Always keep the court and area surrounding the court free from broken glass and other dangerous objects.

Football: Flag football and touch football are popular events at church youth activities and picnics. A game should not be played unless a clear playing area exists. The playing area should be inspected, clearly marked and should include a buffer zone. Teams should be divided to reflect equal skills and physical size. All players should understand the rules of the game including what is acceptable and unacceptable behavior. The participants should warm up before play begins and remove jewelry. The game should be supervised.

Golf: When churches sponsor a golf outing, it should not be assumed that each player knows the basic rules of safe play. One way to communicate safety rules is to ask each player to read and sign a safety card or risk form. This is standard practice in many golf clubs and school programs. Common instructions include:

- ❖ stay alert and clear of someone preparing to hit a ball;
- ❖ do not swing a club unless a clear safety zone exists;
- ❖ if other golfers are playing ahead of you, do not hit until they are out of your range;
- ❖ do not retrieve balls or tees while hitting from the practice range.

If a thunderstorm occurs, leave the course. In addition, remind inexperienced players to use a golf glove and carry some band-aids for blisters.

Volleyball: Volleyball represents a very low risk of serious injury, and from a risk standpoint is a good choice for a church recreational activity. The most common injuries are sprains and muscle strains. Check for hazards before playing such as holes, sprinklers, tree roots and other items that could cause someone to trip or twist an ankle. Higher quality equipment designed for indoor use requires special attention. A clear space of at least 6 ½ feet should exist around the court. Jewelry should be removed before play and knee pads can reduce bruises and cushion falls to the ground.

Aerobic classes and exercise programs: One reason that people participate in these programs is to lower health risks. Regular exercise plays an important role in developing and maintaining a health life style. It is important to know if a person is a diabetic, has asthma or cardiac problems, or experiences hypertension. Pre-existing conditions affect the entire exercise strategy.

Churches that sponsor such activities should do so only under the supervision of certified individuals. Not only are professional, certified leaders needed, the facilities must be properly equipped with safe equipment that is routinely inspected and properly stored. Attention must be given to layout, maintenance, lighting, ventilation,

Skating: Inexperienced skaters and small children need close supervision to prevent falls and head injuries. Helmets provide the best head protection. For outdoor skating, use public rinks or areas that are certified as safe. Ice should be at least 4 inches thick.

Games: Games are the second most frequent cause of litigation. Use a play area that is inspected for hazards and that always has a buffer zone around its perimeter. Do not use areas that are next to roads unless they have adequate barriers. Do not include tree climbing as a part of any game. Provide clear instructions about the rules for playing the game. Explain any safety concerns that are present. If necessary, have participants remove potential hazards such as jewelry.

Adults should supervise and not play. Supervisors should be able to see all the participants all the time. Balance the teams with respect to size and skill and make sure the activity is appropriate for the age and skill. Correct inappropriate behavior immediately.

Use a whistle to gain immediate attention and use time-outs to control the level of play. Do not force children to play who are uncomfortable with the activity. Be prepared to respond to an emergency. Use the following checklist prepared by Dr. James Cobble for the inspection of playing areas and equipment:

- ❖ If the play area is located near a street, check that it has been enclosed by a fence or some other barrier to prevent participants from running into traffic.
- ❖ Check that all hazards or obstacles have been removed from the site.
- ❖ Check that the play area is free of holes.
- ❖ Check that sidewalks and pathways around the play area are smooth without sudden, irregular surfaces.

Carnivals: Many churches sponsor a carnival in the Spring or Fall. The risk management issues would include slips and falls. Clean up any spills immediately. Keep a mop handy. Have plenty of garbage cans available and keep debris picked up off the ground. Have a fire extinguisher available for outdoor booths. If horses are used, all riders should wear riding helmets. Parents or organizers should hold on to small children and walk beside them during the ride. Get a certificate of insurance form each outside vendor. The church should also monitor the rides and require that the owner of the ride exercise reasonable care in the operation of the ride.

Hayrides: Major concerns include falling off the wagon and sustaining injuries directly from the fall or being run over by the wagon or a vehicle that is following the wagon. Accidents also occur that crush participants who are setting on the sides or back of the wagon with their legs hanging over the side. Many risk management experts do not recommend hayrides. If the church sponsors a hayride the following points should be considered:

- ❖ Equipment: should be in good repair. The wagon should be clean and equipped with side-walls. Loose hay should not be used. Two wagons should not be hitched together.
- ❖ Driver: should be fully trained and experienced in driving the tractor. The driver should have a checklist of all safety precautions.
- ❖ Route: The route should be selected in advance and fully inspected for hazards. The driver should practice driving the route. Avoid use of busy roads.
- ❖ Seating: No rider should be seated on the sides, back, or front of the wagon. Riders should remain seated inside the wagon at all times.
- ❖ Trailing car: A car can follow the wagon at a safe distance with the headlights on the wagon. The car should have on its hazard lights.

- ❖ Lighting and visibility: Lighting is a critical safety factor for hayrides that occur at night. The tractor pulling the wagon should have the headlights on, the warning hazard lights on, and lights on the back that illuminate the wagon.
- ❖ Supervision: An adequate number of supervisors should be present on the wagon. Riders should be given clear safety instructions prior to the hayride.
- ❖ Speed: The speed should be kept low.
- ❖ Communication: The driver, a supervisor on the wagon, and the driver of the car following the wagon should use walkie-talkies to stay in communication with one another. A cell phone should be available in case of an emergency.
- ❖ Emergency procedures: A first aid kit should be present.

Camping trips: Camping trips pose a diverse range of risks. One risk is carbon monoxide poisoning that can occur through the use of grills, portable heaters, lanterns, or stoves that use fossil fuels. As a general rule do not use portable heaters while sleeping inside of tents or campers, or inside of a vehicle. Flu symptoms such as headaches, nausea, dizziness, or fatigue are signs of CO poisoning. Rock climbing should not be permitted. Keep food properly stored away from tents and sleeping areas. Have hikers stay on trails and make sure campers can identify poisonous plants. Never permit campers to wander off by themselves. Use insect repellents and avoid brush piles that may harbor snakes. Instruct campers to avoid contact with any wild animal.

Fireworks: While discouraged by insurance companies, some churches sponsor fireworks displays. Make it clear that no individuals are permitted to bring their own fireworks. The improper use of fireworks can result in death, amputations, and blindness. Children should never be allowed to use fireworks. Notify the fire department of your plans and take the necessary safety precautions to respond if a fire should occur. If possible, use the expertise of the fire department to supervise the display.

Recreation for older adults: The top five activities in which injuries occur include bicycling, exercising, golf, snow skiing, and fishing. Most injuries are due to falls, tripping, and strains. Church programs should adapt activities to the development capabilities of this age group. Older adults should not engage in physical activities without first consulting with their physician. Then each activity should conform to the appropriate safety gear, warm-up activities, and occasional breaks to rest can help reduce accidents.

Hazardous activities to avoid: These activities include:

- ❖ rock climbing,
- ❖ sky diving,
- ❖ hang gliding,
- ❖ rodeo activities,
- ❖ the use of trampolines, and
- ❖ the use of all-terrain vehicles.

Never use a car or other motorized vehicle to pull a child on a sled or inner tubes across snow or ice. Do not sponsor scavenger hunts where cars must be used to go from one location to another.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

H. Transportation:

An effective risk management strategy should address **four issues** with respect to church vehicles:

- 1. The selection and approved use of vehicles.** The selection often boils down to what is available. Often volunteers are recruited who use their own vehicles. Other times rental cars or vans are used to meet temporary demands.

Church leaders need to understand that they have an obligation to use reasonable care in the selection and approval of any vehicle that is used for one of their programs. If drivers are recruited to use their own cars for a church activity, the church assumes certain risks. If a car is unsafe it should not be used. If it is used and an accident occurs and passengers are injured, the church may be found liable of negligence. If the church does not own the vehicle, a certificate of insurance or a copy of an insurance card should be obtained from the owner. Always check with the insurance agent before renting or using any vehicle that the church does not own to determine what additional insurance coverage may be need. A first aid kit should be kept on ALL vehicles.

- 2. The maintenance of vehicles.** All church owned vehicles should have regular cleaning and maintenance. The maintenance records should be retained. They may be needed if an accident should occur and the church is charged with negligent maintenance.

- ❖ Vehicles should be locked when not in use with all the windows up.

- ❖ Park vehicles in areas that have plenty of light
- ❖ Do not leave any valuable items in the vehicle.
- ❖ Keep a copy of the vehicle's Vehicle Identification Number at the church. That number will be reported if a vehicle is stolen.

3. The inspection of vehicles...church owned or used.

First, churches should comply with all applicable laws regarding vehicle licenses and inspections. Vehicles should always display up-to-date license plates and inspection certificates.

Second, a professional, mechanical inspection should be a routine maintenance schedule.

Third, drivers should regularly monitor the vehicle's fluid levels (oil, coolant, washer, brake fluid), tire pressure and wear, headlights, taillights, turn signals, dashboard gauges or warning lights, mirrors, and seat belt use to see that they are in good working order.

It's a good idea to maintain a vehicle log that is filled in each trip. The log should indicate date, driver, purpose of trip, and any problems that occur with the vehicle. A repair form should be completed and turned into the office if a problem is noted. Corrective actions should be taken when the need arises. A written inspection checklist should be used prior to any trip out-of-town. Use the following checklist prepared by Dr. James Cobble as an example:

- ❖ Check that all vehicles have:
 - a. Current license plates;
 - b. An inspection certificate (if required by law);
 - c. Adequate fluid levels;
 - d. Proper tire pressure and wear;
 - e. Working headlights;
 - f. Working taillights;
 - g. Working turn signals;
 - h. Working dashboard gauges and warning lights;
 - i. Mirrors;
 - j. Seat belts;
 - k. A spare tire is in good repair
 - l. A jack and tools to change a flat tire;
 - m. No signs of other obvious hazards.
- ❖ Check that all vehicles begin the trip with a full tank of gas.
- ❖ Check that the following emergency items are available on the vehicle:
 - a. Roadside warning signs and red distress flags;
 - b. Flares;
 - c. Flashlight with fully charged batteries;

- d. Emergency phone numbers;
 - e. The standard tools and equipment need to change a flat tire;
 - f. Booster cables;
 - g. First aid kit;
 - h. An operational manual for the vehicle.
- ❖ Check that vehicles have first aid kits that include:
 - a. Bandages;
 - b. Gauze;
 - c. Cold packs;
 - d. Tape;
 - e. Protective gloves;
 - f. Antibacterial crème.
 - ❖ In addition to the above emergency items, check that you have the following items if the trip is in cold weather:
 - a. Blankets;
 - b. Shovel;
 - c. Windshield scraper and brush;
 - d. Water proof matches;
 - e. Bag of sand;
 - f. Portable radio;
 - g. Emergency rations.

The safety of NON-OWNED vehicles is just as important as the safety of church owned. Minimally, leaders should only permit the use of vehicles that have current license plates and inspection certificate (if required by law). The driver should read and sign a form that indicates the vehicle meets the minimum requirements for church use. Vehicles that are rented or borrowed should be inspected in the same fashion as owned vehicles prior to use.

- 4. Responding to problems** ...drivers should know whom to contact if problems occur and should have access to a cell phone while driving for church events.

DRIVERS: An effective transportation strategy should address the selection and screening of drivers as well as driver training.

Selection and screening ... Key point.

Drivers who transport children must also be screened to reduce the risk of child sexual molestation.

Leaders should only use qualified drivers who are properly insured, and who have safe driving records. For purposes of screening, drivers can be classified into two groups. The first group consists of individuals who drive church vehicles, or who drive their own vehicle for the church on a frequent basis. The second group includes individuals who drive their own vehicle for the church infrequently. Both groups represent the church and the church potentially can be held liable for the actions of both groups while driving on their behalf. For this reason, reasonable care must be exercised in the selection and screening of drivers for both groups.

A starting point in the screening process is to establish threshold standards that all drivers must meet.

- ❖ Valid driver's license
- ❖ Proper license classification corresponding with the vehicle used. (i.e., J-02 for 15 passenger in Illinois)
- ❖ Proper insurance
- ❖ Good driving records

A screening form should be consistent and drivers in both regular and occasional category should complete a screening form (obtain a copy and review the form the public school district uses). Most screening forms include:

- a. collect background information (name, address, driver's license number and status, and insurance company);
- b. ask specific questions concerning driving history (number and type of tickets, accidents, suspensions, revocations);
- c. state organizational policies and procedures for drivers; and
- d. provide a place for the driver to sign indicating that he/she has truthfully completed the form, has current auto insurance, and agrees to abide by the organization's policies and procedures.

In general, leaders should avoid using young and inexperienced drivers.

The two most common arguments against screening drivers are as follows: (1) screening is offensive and will repel potential volunteers; and (2) screening is too burdensome.

Four key factors affect the viability of a screening program:

- 1. Support of leadership.** Gaining the support of leaders is necessary to initiate a program and to sustain it. Potential liability – personally

and corporately. Key steps in gaining the support of leadership include developing a rationale for the program.

- a. Develop a rationale for the program.
 - ❖ Providing safety arises out of Biblical concepts
 - ❖ It is a legal obligation
 - ❖ Screening is a standard practice
 - ❖ Failure to provide reasonable care can result in potential charges of negligence and penalties can be substantial
 - ❖ Parents want the best for their children.
- b. Reduce fears that leaders may have about screening.
- c. Build support among opinion leaders.
- d. Involve leaders and congregational members in establishing procedures and policies.

2. Establishing a workable screening process. Create a proper structure for the screening process.

- a. The actual screening form. A form should only collect information that is useful and necessary. An attorney should review any form that your church uses to make sure that it takes into account local and state issues. Also, consult with your insurance company before you begin to use the form to make sure it is consistent with your insurance coverage.
- b. The manner the form is distributed and collected. To endure over time, a screening program must become part of the church culture. For that to occur, it must be firmly interwoven into the values and commitments of the people – not just a few leaders.
- c. Maintaining confidentiality. It is the duty of the church to protect information collected and use it only for its intended purpose. All screening forms should contain a warning against sharing confidential information. All individuals who have access to the forms should understand that the information is strictly confidential. The forms themselves should be kept in a locked container.

3. Education and training. Attention should be given to educating new members and visitors, and in providing ongoing training at all levels within the congregation.

- a. Educating new members and visitors. Prepare a brochure that explains the church's transportation policy.
- b. Ongoing training keeps congregation members informed concerning the program's, policies and procedures.

4. Accountability. For screening to be effective, accountability must exist. Having a pool of screened drivers is part of the solution. All drivers should update their form on an annual basis. Driver recruitment is an ongoing process.

All churches (no matter the size) should incorporate a screening policy for drivers of children. Following is an example of the policy and procedure that Peoples Church of God has had in place:

PEOPLES CHURCH OF GOD
CHILD ABUSE POLICY
2/2000

Peoples Church of God is an organization dedicated to making a difference in the lives of individuals. Our purpose is to share the good news of Jesus, nurture, and meet the needs of others through love.

Child abuse is a fact in our society and a matter of critical national concern. It is of special concern to Peoples Church of God because we provide volunteer services and ministries to children. **Child abuse is damage to child for which there is no “reasonable” explanation. It includes non-accidental physical injury, neglect, sexual molestation and emotional abuse.**

Peoples Church of God has policies to deal with the issues of child abuse in an attempt to insure that there is no such abuse in any of its ministries. The program involves: a selection process of staff and volunteers, information on child abuse issues, the establishment of policies that make it difficult for child abuse to occur within its ministries, and the encouragement of prompt reporting of inappropriate conduct to the pastoral staff.

PEOPLES CHURCH OF GOD

VOLUNTEER AND STAFF CONDUCT POLICY

It is the policy of Peoples Church of God, that no volunteer or staff member engage in any inappropriate conduct or have any inappropriate contact inside or outside church activities with any child (0-18 years of age) met through Peoples Church of God.

The following, which are not to be considered an exhaustive list, are examples of inappropriate conduct or contact which must be avoided:

- ❖ Any violation of Illinois laws, particularly those laws prohibiting child abuse or contributing to the delinquency of a minor.
- ❖ Objectionable language or gestures, including profanity, off-colored jokes, sexually suggestive language or gestures, and language or gestures that demean any person, group or class of the persons on the basis of sex, race, nationality, religion, personal ability or circumstances.
- ❖ Any physical contact with a student other than a handshake, congratulatory pat on the back, a hug, or similar non-familiar, non-sexual and non-harmful contact strictly appropriate to a teacher pupil professional relationship considering the age and sex of the child.
- ❖ Dress that is not consistent with the norm of church attire.

This policy is to be conveyed verbally and in writing by responsible leaders of each children's ministry to all staff members and volunteers. This policy is to be signed by all volunteers and Peoples Church of God staff members prior to their first day of ministry.

Allegations of violation of this policy will result in immediate investigation of the incident by a pastoral member. If an investigation determines a violation of this policy occurred, it can result in the immediate and permanent dismissal of the volunteer and termination of employment of a staff member and referral to proper authorities.

ACKNOWLEDGEMENT: I have received a copy of the Volunteer and Staff Conduct Policy and have read, understand, and will abide by this policy.

DATE: _____ Signature _____

SS# OR DRIVERS LICENSE# _____

PRINT NAME: _____

DATE: _____ WITNESS: _____

**PEOPLES CHURCH OF GOD
CONFIDENTIAL VOLUNTEER APPLICATION**

NAME: _____
 LAST FIRST MIDDLE MAIDEN ANY PREVIOUS LAST NAME

HOME ADDRESS: _____
 NUMBER STREET APT CITY STATE ZIP COUNTY

PRIOR HOME ADDRESS: _____
 NUMBER STREET APT CITY STATE ZIP COUNTY

HOME PHONE: _____

IF YOU HAVE LIVED AT MORE THAN 2 ADDRESSES IN THE LAST 5 YEARS, PLEASE LIST ADDITIONAL ADDRESSES ON AN ADDITIONAL PIECE OF PAPER.

DATE OF BIRTH: _____

Describe your occupation: _____

What ministry are you interested in volunteering for: _____

Please list and describe the ministries in which you are currently involved: _____

Are you a Christian? _____ Are you sanctified by the Holy Spirit? _____

Do you attend PEOPLES CHURCH OF GOD's services on a regular basis (an average of three services a month)? ___ Yes ___ No

Which services do you attend: Sunday School ___ Sunday Morning Service ___ Sunday Night Service ___ Wednesday Night Service ___

List your top three spiritual gifts (if you know them): 1. _____

2. _____ 3. _____

Have you received and read a written ministry description? ___ Yes ___ No

If so, are you able to perform each of the essential functions listed? ___ Yes ___ No

Have you ever been convicted of, pled guilty to, or pled no contest to a crime other than a minor traffic violation? Yes No

If yes, please explain fully on an additional sheet.

Are you now under charges for any criminal offense? Yes No

(If yes, explain fully on an additional sheet.)

A criminal conviction will not necessarily disqualify you from consideration.

Do you have, or have you ever been concerned that you may have any past life experiences that predisposed you to have a sexual preference that is oriented to children minors? Yes No

Have you ever been accused, charged, or alleged to have committed any act of neglecting, abusing, or molesting any child? Yes No

Were you a victim of abuse or molestation as a minor? Yes No

If yes, was the answer to any of the above questions, would you be willing to discuss this matter with a staff member? Yes No

List two personal references within our church (other than relatives)

Authorization of Background Investigation:

The information contained in this application is true and complete to the best of my knowledge. I authorize any references in this application to give you any information (including opinions) that they may have regarding my character and fitness for working in Children's Ministries. I am aware that a criminal history record check may be made on any volunteers in the Children's Ministries.

I hereby authorize the Illinois State Police, the Decatur Police Department, the Macon County Sheriff's Department and any other applicable law enforcement agency to search their records for and release any and all contacts including any and all criminal history past and present which they may have regarding me. This information shall be released to be used for consideration in determining if I qualify for volunteer work in the Children's Ministry of Peoples Church of God of Decatur, IL. I voluntarily release the Illinois State Police, the Decatur Police Department, the Macon County Sheriff's Department and any other applicable law enforcement agency and Peoples Church of God of Decatur, IL and each of its officers, agents and employees from any and all liability or damages arising from the release and findings of any and all information.

Signature _____

Date _____

Note: This application, inquiry and information pertinent to it is confidential. It will be kept in a separate file and will only be accessed by the Pastoral Staff.

DRIVER TRAINING begins when a driver has been selected. The primary focus of the training should be on three areas:

1. **Vehicle operation.** Those who drive the church vehicle should receive an orientation on
 - a. How to operate all controls (ignition, lights, etc.).
 - b. How to interpret all dashboard instrumentation
 - c. How to adjust mirrors
 - d. How to back up safely
 - e. How to make a right turn if driving a bus
 - f. How to fill the vehicle with gas
 - g. How to open the hood and trunk
 - h. How to check engine fluid levels
 - i. How to change a fuse
 - j. How to change a flat tire
 - k. How to lock and unlock the vehicle
 - l. Any other routine maintenance issues

An operational manual should be kept in the vehicle.

2. **Policies and procedures.** Individuals should receive a complete review of all driving policies and procedures before they begin to drive. They should be in writing. The policies should clarify who can drive and under what conditions. Attention should be given to the use of alcohol and drugs, including prescription drugs and over the counter drugs. No driver should be impaired in any way, including using medication that could make the driver sleepy. Procedures should clarify how to drive, including the use of driving checklists, and how to respond to a variety of specific situations including bad weather, an accident, an emergency, a mechanical problem or flat tire, getting lost, or running out of gas.

3. **Occupant safety.**

Seat belts should include both lap belt and a shoulder strap. The lap belt should be worn low across the hips and not across the abdomen. The shoulder strap should cross the collar bone and go over the breastbone. There should be no excess slack in the seat belt.

There should be as little slack as possible in the belt. Children should not wear a shoulder strap behind their back, or sit on the edge of the seat.

Air bags are important and have been proven to save lives, however, it is important for children age 12 and under always to ride, properly restrained, in the back seat. Under no circumstances should an infant ever be placed in the front seat in a rear facing safety seat. Occasions arise when a child under 12 must sit in the front seat. In those situations, secure the child in an age appropriate restraint based on their size and weight.

Adults need to take care when riding in vehicles equipped with air bags. The front seats should be moved back as far as practical to reduce the impact of the air bag if it should deploy. This is particularly important for smaller adults. Serious injuries can occur if an adult is within 2-3 inches of a deploying air bag. If a vehicle has a tilt steering wheel, it is best to tilt it down so it will deploy toward the chest and not toward the head.

Finally, if a church sells any vehicles that have had air bags turned off, it is imperative that the buyer knows that information. It should be provided on the bill of sale.

Transporting infants and toddlers must consider what is safe.

- a. Proper use of child safety seats requires the safety seat to be anchored in three locations, two lower anchors and one upper anchor. The new standard requires that 100 percent of all cars and light trucks manufactured after 9/1/2000 have upper anchor tether installed. The final phase-in for the lower anchor tethers occurs two years later. All safety seats manufactured after 9/1/99 must comply with the new standard for the upper tether attachment. Full compliance for all three anchors must occur by 9/1/2002.
- b. Once the child outgrows the safety seat, the child should use a booster seat. Booster seats should be used when the child is about 40 lbs. And should continue to be used until the seat/lap belt fits properly, generally when the child is between 60-80 lbs. Children should never wear a shoulder belt behind their back or under their arms.

- c. Seating arrangements should always have infants in the back seat in a rear-facing restraint. The safety seat should be positioned so the infant reclines at a 45 degree angle to keep the baby's head from dropping forward. Children should not ride in the front seat until they are age 13.

Temperature and safety. Church vehicles that are used to transport children should be equipped with air conditioning. The National Health and Safety Standards for child care programs indicate that vehicles should be air conditioned when the outside temperature exceeds 75 degrees F. They should be heated when the outside temperature falls below 50 degrees F.

Selecting Routes. Selecting a safe route is fundamental to transportation safety. All routes should be planned in advance of a trip. Safety should be a higher priority than time. In selecting a route, attention should be given to:

- ❖ road conditions,
- ❖ traffic congestion,
- ❖ one-way streets,
- ❖ hills and curves,
- ❖ sunlight,
- ❖ high crash locations,
- ❖ road construction and detours,
- ❖ railroad crossings,
- ❖ wildlife,
- ❖ trees and shrubs that block visibility,
- ❖ weather conditions,
- ❖ pedestrians,
- ❖ traffic patterns,
- ❖ parking area,
- ❖ loading and unloading area,
- ❖ fueling,
- ❖ rest stops,
- ❖ food stops,
- ❖ low clearances,
- ❖ weight limits,
- ❖ help if a break down occurs, and
- ❖ tolls.

Managing children should follow three basic rules:

1. stay seated while the vehicle is moving;

2. face forward and keep arms and head inside the vehicle;
3. talk in a quiet voice so the driver is not distracted.

Stop the vehicle and park it off the road in a safe location until control is maintained. Don't argue, threaten unless you plan to follow through, or discipline the whole group – focus on the ringleader. Never ask a child to get off the bus except at his/her appropriate stop. Follow church policy on preparing a discipline report and maintain records of each incident.

Use the following checklists with your drivers:

Church Vehicle Driver's Safety Checklist

Driver's Name: _____
Date: _____ Number of Passengers: _____
Trip Destination: _____
Mileage Start: _____ Mileage End: _____

Prior to starting the trip

Walk around the vehicle and inspect its overall condition.
Check condition of tires and if they are properly inflated.
Look under the vehicle for fluid leaks.
Look behind the vehicle for any obstructions.
Look under the hood for loose wires or hoses.
Check levels of washer fluid, oil, transmission and power steering fluid
Start the vehicle. Have someone stand outside and test the lights, directional lights and brake lights. Look for broken lights.
Test the brakes and the parking brakes.
Test the horn, wipers, fans and defroster.
Make sure you have unobstructed views of all windows and mirrors.
Test emergency door, buzzer and lights.
Check that all seats have seat belts that are in good condition.
Do not exceed maximum passenger limit for the vehicle.
Vehicle should be maintained regularly and a maintenance schedule should be recorded. Any problems discovered should be recorded and submitted to the church office.

Driving tips

Require all passengers to remain seated at all times
Monitor all gauges regularly and listen for noises.
Be aware of changing driving conditions.
If on a longer trip, make regular rest stops. Have two qualified drivers.
Travel with a cellular phone and a list of emergency phone numbers
Obey posted speed limits & use defensive driving skills.

In case of an accident

Remain calm
Assess condition of passengers.
Keep all injured persons comfortable, but do not move them.
Administer first aid only if you have had proper training.
Call for an ambulance, the police or fire department.
Write down names and telephone numbers of any witnesses.
Cooperate with police and fire department investigators.

Notify the insurance company

Notify family, especially if transporting children.

Emergency telephone numbers (in addition to 911)

Your church: _____ () _____

Your camp: _____ () _____

Your pastor: _____ () _____

Emergency contacts*: _____ () _____

_____ () _____

_____ () _____

State police or highway patrol: _____ () _____

State weather and/or highway information: _____

_____ () _____

_____ () _____

*note: Emergency contacts should be listed for every passenger, especially children.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble and from Risk Management Booklets and Forms by Church Mutual Insurance Company.)

I. Accidents:

Accidents requiring medical attention are common in churches and the rate increases significantly with church size. Slips and falls are the number one cause of injuries and lawsuits.

Slips and falls – the most common problem areas include the following:

- ❖ Playgrounds – maintain adequate protective surfaces and have appropriate safety zone for all equipment.
- ❖ Ice, snow, and rain – keep walkways and handrails clear. Post warning signs in hazardous areas. Keep adequate salt and sand on hand during the winter months. Place a barrier around patchy spots.
- ❖ Uneven pavement or parking lots – repair uneven pavement and fill in holes.
- ❖ Loose carpet or runners – do not use throw rugs unless they do not slip and do not pose a tripping hazard. Inspect all carpeting for loose edges, tears, or holes. Make sure all carpeting is properly tacked or glued down and repair tears or holes, or replace the carpet.
- ❖ Wet floors – use nonskid mats around areas that collect water. Once spotted, clean up water spills immediately. Use signs to warn people of wet floors. Use grab rails by toilets.
- ❖ Waxed floors – use only nonskid wax and warning signs to indicate that floors have been waxed. Do not wax floors immediately prior to events attracting large numbers of people.
- ❖ Dark stairways or uneven steps – use colored tape or bright paint to highlight stairs that may be difficult to see. Use nonskid surfaces or strips on all steps. Make sure handrails and top rails are not loose.
- ❖ Ladders – be alert on jobs that require ladders such as painting, cleaning gutters, washing windows, changing light bulbs, or getting or replacing items from high shelves. Use only ladders that are in good repair. Provide instructions on the proper use of ladders and monitor workers.
- ❖ Cords – telephone cords and electrical cords lying across the floor are tripping hazards. If they are permanent, have a professional cover the cords with a secure casing that is designed for that purpose.
- ❖ Windows – children can fall out of windows. Keep windows locked and closed. Use window guards or bars, in accordance with local zoning provisions, to prevent children from falling.

- ❖ Obstructions – debris, clutter, or other items are left lying in areas where people walk is a tripping hazard. Inspect and clear obstructions away.
- ❖ Other common accidents:
 - ❖ The kitchen
 - ❖ Limit the number of workers in the kitchen area
 - ❖ Do not use power equipment such as a meat slicer while wearing clothes or jewelry that can get caught.
 - ❖ Be careful that liquids such as coffee or water for tea are not scalding hot. Dispensers should be placed in areas away from children.
 - ❖ Clean up all spills immediately. Keep a mop handy.
 - ❖ Make hot pads and mitts available. Keep the oven doors closed.
 - ❖ Do not store cleaners or chemicals under sinks.
 - ❖ If aluminum foil pans are used, transfer to a solid tray such as a cookie sheet so the bottom of the pan does not collapse.
 - ❖ Keep a first aid kit in the kitchen.
 - ❖ Industrial areas – follow special safety precautions. Keep out of reach of children and preferably, in locked storage.
 - ❖ Art rooms – keep art supplies stored in a safe place away from children.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

J. Building maintenance and Construction projects :

Churches have ongoing maintenance needs and engage in a wide range of construction projects. Whether it's a clean up day, building a new facility, remodeling old ones, working on a house for a member. The mix of inexperience, limited supervision, and power equipment poses real hazards. As a result serious accidents regularly occur. Many injuries, though, can be prevented by following a simple but effective program that provides training for custodians and use of a safety supervisor for clean up days and construction project.

Custodial training – in the use of equipment should be part of the orientation and continuing education program for custodial and maintenance workers. Such employees should be familiar with equipment being used.

Safety supervisor – minimizes the risk of accidents during construction and clean up days. Appoint a competent person to serve in this position. His/her role is twofold: first, monitor the work site and the workers for hazards; and second, provide training to workers to minimize accidents.

Monitoring the site –

- ❖ The work area should be clear of materials that can cause workers to trip or fall.
- ❖ All tools should be inspected to make sure they are in good repair.
- ❖ Remove defective tools and mark “do not use.”
- ❖ Give clear instructions on the proper use of tools.
- ❖ Tools should be used only for the job they are designed.
- ❖ Workers should wear personal protective equipment...no jewelry or clothing that could get caught in equipment.
- ❖ Hand tools and power tools :
 - ❖ keep tools in good repair
 - ❖ use the right tool for the job
 - ❖ examine tools for damage
 - ❖ follow manufacturer’s instructions
 - ❖ use proper protective equipment
- ❖ First aid –
 - ❖ INDIVIDUALS WITH HEAD OR BACK INJURIES SHOULD NOT BE MOVED, unless essential to move them out of immediate danger. CALL 911
 - ❖ If a worker receives a cut or a wound and is bleeding – wear protective gloves and apply fingertip pressure directly over the wound. If that does not stop the bleeding, apply direct pressure to the wound for at least 10 minutes using a gauze pad or some other clean material.
 - ❖ If the wound is to a limb, elevate the limb above the heart.
 - ❖ The first aid kit should contain eyewash in case sawdust or dust particles get in a worker’s eye.
 - ❖ Someone should be available that is familiar with and can administer CPR.
 - ❖ Have emergency numbers available –
 - ❖ Ambulance
 - ❖ Police department
 - ❖ Fire department
 - ❖ Hospitals
 - ❖ Family

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

K. Ergonomic issues:

Workplace design has a profound influence on the productivity, moral, and health of workers. This is also true within the church environment. The focus is upon the interaction between design, use, and safety.

While ergonomics has broad applications across many forms of work, our concern is to apply ergonomic knowledge to two areas that deserve special attention in churches.

1. **Computer workstations** ... should pay attention to the positioning of each piece of equipment including the chair, keyboard, monitor, and mouse. The chair should be adjusted first, followed by the keyboard, mouse, and monitor. Other important factors include lighting and variation in the completion of computer tasks.

A workstation that is not oriented correctly can cause fatigue and soreness in the neck, shoulder, wrist, fingers, and other muscles. Computer users should feel comfortable and be able to maintain a relaxed posture. A document holder should be positioned so that it does not result in straining the eyes, neck, shoulders, or back muscles. No single "ideal" position exists and workers should be encouraged to monitor and react to their own body.

2. **Lifting and handling of materials and supplies** ... should be done properly so as not to induce back pain. Since the risk of back pain is so high, churches should provide basic guidelines to avoid high-risk actions.

Several simple rules should be followed:

- a. Keep all lifted objects close to your body.
- b. Avoid lifting and twisting, bending forward or reaching. Do not lift over obstacles.
- c. Lift with your legs
- d. Get help to lift heavy objects.
- e. Take breaks
- f. Plan ahead before moving materials. Keep pathway clear.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

L. Juvenile violence:

Historically, churches have been viewed as a safe place. In recent years, mass shootings at public schools, a church, and a Jewish day-care center have raised new questions concerning safety and security. A growing awareness exists that steps should be taken to make the church as safe as possible from acts of violence.

One incident, no matter how impossible it might be to prevent, thrusts any church into a national spotlight with relentless inspection and analysis. Two concerns exist: one that nothing is done and second, that there is an overreaction.

Develop policies that support responsible behavior. To be effective, the program must be fair and consistently enforced. The goal is to develop and implement a positive approach to discipline.

1. Develop a church wide disciplinary policy. The policy should include a code of conduct along with specific rules and consequences. The policy should have some flexibility that can accommodate on a case-by-case basis.
2. Integrate Christian values and educational goals into the disciplinary policy. The policy should be a tool to educate students on values such as honesty, respect for others, and personal integrity.
3. Include students, staff, parents, and leaders in the development of the policies.
4. Be fair in the application of rules. Consequences should be commensurate with the offenses. The rules should be in writing and applied in a way that is nondiscriminatory.
5. Focus on positive strategies for change. Rather than relying on forms of punishment alone, also use strategies for teaching positive behaviors. Identify values that can provide energy and a sense of hope to troubled children and that can help motivate students to change from negative to positive behaviors.
6. Have a ZERO TOLERANCE statement where appropriate. Unless policies become integrated into the fabric and life of the church, they simply collect dust somewhere in a filing cabinet and lose the potential to bring about change.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

M. FIRE:

The greatest fire hazards to churches are lighting, electrical problems, open flames, appliances, and arson. Lightning is one of the most common causes of church fires (and also electrical surges). Yet fires that result from lightning tend to do less damage than fires that originate from electrical problems, open flames, or from arson.

The principles of fire prevention follow a two-part prevention program.

1. **Inspections** – a walk-through inspection of the entire church should be conducted regularly, preferably at least quarterly. The inspection should focus on three areas:
 - a. Sources of ignition – the furnace room, kitchen, printing room, and any other room containing gas appliances, heating equipment, electrical appliances, or open flames should be carefully inspected. Electrical outlets should be checked for potential overload. Remove ignition sources that pose a hazard.
 - b. Sources of fuel – remove sources that pose a hazard. Careful custodial care can contribute greatly to the reduction of fuels that contribute to fires in a church. The proper storage of hazardous chemicals, the removal of rubbish, and keeping areas around ignition sources clean and free from fuel sources can reduce fires.
 - c. Fire fighting equipment and escape routes – inspectors should check that fire extinguishers are fully charged and located in their proper positions. Smoke detectors and alarm systems should be tested. Fire escape routes should also be inspected, including doors, stairways, fire escapes, ladders, and emergency lighting. In large facilities, exits stairways, and floors should be identified with a letter or number so that they can be easily identified in an emergency. In addition, a fire drill should be practiced periodically.
2. **Maintenance** – attention should be given to the maintenance of equipment, storage practices, and good housekeeping. Electrical equipment, gas appliances, and heating equipment **MUST** have a routine maintenance schedule that is adhered to. One way for churches to cope with this problem is to develop service contracts for some of the more important areas that require ongoing maintenance. This is especially important with respect to heating

and air conditioning equipment. Special attention should be given to the storage of hazardous chemicals, gasoline, paint thinner, insecticides and other flammable liquids. Leaders should take special care to promote good housekeeping practices throughout the church facility.

Fire safety should be an important consideration in the design or remodeling of a church building. The type of materials should take into account fire hazards. The use of fire walls, fire divisions, fire doors, the nature of wall openings, and automatic fire detection and suppression systems can help churches control their exposure to fire.

Responding to key problems area:

Lightning – the installation of lightning rods can significantly reduce risk. Churches with bell towers, steeples, or spires are vulnerable.

Electrical wiring and appliances – have a professional inspect the wiring and appliances for potential problems.

Halogen floor lamps – make sure it has a protective cover and if not, discontinue its use until a cover shield is installed. Free shields are available at many hardware stores.

Kitchens – make sure a fire extinguisher is located near the kitchen exit, preferably one with a Class BC rating. Keep the area near and above the range free of flammable items such as paper towels, dish towels plastic bowls or utensils, or potholders. While cooking, do not leave the stove unattended. Avoid gas build up prior to lighting a pilot light.

Flammable liquids – should not be stored in the same room with furnaces, water heaters, ranges and gas appliances. They should be kept in tightly sealed, non-breakable containers – properly labeled and kept out of reach of children.

Candles – wherever possible, electric candles should be substituted for open flames. Keep candles away from young children and used only with direct supervision.

Burning trash – make sure zoning codes are not violated. Trash burning requires supervision, a water supply or other means to extinguish a fire.

Arson – take affirmative actions

1. Install perimeter floodlights outside the building.
2. Install adequate fire & burglar alarm systems
3. Solid wood or sheet metal doors provide extra integrity that a hollow core wooden door cannot. Do remember exits must remain operable.
4. Install burglar-proof bars on screens.
5. Use outside lights around windows.
6. Trim shrubs and vines.
7. Become active in community programs such as Neighborhood Watch.
8. Meet with your neighbors and security personnel assigned to your neighboring businesses.
9. Educate personnel on methods to deal with telephoned threats and conducting bomb searches. Develop a written protocol for threats.
10. Document any strange or threatening phone calls.
11. Be on guard for suspicious packages.
12. Keep the handling of threatening correspondence, once identified, to an absolute minimum.
13. Check the property. Evaluate the need for a security guard.
14. Report suspicious people.
15. Duplicate all documents on computer disks, and records that are stored at the church.
16. Remove fire hazards.

The following checklist can help inspect for fire safety:

Fire Safety Checklist

STRUCTURAL:

OK

NEEDS
WORK

Exit doors open outwards.

No locks prevent free escape from inside building.

Exits are free of obstructions.

Exits are clearly marked with lighted signs.

Remodeling, additions, or repairs are inspected by the fire marshal for compliance with fire codes.

Workers follow fire safety procedures.

The furnace is cleaned and inspected once a year.

The furnace room should be lined with a fire-resistant material such as concrete block.

The furnace room door is fire-resistant material.

The furnace room door is closed.

HOUSEKEEPING:

OK

NEEDS
WORK

- _____ _____ Combustible decorations are stored properly

- _____ _____ Upholstery, draperies, & furniture are fire-retardant materials.

- _____ _____ Use candles in services only when ritual prohibits any substitute. Otherwise, safe candle-type light bulbs are used.

- _____ _____ The organ is turned off at the end of services.

- _____ _____ Keep worship centers a smoke-free environment.

- _____ _____ Clean up debris from social gatherings.

- _____ _____ Don't store combustibles in heating room.

- _____ _____ Don't keep gasoline or gasoline-operated equipment on your premises, unless it is in a well-vented, fire-resistive enclosure.

- _____ _____ Keep kitchen ventilating hood filters clean and free of accumulated grease.

- _____ _____ Kitchen stove burners should be maintained in good condition. They should ignite as soon as the gas is turned on.

ELECTRICAL:

OK

NEEDS
WORK

Check fuse boxes to be sure the proper size fuse is used for each circuit and that the circuits are identified on the fuse box cover.

Inspect all electrical and extension cords. Discard cords frayed, cracked, or dried out.

All junction boxes and switch boxes are covered.

All major appliances have proper connections and grounding.

All wall sockets and light switches are equipped with face plates.

Lightning rod systems are properly in place.

The roof is fire-retardant material.

The grounds are clean, free from piles or leaves and rubbish.

Chimneys are in good repair with a wire mesh across openings.

Chimneys are clean, free of soot and other obstructions.

FIRE EXTINGUISHING EQUIPMENT:

TYPE A extinguishers are for ordinary combustibles such as paper, wood, cloth, or trash.

TYPE B extinguishers are for flammable liquids such as gasoline, paint, oil, tar, and grease.

TYPE C extinguishers are for use on electrical fires, including electrical equipment, motors, switchboards, wiring, and other electrical apparatus.

TYPE K extinguishers are for use in kitchens on combustible cooking media.

OK	NEEDS WORK
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_____	_____	Extinguishers are in conspicuous, easy-to-reach locations. There is no more than 75 feet of travel to reach an extinguisher.
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_____	_____	The top of any heavy extinguisher should not be more than five feet above the floor.
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_____	_____	Operating instructions are clear & legible.
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_____	_____	Employees are familiar with operating instructions.
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_____	_____	Extinguishers should be inspected monthly.
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_____	_____	A record is kept of extinguisher inspections.
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_____	_____	Corrective action is taken if signs of damage.
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(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble and Fire Safety at Your Worship Center by The Protection Series Church Mutual Insurance Company.)

N. Cold weather:

Poses five specific types of risks to churches.

Heating systems – the period from September to March represents increased risk to fire and carbon monoxide poisoning.

- a. **Gas & fueling appliances** – a qualified professional should conduct an annual inspection of the heating system. Inspections should be done for all appliances.
- b. **Gas leaks** – replace flexible connectors; avoid gas build up prior to lighting a pilot light.
- c. **Carbon monoxide** – is an odorless and colorless gas that results from the incomplete combustion of fuels. Exposure to the gas can result in headaches, dizziness, fatigue, breathing difficulties, nausea, and death. The use of CO detectors near heating systems and in kitchen areas is recommended.
- d. **Kerosene heaters** - pose significant risks, and should be avoided. If a kerosene heater is used, Never store kerosene in a gasoline container, use in an open ventilated area and turn off if being moved.
- e. **Electric heaters** - make sure you inspect any heater used for safety. Do not use near water and keep at least three feet away from combustible materials.
- f. **Wood burning stoves** – require special attention. Do not leave installation to a volunteer. Connections must be secure and attention must be given to the hearth, gaskets, doors, and the flue. Have the flue and chimney inspected frequently – annually at minimum.
- g. **Boilers** – must have a properly working low water fuel cut-off control. Every boiler should be inspected before the heating season begins. Routine maintenance using certified technicians is vital.
- h. **Chimneys and flues** – should be inspected prior to the heating season. If your church has a fireplace, a professional chimney sweep should be used to remove creosote build-up.

Freezing pipes, insulation and heat tape – shut off the water and drain pipes to unoccupied buildings during the winter. Know where to shut off the water valves if a break should occur. If a pipe should freeze, open all faucets, remove the insulation and wrap the pipe in rags. While heat tapes can reduce the risk of pipes bursting, they can also pose a fire hazard, and are a source of possible ignition. To reduce this risk use only certified heat tapes.

Snow and ice buildup – the greatest problem is the roof. Clean the gutters and make sure that all drains are free of debris. Once snow and ice buildup occurs, remove it – as safely as possible.

Slips and falls – reach their peak during the winter months. Make sure that outdoor handrails are clear of ice buildup. Clear sidewalks of snow and ice and use salt to help ice from forming and sand to provide traction.

Outdoor activities – pose three potential health risks during cold weather: (1) overexertion, (2) frostbite, and (3) hypothermia. In particular, special attention should be given to those at higher risk including the elderly, those who already have health problems, and to children.

Cancellation of activities – establish guidelines concerning when to cancel services due to inclement weather. Having guidelines in place can assist leaders to act promptly and decisively when bad weather hits.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

O. Natural perils:

Pose a threat to every church, but they differ significantly in both frequency and severity. Each risk is unique and requires independent analysis and evaluation in respect to the area of the country the church is located.

Earthquakes: Churches at risk for earthquakes should have their facilities inspected and make whatever modifications feasible to enhance the structural integrity of the buildings. Find out if your community has established seismic building standards.

Every Sunday School teacher, church leader, employee, and volunteer should know where to go and where to lead others of an earth quake should occur, including if they are driving a church vehicle.

Floods: floods are the number one weather-related killer in the United States and can occur anywhere with little warning. The church should have a disaster response team that takes initiative for both loss prevention and loss control measures.

Tornadoes: most tornadoes occur in the spring and summer months. If conditions are favorable, the national weather service issues a tornado watch. Churches should take steps to enhance safety prior to a tornado. First, have a tornado response plan. Monitor weather reports and take shelter. Stay away from windows.

Hurricanes: begin in June and continues through November. Modern technology has the ability to provide advance warnings and provides churches with an opportunity to better protect property and people.

Landslide and mudflows: if your church is located in a known landslide or mudflow area, check with your county planning department to evaluate your risk. Have a written plan to respond to a landslide or mudslide.

Volcanoes: churches located in danger zones should have a written plan to respond to a volcano. Identify multiple escape routes and know in advance how to contact one another if an evacuation should occur.

Thunderstorms and lightning: more people are killed on an annual basis from lightning strikes than from tornadoes. More church fires start from lightning than from any other cause. If a thunderstorm occurs take the following precautions – don't handle electric equipment or telephones when lightning is striking; turn off electrical appliances; avoid water faucets and sinks. If outdoors during a thunderstorm – attempt to get into a building. If not available, get to an open space and squat as close to the ground as possible; find an area protected by a low clump of trees – never stand underneath a single large tree in the open; be alert of potential flooding; avoid tall structures; stay away from natural lightning rods such as golf clubs, tractor, fishing rods, bicycles, or camping equipment; and stay away from rivers, lakes, or other bodies of water.

Extreme heat or sun exposure: staying too long in the sun or in excess heat can cause illnesses. Wear sunscreen when participating in outdoor activities. Avoid extended periods in the sun during the strongest heat of the day. Drink plenty of water and avoid drinks with caffeine. Drink water even if you are not thirsty.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

P. Crime and vandalism risk reduction:

Are problems for all churches and schools, regardless of size or location, in part, churches are targets of crime because they are often vacant and unprotected. Sometimes doors and windows are left unlocked. The Sunday offering may be left in the church office in a file cabinet for a Monday deposit. The church office generally contains computers, printers, a fax machine, and other electronic equipment. Musical instruments and sound equipment are often left in a sanctuary or a music room. A shed may house a riding lawn mower and power tools. These items attract thieves.

In addition, churches experience vandalism. Windows are broken, equipment is smashed, graffiti is painted on walls, and vehicles are damaged. Church secretaries often work alone with no one else in the building.

Some of the individuals seeking help have emotional or mental problems, and others are experienced con-artists.

Crime prevention through environmental design – the basic idea behind Crime Prevention Through Environmental Design is that proper design and use of the environment can reduce crime and the fear that is associated with it.

Surveillance - The property and building design should promote clear and unobstructed views from activity areas

Access control - Entry points should be carefully designed to maximize safety and security.

Burglary prevention – involves controlling access to church facilities and property, maintaining an effective surveillance system, and maintaining sufficient lighting to deter the casual thief.

- ❖ Never have a spare key outside the office.
- ❖ Use a burglar resistant safe that is fireproof and securely anchored. Keep cash stored on the property in the safe.
- ❖ If using padlocks, they should be of a high quality hardened steel.
- ❖ Use landscape designs and plants to make a break-in more difficult. Thorny or prickly plants under a first floor window can discourage potential burglars.

- ❖ Use landscaping, fences, and screens to control access to church property.
- ❖ Do not have easy access to the roof.
- ❖ Use a metal bar or piece of wood in the track of sliding doors.
- ❖ Keep all vehicles locked and parked in a well-lighted area.
- ❖ Never leave any valuables or the keys in a vehicle.
- ❖ Make parking spaces visible from the street or main offices of the church building.
- ❖ All church keys should be numbered. Maintain an accurate list of who has a church key. Limit the distribution of keys to the fewest number of people possible. Store keys in a key safe.
- ❖ Do not give out sensitive information or credit card numbers over the phone unless you have initiated the call or you know the person with whom you are speaking.

Surveillance systems – some key factors to keep in mind are: monitor the church parking lots during church services. Use an alarm system as a compliment to basic security measure. Create a natural surveillance system. Look for signs of illegal entry. Use lighting to deter criminals.

Additional measures – mark church equipment with an indelible identification mark or number. Maintain an inventory of all equipment and their corresponding identification mark or number. Store important documents in a safe deposit box at the bank. Keep backup copies of computer data and important documents off church property

Preventing robbery – the need for adequate lighting in parking lots is vital.

- ❖ Keep doors locked during regular office hours. Install a remote controlled door lock that the secretary can activate from the church office. The secretary should be able to see who is at the door through a window, a peephole, or through video surveillance.
- ❖ Create a physical barrier between the reception space used to greet visitors and the secretary.
- ❖ Install a panic button in the office. The button should activate an alarm in other parts of the building.
 - ❖ Do not keep large amounts of money at the church.
 - ❖ Maintain adequate lighting in the area around the facilities. Use a buddy system when going to a parked car.
 - ❖ Instruct drivers of church vehicles not to pick up hitchhikers.
 - ❖ Train employees not to resist robbers.

Preventing vandalism – establish the same safeguards that are listed to prevent burglary, especially preventive lighting.

- ❖ Control access to playgrounds that may attract potential vandals.
- ❖ Keep the property clear of any rubbish. Report every act of vandalism to the police.
- ❖ Quickly respond to any act of vandalism.
- ❖ Organize a neighborhood watch program.

Preventing computer crime – is an increasing concern to churches.

- ❖ Maintain current virus protection software and update on a regular basis to identify new viruses.
- ❖ Limit the use of office computers to authorized staff members. Use passwords to gain access to sensitive information.
- ❖ Back-up data on a daily basis.

Preventing crime on trips – groups going on trips should take the following precautions:

- ❖ Use traveler's checks rather than cash. Leave a list of the ID numbers for the checks at home and keep a list with you.
- ❖ Take along a photocopy of your passport for trips outside the United States.
- ❖ Clean your billfold or purse of all nonessential items prior to the trip. Keep credit cards separate from one another. Also, take along the phone numbers of your credit card company so you can contact them in case a card is lost or stolen.
- ❖ Use a money belt. Do not wear a purse over your shoulder. Place the strap over the head and under the arm so that it cannot be grabbed and taken away. Keep wallets in a front pocket or inside coat pocket.
- ❖ Use ATM machines during the day when plenty of people are around.
- ❖ Do not display expensive items that may attract attention.
- ❖ Avoid dark streets and isolated areas. Always stay with a buddy.
- ❖ Do not accept rides from strangers.
- ❖ Do not bring jewelry and valuables.
- ❖ Never resist a robber.
- ❖ Do not leave purses or valuable items hanging on a chair while seated in a public place.

Security issues – need more attention in general and more precaution should be taken to safeguard secretaries who work in buildings alone.

- ❖ When a secretary is working alone at the church, the building should be locked.
- ❖ In high crime areas access to the building should be controlled during office hours even if the secretary is not alone.
- ❖ An intercom system should be installed between the secretary's office and the pastor's office. A code word can be used indicating that immediate assistance is required in the church office. Also, install a panic button. The button should activate an alarm in other parts of the building.
- ❖ If a church employee is working alone, he/she should not indicate that to someone over the phone, or to a stranger who drops in.
- ❖ Employees who work alone should let others know their schedule.
- ❖ Do not allow strangers to enter the church office.
- ❖ Keep personal valuables locked up.
- ❖ Do not keep large amounts of cash at the church.
- ❖ If a staff member feels that an unsafe situation is developing, he/she should not hesitate to contact the police.
- ❖ Some people have serious emotional problems that go beyond the secretary's ability to help. Know your limits, and be prepared to make referrals when necessary.

Responding to the con-artist – the Christian emphasis upon caring and compassion can be viewed by the con-artist as an invitation for easy pickings.

- ❖ Do not give cash – use a voucher system.
- ❖ To the extent possible, provide food assistance to all that may request it based on reasonable frequency guidelines. The church can maintain a food pantry, know where to make referrals, or provide vouchers which explicitly state what can and cannot be purchased with them.
- ❖ Ask for identification (driver's license etc.) and references. Don't be afraid to make a few phone calls to gain more information.
- ❖ Verify the need. Ask for names addresses, phone numbers, statements and other relevant information. If the person is evasive, take note of it and raise your level of caution.
- ❖ Inquire concerning the person's religious background. Do they have a minister you can contact? Why did they come to your church? Have other churches helped them?
- ❖ Be aware if the person attempts to use guilt to manipulate you. "If you were really a Christian..." - is a tactic of the con-artist.
- ❖ The con-artist often stresses the urgency of the need and presents it in a life or death context.
- ❖ The con-artist often has no local ties. He/she is from out of town and has been waylaid by a series of unfortunate circumstances.
- ❖ Unless you have discussed it with a lawyer, do not hire transients for part-time work.

- ❖ Develop a community wide program with a centralized referral system.

(Some information in this section was quoted from Risk Management Handbook for Churches and Schools by Dr. James Cobble.)

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Child Protection in the Church

Those who offend

For generations children have been taught to fear the dirty, evil-looking man in the trench-coat because he will/can do unspeakable things to them. In reality, the person who is most likely to harm a child lives under the same roof as the child, is an extended family member, a close family friend, a trusted teacher, coach, pastor, or children/youth worker.

There are a variety of names and characteristics for individuals who abuse children. Kenneth Lanning, former FBI specialist in crimes against children, separates predators into two classifications with each classification containing several personality types. In his work, *Child Molesters: a Behavior Analysis*, Lanning defines these two classifications as Situational Child Molesters and Preferential Child Molesters.

The Situational Child Molester does not have a true sexual preference for children, but engages in sex with children for varied and sometimes complex reasons. The Situational Child Molester usually has fewer numbers of different child victims. Other vulnerable individuals, such as the elderly, sick, or the disabled, may also be at a risk of sexual victimization by him or her. Members of lower socioeconomic groups tend to be overrepresented among Situational Child Molesters. (p. 6)

The Preferential Child Molesters have a definite sexual preference for children. They have sex with children not because of some situational stress or insecurity but because they are sexually attracted to and prefer children. Although they may be smaller in number than the Situational Child Molester, they have the potential to molest large numbers of victims. For many of them, their problem is not only the nature of the sex drive (attraction to children) but also the quantity (need for frequent and repeated sex with children). They usually have age and gender preferences for their victims. (p. 8)

Lanning identifies 4 types of Situational Child Molesters and 3 types of Preferential Child Molesters.

Situational Child Molesters

Regressed Child Molester: One “whose sexual involvement with a child is a clear departure, under stress, from a primary sexual orientation towards agemates.” The Regressed Child Molester prefers agemates for sexual partners but, because of some precipitating stress in his life, he substitutes a child for the troubled adult relationship. Such an offender usually has low self-esteem and poor coping skills; he turns to children as a sexual substitute for the preferred peer sex partner. (p. 6)

Morally Indiscriminate: For this individual, the sexual abuse of children is simply part of a general pattern of abuse in his life. He is a user and abuser of people. He abuses his wife, friends, and coworkers. He lies, cheats, or steals whenever he thinks he can get away with it. His primary victim criteria are vulnerability and opportunity. He has the urge, a child is there, and so he acts. He typically uses force, lures, or manipulation to obtain his victim. (p. 6)

Sexually Indiscriminate: He is the “try-sexual” – willing to try anything sexual. While he may have clearly defined paraphilic or sexual preferences – bondage or sadomasochism, etc. – however, he has no real sexual preference for children. His basic motivation is sexual experimentation, and he appears to have sex with children out of boredom. His main criteria for such children are that they are new and different, and he involves children in previously existing sexual activity. Again, it is important to realize that these children may be his own. Although much of his sexual activity with adults may not be criminal, such an individual may also provide his children to other adults as part of group sex, spouse-swapping activity, or even as part of some bizarre ritual. Of all Situational Child Molesters, he is by far the most likely to have multiple victims, be from a higher socioeconomic background, and collect pornography and erotica. (p. 7)

Inadequate: In layman’s terms he is the social misfit, the withdrawn, the unusual. This offender seems to become sexually involved with children out of insecurity or curiosity. He finds children non-threatening objects with whom he can explore his sexual fantasies. Often his sexual activity with children is the result of built-up impulses. His victims, however, could be among the elderly as well as children – anyone who appears helpless at first sight. (p. 7)

Preferential Child Molesters

Seduction: This pattern characterizes the offender who engages children in sexual activity by “seducing” them – courting them with attention, affection, and gifts. The characteristic that seems to make this individual a master seducer of children is his ability to identify with them. He knows how to talk to children – but, more important, he knows how to listen to them. His adult status and authority is also an important part of the seduction process. In addition, he frequently selects as targets children who are victims of emotional or physical neglect. This child

molester is most likely to use threats and physical violence to avoid identification and disclosure or to prevent a victim from leaving before he is ready to “dump” the victim. (p. 8)

Introverted: This pattern of behavior characterizes the offender who has a preference for children but lacks the interpersonal skills necessary to seduce them. (p. 8)

Sadistic: This pattern of behavior characterizes the offender who has a sexual preference for children but who, in order to be aroused or gratified, must inflict psychological or physical pain or suffering on the child victim. They are more likely than other Preferential Child Molesters to abduct and even murder their victims. (p. 9)

Dr. Leigh Baker describes four classes of male predators and three classes of female predators in her book, *Protecting Your Children from Sexual Predators*.

Male Predators

Narcissistic Predator: A narcissistic person is one who long ago in childhood received unrealistic messages about his self-importance. As he was glorified, sanctified, and idolized by his parents, he learned that his accomplishments and attributes made him lovable and beyond reproach. He learned to hide unacceptable feelings, desires, fantasies, and behaviors from the rest of the world, and at times even from himself and therefore his “true” self was never fully recognized. The narcissistic individual is more likely to cause pain and suffering to others. To narcissists, the world is theirs for the taking, and they are exempt from the everyday rules and regulations that govern the rest of society. The narcissist, who has never really experienced unconditional love and acceptance, exists only for the continued pursuit of attention, recognition, and praise from others. The narcissist will hurt and destroy others because he has an endless need for recognition that does not allow room for the give-and-take that is found in healthy relationships. (pp. 58-59)

Inadequate Predator: The inadequate individual has not achieved much in life. These individuals cannot find fulfillment in adult relationships and therefore turn to children as a source of companionship and sexual fulfillment. For inadequate predators, who have little belief in their self worth, perceive children as their only recourse for fulfillment. (p. 68)

Antisocial Predator: The individual with no conscience. Antisocial individuals display warning signs of their lack of conscience early on in their development. As children they engage in aggressive and destructive behavior, such as setting fires, cruelty to animals, bullying their peers, and even attacking their own siblings and parents. They are frequently suspended from school and often have difficulty learning. Their parents report them to be difficult to control; and despite

the consequences, nothing seems to deter these children's errant behavior. Because the antisocial individual lacks the internal mechanism to inhibit him from acting out against others, his only deterrent is his fear of getting caught. Therefore the antisocial predator, to avoid detection, is cunning and deceptive. Like a chameleon, he can change his appearance with lightning speed so that he appears to be a perfect match for his environment. Place him at a socialite's ball, and he will be bedecked in splendid attire as he glides around the dance floor waltzing with the pretty debutantes. Ask him to attend a business lunch at a pricey restaurant downtown, and he will don his most stylish suit and skillfully negotiate international deals while casually sipping Perrier. Admire him as he effortlessly glides down the most challenging ski run, or listen to him as he shoots the breeze with the guys at the local bar while drinking shots of tequila. This is why the antisocial individual is so difficult to detect because once you think you have him pegged in that square hole, he changes shape. He is the charmer, the quintessential seducer, the man who can make you sympathize with him for his unfortunate circumstances and believe in him for his outward display of courage and triumph. However, this is only an illusion, for he is the sorcerer of trickery. He is skilled at making others believe in him, and that is how he snares his victims. (pp. 76-77)

Pedophile Predator: The pedophile does have a sexual inclination toward children, and therefore his act of molestation will be a pervasive fulfillment of his deviant sexual desires. Their compulsion to act out their sexual fantasies usually began early in adolescence when experimentation with sexuality is common. They may have had a few relationships in high school, but they were not satisfied with the relationships. They felt empty and hollow with girls their own age, and these relationships rarely led to sexual fulfillment. They may have found solace and satisfaction in being with young children. As youth counselors, baby-sitters, and neighborhood "big buddies," these adolescents began to gravitate toward children, and little by little their relationships with people their own age diminished. They may have found themselves looking at children at the swimming pool or at clothing stores. Their fascination and sexual attraction to little bodies could often be discovered in their collection of child photos cut out from magazines that they kept safely tucked away in their bottom drawer. (pp. 85-87)

Female Predators

Teacher/Lover Predator: The teacher/lover female predator usually chooses prepubescent or adolescent males as her victims. Her motives for the sexual offense are teaching her young victims about sexuality or obtaining love from them. She is likely to see her contact with her victims as positive. This type of predator is searching for power and control. These women are insecure, angry, and have many unresolved issues about dependency and abandonment. They usually have a number of failed relationships in their past and come from homes where they were sexually, physically, or emotionally abused.

Predisposed Predator: This type of female predator is sexually aroused by children and has a chronic pattern of using children as sexual objects. She often has a childhood history of severe sexual abuse that was perpetrated on her at a very early age. Therefore she is likely to display more severe forms of mental illness than the other two types of female predators. The predisposed predator will function poorly in most areas of her life. These women often marry in their teens, but their relationships are unstable and they eventually live on their own. They also have trouble finding and keeping jobs, have chronic financial problems, and a lower level of education than the other two types of female predators. In general, the predisposed predator has sexual contact with boys and girls equally; however, in the case of maternal incest, daughters are more likely than sons to be the victims. Predisposed predators often act alone, and their motives for the abuse may sound much like the teacher/lover predator's justifications. However, because the predisposed predator's prey are, on the average, younger than the teacher/lover's victim, it is harder to rationalize the abuse in the guise of a romantic relationship. A predisposed predator's most accessible victims are her own children, and thus she is likely to turn to them for sexual pleasure and intimacy. However, if a female predator does not have children, she will find her victims through extended family, neighbors, and friends. (pp. 118-119)

Male-coerced Predator: The male-coerced predator most commonly co-offends against her own children. The co-offender may be the biological father or more frequently a stepfather. It is not uncommon for a male predator to marry a woman in order to gain access to her children. Once this type of man is in the home, he can exert more influence and control over the family. In certain cases a woman may suspect that her husband is abusing the children; and when she finally catches him in the act, she may be reluctant to do anything about it because of the fears that threaten her own sense of safety. The type of woman who co-offends with her partner has certain personality characteristics that make it more probable that she will attach to a deviant man and then become dependent on him to fill her emotional and physical needs. Craig Allen describes the "typical" co-offending female as someone who comes from a troubled and neglectful childhood, has borderline intelligence, and does not work outside the home. She has strong dependency needs and may therefore appear passive. She often has a low self-esteem and is involved with drug or alcohol abuse. Suicidal ideation, antisocial tendencies, unresolved anger, and deviant sexual behaviors are more common with this type of female predator. (p. 125)

Though it is more frequent for predators to be male, Craig Allen's study in 1991, "Women and Men Who Sexually Abuse Children: A Comparative Analysis," showed that in 1989, 3 million children were sexually abused by women. (Baker, p. 101)

In 1998, the National Center for Juvenile Justice cited that women were responsible for over 8 percent of the total number of sexual offenses committed against children. (Baker, p. 101)

A child's life is changed forever when he or she is abused and it doesn't matter whether the predator is male or female. We need to be aware of basic characteristics of female and male predators especially in church settings as leaders are chosen to work with children and youth.

Dr. Baker lists the following characteristics of female predators:

- Female offenders generally have lower income levels and lower occupational status.
- Female offenders are less residentially stable.
- Female offenders are on the average younger than male offenders.
- Female offenders are less likely to exhibit other aggressive forms of antisocial behavior.
- Female offenders have more traumatic childhood histories, including a higher degree of sexual abuse within their immediate family.
- Female offenders are less likely to admit that their sexual acts were abusive.
- Women use a victim stance more often than men and tend to blame their offensive behaviors on men.
- Women are more likely than men to be involved with co-offenders even if they started the abuse on their own.
- Women tend to romanticize the abusive relationship more than men.

(pp. 105-106)

Lanning describes the characteristics of the Preferential Child Molester as follows (Preferential Child Molesters are considered pedophiles because of their preference for children and the large quantity of victims.):

1. Long-term and persistent pattern of behavior
 - a. Sexual abuse in background
 - b. Limited social contact as teenagers
 - c. Premature separation from military
 - d. Frequent and unexpected moves
 - e. Prior arrests
 - f. Multiple victims
 - g. Planned, repeated, or high-risk attempts

2. Children as Preferred Sexual Objects
 - a. Over 25, single, never married
 - b. Live alone or with parents
 - c. Limited dating relationships if not married
 - d. If married, "special" relationship with spouse
 - e. Excessive interest in children
 - f. Associates and circle of friends are young
 - g. Limited peer relationships
 - h. Age and gender preference
 - i. Refers to children as "clean," "pure," "innocent," "impish," etc., or as objects

3. Well-developed Techniques in obtaining Victims
 - a. Skilled at identifying vulnerable victims
 - b. Identifies with children (better than with adults)
 - c. Access to children
 - d. Activities with children, often excluding other adults
 - e. Seduces with attention, affection, and gifts
 - f. Skilled at manipulating children
 - g. Has hobbies and interests appealing to children
 - h. Shows sexually explicit material to children

4. Sexual Fantasies Focusing on Children
 - a. Youth-oriented decorations in house or room
 - b. Photographing of children
 - c. Collecting child pornography or child erotica

Signs of Abuse

There are many behavioral and physical indicators one can observe in children that have experienced sexual abuse, physical abuse, emotional abuse, or neglect. **Though no indicator by itself may support that abuse has taken place, if more than two or three are present, the situation should be investigated further.** The following lists are by no means exhaustive.

Behavioral Indicators of Sexual Abuse

- Is reluctant to change clothes in front of others
- Is withdrawn
- Exhibits sexualized behavior; unusual sexual behavior and/or knowledge beyond that which is common for his or her particular developmental stage
- Has poor peer relationships
- Either avoids or seeks out adults
- Is pseudomature
- Is manipulative
- Is self conscious

- Has problems with authority and rules
- Exhibits an eating disorder
- Is self-mutilating
- Is obsessively clean
- Uses or abuses alcohol and/or other drugs
- Exhibits delinquent behavior, such as running away from home
- Exhibits extreme compliance or defiance
- Is fearful or anxious
- Exhibits suicidal gestures and/or attempts suicide
- Is promiscuous
- Engages in fantasy or infantile behavior
- Is unwilling to participate in sports activities
- Has school difficulties

Physical Indicators of Sexual Abuse

- Has pain and/or itching in the genital area
- Has bruises or bleeding in the genital area
- Has venereal disease
- Has swollen private parts
- Unusual odors in the genital area
- Pain in urinating or defecating
- Has difficulty walking or sitting
- Vaginal infections or discharge
- Has torn, bloody, and/or stained underclothing
- Unexplained persistent sore throat or gagging (due to oral sex)
- Is pregnant
- Wets bed
- Physical complaints with no apparent somatic base

Behavioral Indicators of Emotional Abuse

- Is overly eager to please
- Seeks adult contact
- Views abuse as being warranted
- Exhibits changes in behavior
- Is excessively anxious
- Is depressed
- Is unwilling to discuss problems
- Exhibits aggressive or bizarre behavior
- Is withdrawn
- Is apathetic
- Is passive
- Has unprovoked fits of yelling or screaming

- Exhibits inconsistent behavior at home and school
- Feels responsible for the abuser
- Runs away from home
- Attempts suicide
- Has low self-esteem
- Exhibits a gradual impairment of health and/or personality
- Has difficulty sustaining relationships
- Has unrealistic goals
- Is impatient
- Is unable to communicate or express his or her feelings, needs, or desires
- Sabotages his or her chances of success
- Lacks self-confidence
- Is self-deprecating and has a negative self-image

Physical Indicators of Emotional Abuse

- Failure-to-thrive or less extreme (but still severe) deficits in growth or development
- Habit disorders (such as head banging, sucking, biting, rocking)
- Has a sleep disorder, including nightmares or restlessness
- Wets the bed
- Is hyperactive
- Exhibits an eating disorder

Behavior Indicators of Physical Abuse

- Is wary of adults
- Is either extremely aggressive or withdrawn
- Is dependent and indiscriminate in his or her attachments
- Is uncomfortable when other children cry
- Generally controls his or her own crying
- Exhibits a drastic behavior change when not with parents or caregiver
- Is manipulative
- Has a poor self-concept
- Exhibits delinquent behavior, such as running away from home
- Uses or abuses alcohol/or other drugs
- Is self-mutilating
- Is frightened of parents or of going home
- Is overprotective of or responsible for parents
- Exhibits suicidal gestures and/or attempts suicide
- Has behavior problems at school

Physical Indicators of Physical Abuse

- Has unexplained bruises or welts, often clustered or in a pattern
- Has unexplained and/or unusual burns (cigarette, dough-nut shaped, immersion-like, object-pattern)
- Has unexplained bite marks
- Has unexplained fractures or dislocations
- Has unexplained abrasions or lacerations
- Wets the bed

Behavior Indicators of Neglect

- Is truant or tardy to school often or arrives early and stays late
- Begs or steals food
- Attempts suicide
- Uses or abuses alcohol and/or other drugs
- Is extremely dependent or detached
- Engages in delinquent behavior, such as prostitution or stealing
- Appears to be exhausted
- States frequent or continual absence of parent or guardian

Physical Indicators of Neglect

- Frequently is dirty, unwashed, hungry, or inappropriately dressed
- Engages in dangerous activities (possibly because he or she generally is unsupervised)
- Is tired and listless
- Has unattended physical problems
- May appear to be overworked and/or exploited

Resources used to compile this list include:

Becca Cowan Johnson: *For Their Sake: Recognizing, Responding to, and Reporting Child Abuse*

Bill Anderson: *When Child Abuse Comes to Church: Recognizing Sexual Abuse, Know What to Do About It – and Possibly Preventing It from Happening*

Location of Injuries

It is normal for children to fall or run into things. There are areas of the body that are easily recognized as normal childhood injuries. These would include the following:

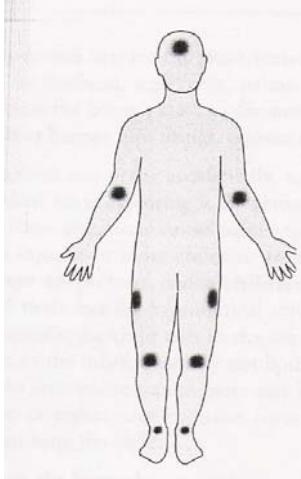


Figure a: Normal frontal injuries

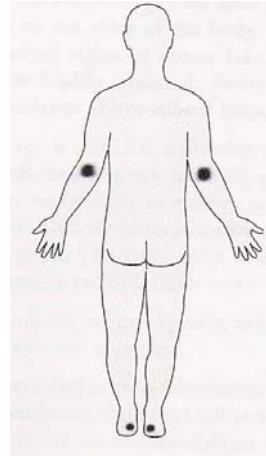


Figure b: Normal rear injuries

There are injuries to other locations on the body that would suggest that abuse has taken place. It needs to be kept in mind that these injuries need to be taken into consideration with other factors to ascertain whether abuse has actually taken place. Bodily injuries that may suggest abuse include:

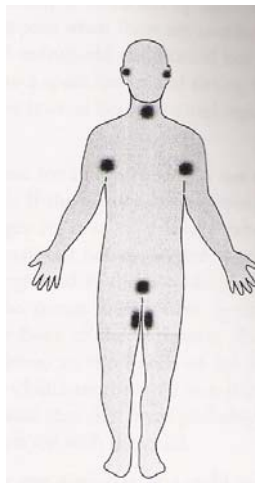


Figure c: Abnormal frontal injuries

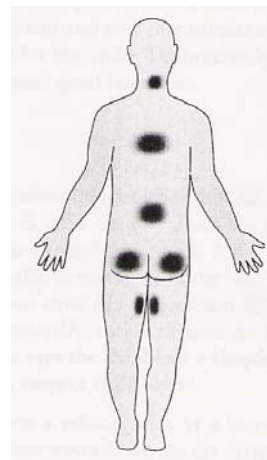


Figure d: Abnormal rear injuries

The above pictures are from James A. Monteleone's book, *A Parent's and Teacher's Handbook on Identifying and Preventing Child Abuse*.

Instruments of Abuse

There are a variety of items that may be used as instruments of abuse. These basically can be what ever is handy. Some items include:

belt, lamp cord, cigarette, lighter, shoe, dish, boiling water, coke can, etc.

Some of the items listed above will leave distinguishing marks such as the belt, lamp cord, or cigarette. The other items can leave bruises or blisters. Below are some pictures of marking various items can leave on a child:

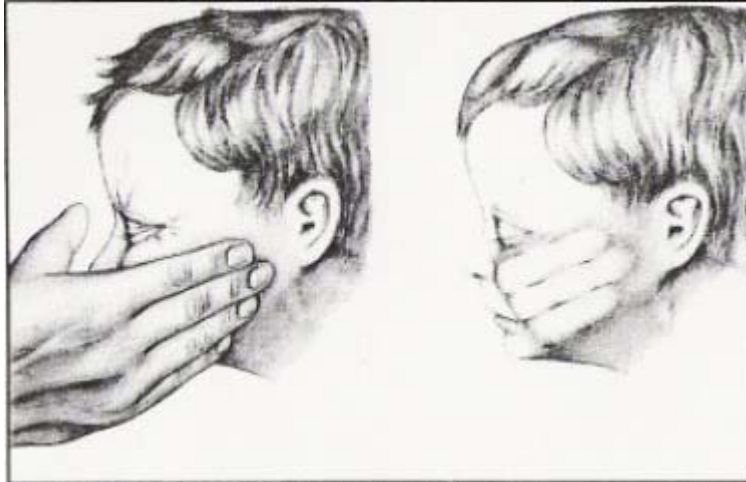


Figure 5: Forceful slap marks



Figure 6: Markings from using an electric cord

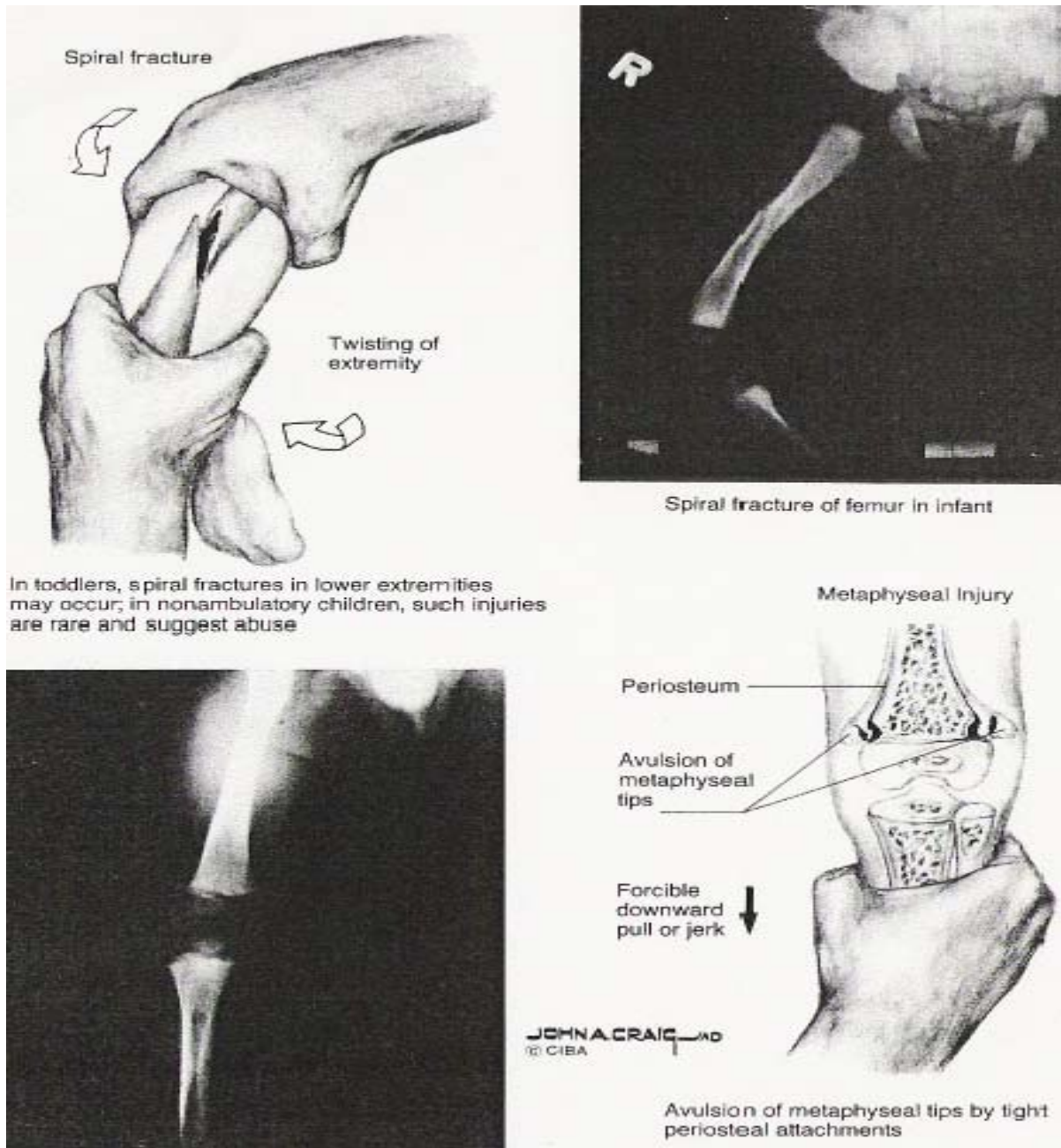


Figure 7: Spiral breaks resulting from twisting of bone

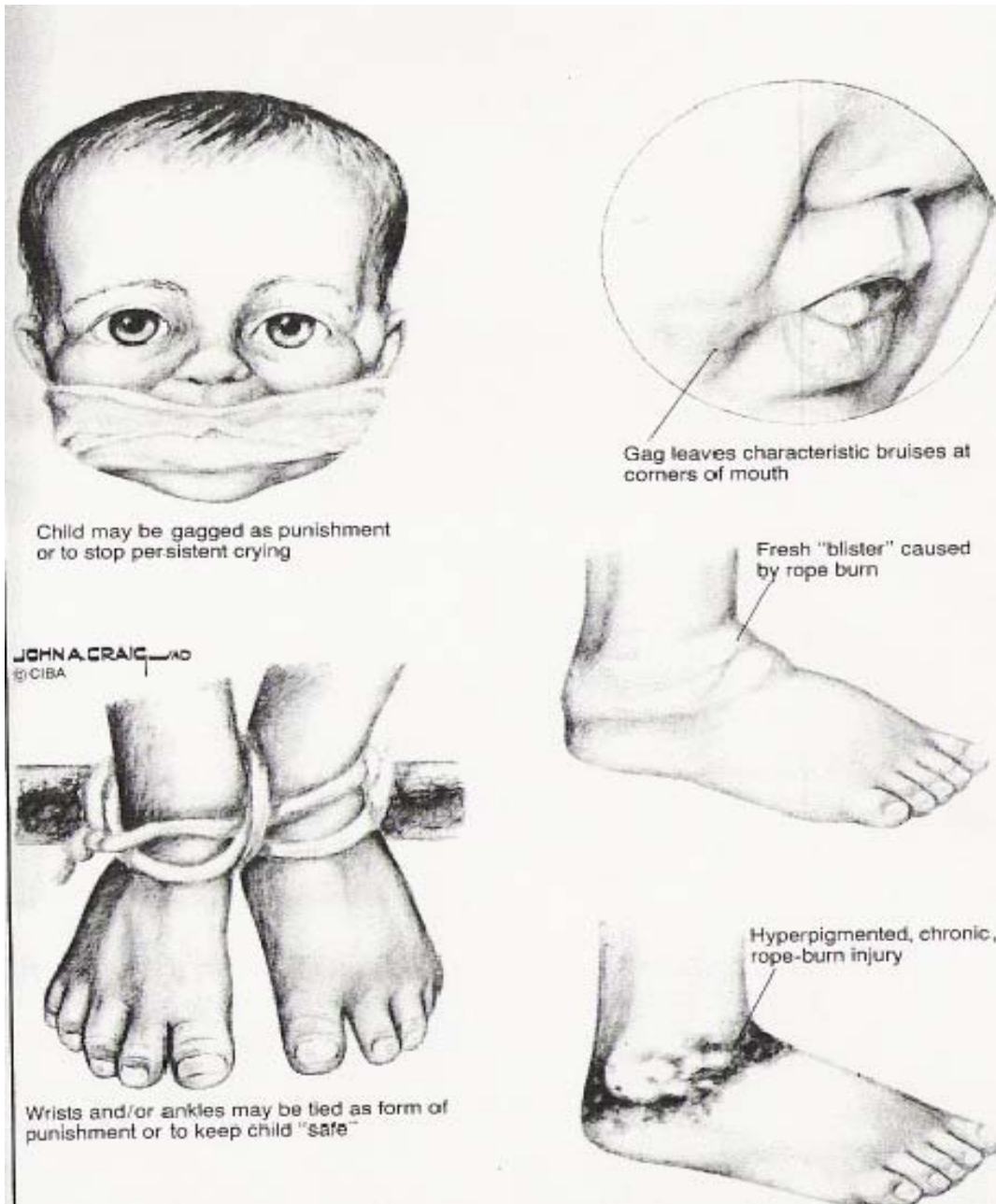


Figure 8: Results of gagging and binding

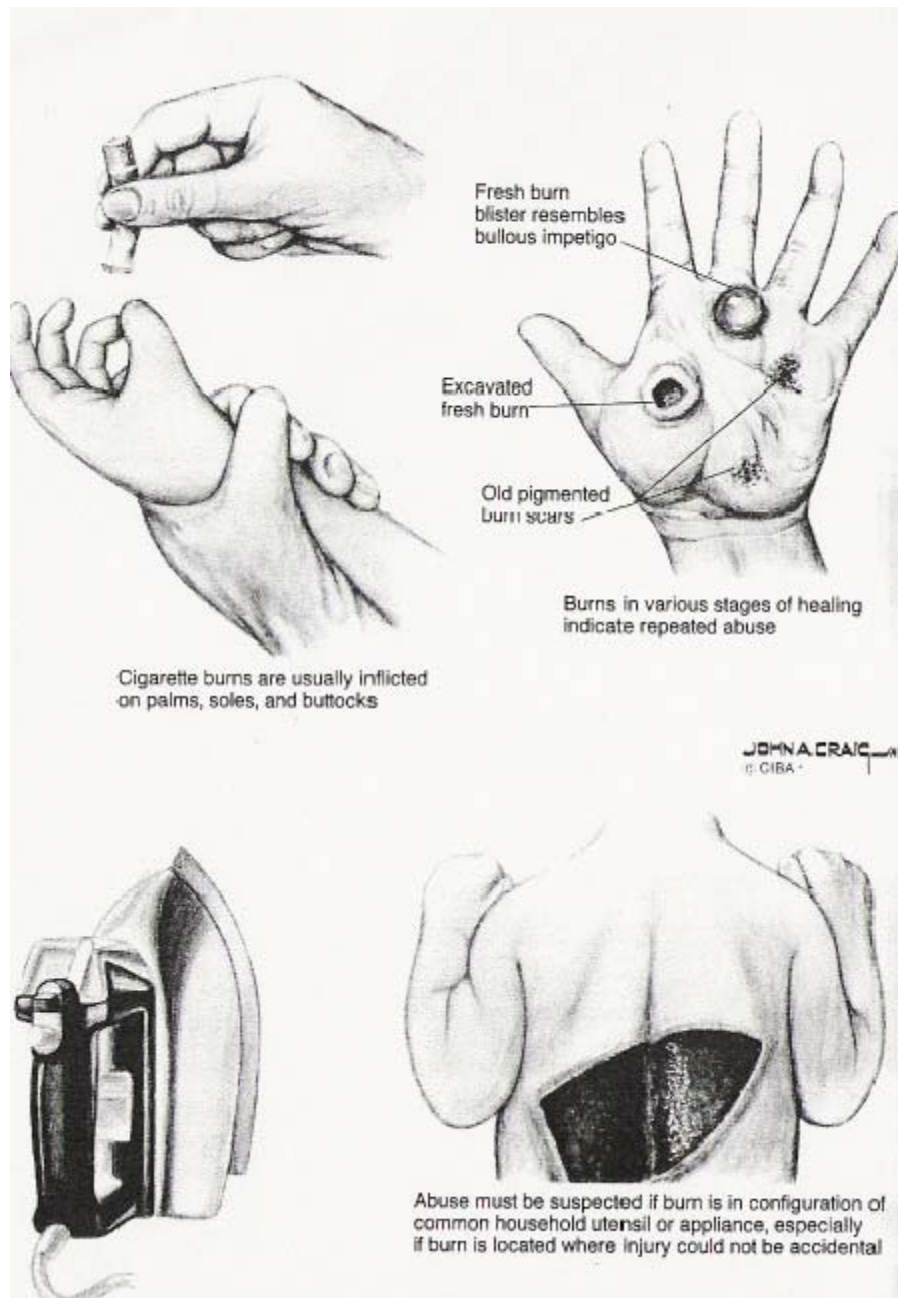


Figure 9: Results from various burns

The above pictures are from Douglas J. Besharow's, *Recognizing Child Abuse: A Guide for the Concerned*.

Definitions

There are a few definitions that may be helpful in understanding the various forms of abuse, neglect, and age.

Child: The term child is used generally to refer to a person, from birth to the legal age of maturity. In the United States, the Child Abuse Prevention and Treatment Act of 1974 defines a child as anyone under age 18.

Emotional Abuse: The National Center on Child Abuse and Neglect defines emotional abuse as “acts or omissions by the parents or other caregivers that have caused, or could cause, serious behavioral, cognitive emotional or mental disorders.”

Physical Abuse: This is an act of commission by a parent or caretaker which is not accidental and which results in physical injury, including fractures, burns, bruises, welts, cuts and/or internal injuries.

Sexual Abuse: Contacts or interactions between a child and an adult when the child is used for the sexual stimulation of the perpetrator or another person is sexual abuse. State definitions of sexual abuse vary but many indicate various degrees of physical contact, or there may be no contact but the child was used in a sexual way, for example, in a pornographic display for the sexual gratification of the photographer and/or other persons. Sexual abuse may also be committed by a person under the age of 18 when that person is either significantly older than the victim or when the perpetrator is in a position of power or control over another child.

Neglect: Repeated failure to meet the minimal standards for a child’s nutritional, clothing, medical, educational, safety and/or emotional needs constitutes neglect.

Reporting Requirements

Each state has its regulations regarding the reporting of child abuse. Below is a list of the requirements for each state, the penalties, and contact numbers. Not all states provided contact numbers. Penalties regarding false reporting are for cases of malice reporting.

Alabama

Statute: §§26-14-3(a); 26-14-10
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§26-14-13; 13A-10-9
Failure to report: misdemeanor;
imprisonment not exceeding 6

months; or a fine not exceeding \$500.

False reporting: Class A misdemeanor.

Reporting number:
334-242-9500

Alaska

Statute: §§47.17.020(a); 47.17.023;
47.17.060

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: 47.17.068

Failure to report: Class B misdemeanor.

Reporting phone number:

800-478-4444

Arizona

Statute: §§13-3620(A); 8-805(B)-(C)

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§13-3620(O); 13-3620.01

Failure to report: Class 1 misdemeanor. If it involves a reportable offense, Class 6 felony.

False reporting: Class 1 misdemeanor.

Reporting phone number:

888-767-2445

Arkansas

Statute: §§12-12-507(b)-(c); 12-12-518(b)(1)

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§12-12-504(a),(b),(d)

Failure to report: Class C misdemeanor. Civilly liable for damages proximately caused.

False reporting: Class A misdemeanor. Class D felony, when there is a prior conviction.

Reporting phone number:

800-482-5964

California

Statute: Penal Code: §§11166(a),(c); 11165.7(a)

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: Penal §§11166(b); 11172(a)

Failure to report: misdemeanor: confinement in county jail not exceeding 6 months; and/or a fine not exceeding \$1,000.

False reporting: liable for damages proximately caused.

Reporting phone number:

916-445-2771

Colorado

Statute: §§19-3-304(1),(2),(2.5); 19-3-311

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§19-3-304(3.5)(4)

Failure to report: Class 3 misdemeanor; liable for damages.

False reporting: Class 3 misdemeanor; liable for damages.

Connecticut

Statute: §§17a-101(b); 17a-101a

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§17a-101a; 17a-101e(c)

Failure to report: A fine not exceeding \$500. Required to participate in a training program.

False reporting: A fine not exceeding \$2,000 and/or imprisonment for not more than one year.

Reporting number:
800-842-2288

Delaware

Statute: tit. 16 §§903; 909

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: Tit. 16, §914

Failure to report: A fine not exceeding \$1,000 and/or imprisonment not exceeding 15 days.

False reporting: A fine not exceeding \$1,000 and/or imprisonment not exceeding 15 days.

Reporting phone number:
800-292-9582

District of Columbia

Statute: §§4-1321.02(a),(b),(d); 4-1321.05

Statute does not specify clergy.

Penalties:

Statute: §4-1321.07

Failure to report: A fine not exceeding \$100 and/or imprisonment not exceeding 30 days.

Reporting phone number:
877-671-7233

Florida

Statute: §§39.201(1); 39.204

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§39.205(1)-(2), (6); 39.206(1)

Failure to report: 1st degree misdemeanor.

False reporting: 3rd degree felony; possible fine not exceeding \$10,000.

Reporting phone number:
800-962-2873

Georgia

Statute: §§19-7-5(c)(1),(g); 16-12-100(c)

Statute does not specify clergy.

Penalties:

Statute: §19-7-5(h)

Failure to report: Misdemeanor.

Hawaii

Statute: §§350-1.1(a); 350-5

Statute does not specify clergy.

Penalties:

Statute: §350-1.2

Failure to report: Petty misdemeanor.

Idaho

Statute: §§16-1619(a),(c); 16-1620

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation,

emotional/mental injury, and abandonment.

Penalties:

Statute: §§16-1619(d); 16-1620A
Failure to report: Misdemeanor

False reporting: Liable for damages sustained or statutory damages of \$500, whichever is greater, plus attorney's fees and costs.

Reporting number:
800-926-2588

Illinois

Statute: 325 ILCS 5/4; 720 ILCS 5/11-20.2

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: ch. 325 para. 5/4; 5/4.02
Failure to report: Class A misdemeanor for first violation; Class 4 felony for subsequent violation.

False reporting: offense of disorderly conduct for a first violation; Class 4 felony for subsequent violation.

Reporting phone number:
800-252-2873

Indiana

Statute: §§31-33-5-1; 31-33-5-2; 31-32-11-1

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§31-33-22-1; 31-33-22-3(a)-(b)

Failure to report: Class B misdemeanor.

False reporting: Class A misdemeanor; liable for actual damages and possibly punitive damages; Class D felony, if there is a prior conviction.

Reporting phone number:
800-800-5556

Iowa

Statute: §§232.69(1)(a)-(b); 728.14(1); 232.74

Statute does not specify clergy.

Penalties:

Statute: §232.75
Failure to report: Simple misdemeanor; civilly liable for damages proximately caused.

False reporting: Simple misdemeanor.

Reporting phone number:
800-362-2178

Kansas

Statute: §38-1522(a),(b)
Statute does not specify clergy.

Penalties:

Statute: §38-1522(f),(g)
Failure to report: Class B misdemeanor.

Reporting phone number:
800-922-5330

Kentucky

Statute: §§620.030(1), (2); 620.050(3)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation,

emotional/mental injury, and abandonment.

Penalties:

Statute: §§620.990(1); 620.050(1)
Failure to report: Class B misdemeanor.

False reporting: Class A misdemeanor.

State reporting phone number:
800-752-6200

Louisiana

Statute: Ch. Code art. 603(13); 609(A)(1); 610(F)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: Children's Code Ann. Art. 609(A)(2),(C)
Failure to report: Subject to criminal prosecution.

False reporting: Subject to criminal prosecution.

Reporting phone number:
225-342-6832

Maine

Statute: Tit. 22, §§4011-A(1);4015
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: Tit. 22, §4014(1)
False reporting: Subject to criminal or civil action.

Reporting phone number:
800-452-1999

Maryland

Statute: Family Law §§5-704(a); 5-705(a)(1)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Reporting phone number:
800-332-6347

Massachusetts

Statute: Ch. 119, §§51A; 51B
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: Ch. 119, §51A
Failure to report: A fine not exceeding \$1,000/

False reporting: A fine not exceeding \$1,000.

Reporting phone number:
800-792-5200

Michigan

Statute: §§722.623; 722.623(1),(8); 722.631
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §722.633(1),(2),(5)
Failure to report: Misdemeanor: Imprisonment not exceeding 93 days and/or fine not exceeding \$500;

civily liable for damages proximately caused.

False reporting: Misdemeanor, punishable by imprisonment of not more than 93 days and/or a fine of not more than \$100, if the abuse reported would be a misdemeanor if true; Felony, if the abuse reported would be a felony if true, punishable by imprisonment of not more than 4 years and/or a fine of not more than \$2,000

Reporting phone number:
800-942-4357

Minnesota

Statute: §626.556 Subd. 3(a), 8
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:
Statute: §626.556 Subd. 5, 6
Failure to report: misdemeanor.
Imprisonment not exceeding 2 years and/or fine not exceeding \$4,000.

False reporting: Civily liable for actual and punitive damages; responsible for costs and reasonable attorney fees.

Reporting phone number:
651-291-0211

Mississippi

Statute: §43-21-353(1)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §43-21-353(7)
Failure to report: Imprisonment not exceeding 1 year and/or a fine not exceeding \$5,000.

Reporting phone number:
800-222-8000

Missouri

Statute: §§210.115; 210.115(1); 568.110; 210.140
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:
Statute: §210.165(1)-(3)
Failure to report: Class A misdemeanor.

False reporting: Class A misdemeanor; Class D felony if previously convicted.

Reporting phone number:
800-392-3738

Montana

Statute: Mont. Code Ann. §§41-3-201(2)(h), (4)(b); 41-3-201(1)-(2), (4)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:
Statute: §§41-3-207; 41-3-203(1)
Failure to report: Misdemeanor; civily liable for damages proximately caused.

False reporting: Civily liable for damages.

Reporting phone number:

866-820-5437

Nebraska

Statute: §§28-711(1); 28-714
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§28-716; 28-717
Failure to report: Class 3 misdemeanor.

False reporting: Subject to criminal or civil action.

Reporting phone number:
800-652-1999

Nevada

Statute: Nev. Rev. Stat. Ann. §§432B.220(3)(d); 432B.220(3),(5); 432B.250
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §432B.240
Failure to report: Misdemeanor.

Reporting phone number:
800-992-5757

New Hampshire

Statute: §§169-C:29; 169-C:32
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §169-C:39
Failure to report: Misdemeanor.

Reporting phone number:
800-894-5533

New Jersey

Statute: §9:6-8.10
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §9:6-8.14
Failure to report: Imprisonment not exceeding 6 months.

Reporting phone number:
800-792-8610

New Mexico

Statute: §§32A-4-3(A); 32A-4-5(A)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §32A-4-3(F)
Failure to report: misdemeanor.

Reporting phone number:
800-797-3260

New York

Statute: Soc. Serv. Law §413(1)
Statute does not specify clergy.

Penalties:

Statute: Soc. Serv. §420
Penal: §240.50(4)
Failure to report: Class A misdemeanor; civilly liable for damages proximately caused.

False reporting: Class A misdemeanor.

Reporting phone number:
800-342-3720

North Carolina

Statute: §§7B-301; 7B-310
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties: not discussed.

North Dakota

Statute: N.D. Cent. Code §50-25.1-03(1); 50-25.1-03; 50-25.1-10
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:
Statute: §50-25.1-13
Failure to report: Class B misdemeanor.

False reporting: Class B misdemeanor; Class A misdemeanor if made to a law enforcement official; civilly liable for damages.

Reporting phone number:
701-328-2316

Ohio

Statute:
§2151.421(A)(1),(A)(2),(G)(1)(b)
Statute specifies "religious healers".
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:
Statute: §§2151.421(A),(G),(H); 2921.14
Failure to report: none specified.

False reporting: Misdemeanor of 1st degree; reasonable attorney's fees and costs in any civil action.

Oklahoma

Statute: Tit. 10, §§7103(A)(1); 7104; 7113; tit. 21, §1021.4
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:
Statute: tit. 10, 7103(C),(D)
Failure to report: Misdemeanor.

False reporting: Misdemeanor: a fine not to exceed \$5,000 if made during a child custody proceeding.

Reporting phone number:
800-522-3511

Oregon

Statute: Or. Rev. Stat. Ann. §§419B.005(3)(h); 419B.005(3); 419B.010(1)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:
Statute: §419B.010(3)
Failure to report: Class A violation.

Reporting phone number:
800-854-3508; Ext. 2402

Pennsylvania

Statute: 23 Pa. §6311(a),(b)
Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: 23 PCSA §6319

Failure to report: Summary offense for first violation. Misdemeanor of 3rd degree for second or subsequent violation.

Reporting phone number:

800-932-0313

Rhode Island

Statute: §§40-11-3(a); 40-11-6(a); 40-11-11

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§40-11-6.1; 40-11-3.2

Failure to report: Misdemeanor: A fine not exceeding \$500 and/or imprisonment not exceeding 1 year; civilly liable for damages proximately caused.

False reporting: Misdemeanor: A fine not exceeding \$1,000 and/or imprisonment not exceeding one year.

Reporting phone number:

800-742-4453

South Carolina

Statute: §§20-7-510(A); 20-7-550

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§20-7-560; 20-7-567

Failure to report: Misdemeanor: a fine not exceeding \$500 and/or imprisonment not exceeding 6 months.

False reporting: Misdemeanor: a fine not exceeding \$5,000 and/or imprisonment not exceeding 90 days.

Reporting phone number:

803-898-7318

South Dakota

Statute: §§26-8A-3; 26-8A-15

Statute does not specify clergy.

Penalties:

Statute: §§26-8A-3; 26-8A-6; 26-8A-7

Failure to report: Class 1 misdemeanor.

Reporting phone number:

605-773-3227

Tennessee

Statute: §§37-1-403(a); 37-1-605(a); 37-1-411

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§37-1-412(a); 37-1-413

Failure to report: Class A misdemeanor. If pleads guilty before a court, fine limited to \$50.

False reporting: Class E felony (only applies to sexual abuse reporting).

Reporting phone number:

877-237-0004

Texas

Statute: Family Code §§261.101;

261.101(a)-(c); 261.102

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation,

emotional/mental injury, and abandonment.

Penalties:

Statute: Fam. §§261.107(a)-(b); 261.109

Failure to report: Class B misdemeanor.

False reporting: Class A misdemeanor; state jail felony, if there is a prior conviction.

Reporting phone number:

800-252-5400

Utah

Statute: §§62A-4a-403;62A-4a-403(1)-(3); 62A-4a-412(5)

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §62A-4a-411

Failure to report: Class B misdemeanor.

Reporting phone number:

800-678-9399

Vermont

Statute: Tit. 33, §4913(a),(f)-(h)

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: tit.33, §4913(e)

Failure to report: A fine not exceeding \$500; imprisonment of not more than 6 months and/or a fine not exceeding \$1,000.

Reporting phone number:

800-649-5285

Virginia

Statute: §§63.2-1509(A); 63.2-1519

Statute does not specify clergy.

Penalties:

Statute: §§63.2-1509(D); 63.2-1513(A)

Failure to report: A fine not exceeding \$500 for first violation; a fine of no less than \$100 nor exceeding \$1,000 for subsequent violations.

False reporting: Class 1 misdemeanor; Class 6 felony, if there is a prior conviction.

Reporting phone number:

800-552-7096

Washington

Statute: Wash. Rev. Code Ann.

§§26.44.030(7); 26.44.030(1), (2); 26.44.060(3)

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §§26.44.080; 26.44.060(4)

Failure to report: Gross misdemeanor.

False reporting: misdemeanor.

Reporting phone number:

866-363-4276

West Virginia

Statute: §§49-6A-2; 49-6A-7

Must report: Physical abuse, neglect, sexual abuse, sexual exploitation, emotional/mental injury, and abandonment.

Penalties:

Statute: §49-6A-8

Failure to report: Misdemeanor:
imprisonment in county jail not
exceeding 10 days and/or a fine not
exceeding \$100.

Reporting phone number:

800-352-6513

Wisconsin

Statute: §48.981(2), (2m)(c)-(e)

Statute does not specify clergy.

Penalties:

Statute: §48.981(6)

Failure to report: A fine not
exceeding \$1,000 and/or
imprisonment not exceeding 6
months.

Reporting phone number:

608-266-3036

Wyoming

Statute: §§14-3-205(a); 14-3-210

Must report: Physical abuse, neglect,
sexual abuse, sexual exploitation,
emotional/mental injury, and
abandonment.

Penalties: not specified.

Megan's Law

In 1996, Megan's Law became a federal law. It was named after 7 year old Megan Nicole Kanka who was brutally raped and murdered by a neighbor. This neighbor had been twice convicted of attacks on children.

Megan's Law contains two components:

Sex Offender Registration – This is based on the 1994 Jacob Wetterling Act. It requires states to register those convicted of sex crimes against children. Such a registration law has become necessary because:

- Sex offenders pose a high risk of re-offending after release from custody;
- Protecting the public from sex offenders is a primary governmental interest;
- The privacy interests of persons convicted of sex offenses are less important than the government's interest in public safety;
- Release of certain information about sex offenders to public agencies and the general public will assist in protecting the public safety

Community Notification – This allows states discretion to establish criteria for disclosure, but it also compels states to make private and personal information available on registered sex offenders. The purpose of community notification is it:

- Assists law enforcement in investigations;
- Establishes legal grounds to hold known offenders;
- Deters sex offenders from committing new offenses;
- Offers citizens information they can use to protect children from victimization.

It has been a misconception by the public that Megan's Law mandates active community notification of a convicted sex offender moving into their community. The federal law requires all 50 states to release information to the public if the states determine it is necessary to protect public safety. However, the federal law does not mandate active notification. If states fail to provide minimal information, they could lose federal crime-fighting funds.

Individuals can access their state's Megan's Law information through the following websites:

Alabama

http://www.doc.state.al.us/inmate_search.htm

Alaska

<http://www.dps.state.ak.us/>

Arizona

<http://www.azsexoffender.com>

Arkansas

<http://acic.org/registration/registratio-main.html>

California

By county

Colorado

<http://sor.state.o.us>

Connecticut

<http://www.state.ct.us/dps>

Delaware

<http://www.state.de.us/dsp/sexoff>

Florida

http://www.fdle.state.fl.us/Sexual_Predators/

Georgia

<http://www.ganet.org/gbi/disclaim.html>

Hawaii

Email gov@gov.state.hi.us

Idaho

http://www.isp.state.id.us/identification/sex_offender/index.html

Illinois

<http://www.isp.state.il.us/sor/frames.htm>

Indiana

http://www.state.in.us/serv/cji_sor

Iowa

<http://www.state.ia.us/government/dps/dci/isor>

<http://www.iowasexoffenders.com>

Kansas

<http://www.accesskansas.org/kbi/ro.htm>

Kentucky

<http://kspsor.state.ky.us/>

Louisiana

<http://www.lasocpr.lsp.org/socpr/>

Maine

None listed

Maryland

<http://www.dpscs.state.md.us/sor/>

Massachusetts

<http://www.state.ma.us/sorb/community.htm>

Michigan

<http://www.mipsor.state.mi.us>

Minnesota

<http://www.doc.state.mn.us/>

Mississippi

<http://www.sor.mdps.state.ms.us/>

Missouri

<http://www.jcsd.org/offenders.htm>

Montana

<http://svor2.doj.state.mt.us:8010/index.htm>

Nebraska

<http://www.nsp.state.ne.us/sor/find.cfm>

Nevada

None listed

New Hampshire

<http://www.state.nh.us/safety/nhsp/>

New Jersey

http://www.njsp.org/info/reg_sexoffend.html

New Mexico

<http://www.nmsexoffender.com>

New York

<http://criminaljustice.state.ny.us/nsor/index.htm>

North Carolina

<http://sbi.jus.state.nc.us/DOJHAHT/SOR/default.htm>

North Dakota

<http://www.ndsexoffender.com>

Ohio

<http://www.drc.state.oh.us/search2.htm>

Oklahoma

<http://www.tulsapolice.org/sexreg/default.asp>

Oregon

<http://www.doc.state.or.us>

Pennsylvania

<http://www.psp2.state.pa.us/SVP/index.htm>

Rhode Island

None listed

South Carolina

None listed

South Dakota

<http://www.sddci.com/administration/id/sexoffender/index.asp>

Tennessee

<http://www.tbi.state.tn.us>

Texas

<http://records.txdps.state.tx.us/>

Utah

<http://corrections.utah.gov/community/sexoffenders/>

Vermont

http://www.dps.state.vt.us/cjs/s_registry.htm

Virginia

<http://sex-offender.vsp.state.va.us/cool-ICE/>

Washington

By county

Washington D.C.

<http://www.mpcd.org/>

Wisconsin

<http://offender.doc.state.wi.us/public/>

Wyoming

http://attorneygeneral.state.wy.us/dci/so/so_registration.html

Amber Alert

What is the Amber Alert Plan?

- Child abduction alert notification plan to notify citizens of an abduction.
- Utilizes the Emergency Alert System (EAS) to inform the public of an abduction.
- Provides descriptive information about the child and the perpetrator, if known, to the public in the hope of enlisting public support in the search efforts.
- The ultimate goal is to save the life of the child.

Who developed the Amber Alert Plan?

- The plan originated in Texas in memory of Amber Hagerman, an abduction and murder victim.

What are the Activation Criteria?

Recognizing the importance of local determination of AMBER Alert criteria, while acknowledging the importance of consistency across the country to help ensure a smooth AMBER Alert system, the U.S. Department of Justice recommends the criteria listed below for AMBER Alert programs nationwide.

- There is reasonable belief by law enforcement that an abduction has occurred.
- The abduction is of a child age 17 years or younger.
- The law-enforcement agency believes that the child is in imminent danger of serious bodily injury or death.
- There is enough descriptive information about the victim and the abduction for law enforcement to issue an AMBER Alert to assist in the recovery of the child.

- The child's name and other critical data elements, including the Child Abduction flag, have been entered into the National Crime Information Center (NCIC).

If these criteria are met, alert information must be put together for public distribution. This information can include descriptions and pictures of the missing child, the suspected abductor, a suspected vehicle, and any other information available and valuable to identifying the child and suspect.

The benefits of the Amber Alert system include:

- Its free;
- It encourages participation between natural adversaries, law enforcement and media by drawing on their inherent strengths;
- It promotes accountability by creating the foundation of a comprehensive missing child protocol;
- It is an effective time critical response to kidnappers who can disappear with children at the rate of a mile a minute;
- It sends a powerful message to wanna-be kidnappers that this is a community that cares about and protects children;
- It saves lives.

Things that should be taught

The best way to be preventative against child abuse is to educate child, youth, teachers, volunteers, parents, and congregations. The following sections are items that can be taught in training sessions, small group discussions, etc.

Tricks Predators Use on Children

The following list of tricks or lures that predators use on children should be actively taught to children and parents. The list was compiled from collections gathered by the following authors:

Laura A. Ahearn: *Megan's Law Nationwide and ...The Apple of My Eye... Childhood Sexual Abuse Prevention Program*

Kenneth Wooden: *Child Lures: What Every Parent and Child Should Know About Preventing Sexual Abuse and Abduction*

- The apple of my eye trick
All children want love, attention and affection, this is why they are particularly vulnerable to those who are experts at grooming them to lead to their eventual sexual abuse.
- Detecting parental guilt/inadequacy trick

Predators look for parents that are overworked or have to be out of town a lot and offer to help fill in.

- Accidental touching trick
Children are often unaware that an accidental touching may be intentional or may be an offender attempting to touch.
- Assistance tricks
Offenders may ask a child for help with directions or carrying packages. Another type of assistance lure may be an offender who senses a role he might play by assisting a family with children. His assistance might be needed for babysitting or for driving a child to activities. Watch for those who are more interested in your child than you, there is a reason.
- Authority trick
Many of us have taught our children to respect authority without realizing that individuals who target our children take advantage of their position such as a teacher, coach, religious or club leader.
- Bathroom trick
A predator may hang out in mall or child-friendly restaurant bathrooms under the guise of helping young boys with zippers.
- Costume trick
Some predators use amusement park or mascot costumes to touch children inappropriately.
- Desensitization trick
Offenders may continually talk to children about sex or use pornography to demonstrate sexual acts. They may arouse a child's curiosity by leaving sexual material and aids around where they may see them.
- Divide and conquer trick
The offender may have a variety of video games in their garage where neighborhood children will gather and he will tell them they don't have to go home when their parents call for them.
- Driving instructor trick
The offender uses the confined space for inappropriate touching.
- Drug & alcohol trick
Drugs or alcohol can be used to incapacitate a child making them highly vulnerable to sexual abuse.
- Emergency trick
Crisis can be confusing for young children and offenders count on that so they construct an emergency to lure children.
- Fame trick
Promises are made to make the child a movie star.
- Friendship trick
Older children may bribe a younger child (or same age) by saying that they will not be their friend anymore unless they participate in a sexual act.

- Games trick
Body contact games such as wrestling are played where touching genitalia is part of the rules.
- “I know you” trick
Do not write your child’s name on the outside of any of their clothing or items they use outside of their home such as umbrellas or lunchboxes. This gives the offender an opportunity to make your child feel as though they know them.
- Internet trick
The internet has become a preying ground for sex offenders trying to lure victims. Offenders will try to get specific information from your child without directly asking for it.
- Job trick
Promises of high paying jobs easily influence young adults into meeting individuals in questionable places for interviews where they may be sexually abused. Young children may be offered high pay for odd jobs inside an offender’s house where they too may be sexually abused.
- Legitimacy trick
There are a few organizations that promote sexual relations with children and attempt to legitimize this activity. Those offenders may attempt to convince a child that sex with an adult is a legitimate activity.
- Outing trick
This could include camping trips or trips with children without other adults.
- Pet trick
Help finding a lost pet.
- Photographer trick
Convinces parent that child has future as model.
- Rescuing single women with children trick
Similar to guilty parent trick.
- Teaching trick
Private music lessons, sport lessons, etc.
- Threat trick
Usually by older children threatening younger children about what will happen if they tell.
- Hero lure
Coach, teacher, pastor, etc. – someone the child looks up to.

Red Flags

The following list of red flags was created by Laura A. Ahearn and are found in her book, *Megan’s Law Nationwide and...The Apple of My Eye...Childhood Sexual Abuse Prevention Program*.

1. Someone who wants to spend more time with your child than you.
2. Someone who manages to get time alone with, or attempts to be alone with your child or other children.
3. Someone who insists on hugging, touching, kissing, tickling, wrestling or holding a child, even when a child doesn't want this affection.
4. Someone who is overly interested in the sexuality of a child or teen and asks either the parents or the child sexually-oriented question.
5. Someone who relates extremely well to children and spends most of his/her spare time with them and has little interest in spending time with individuals their own age.
6. Someone who has few or no boundaries and does not respect the limits of their role in their relationship with children.
7. Someone who regularly offers to baby-sit, help-out or takes children on day or overnight outings alone.
8. Someone who buys expensive gifts or gives children money for no reason.
9. Someone who frequently walks in on children/teens in the bathroom or in the locker room while they are showering or changing.
10. Someone who goes to parks, beaches, or public places where children congregate and spends an exorbitant amount of time staring or taking photographs of children for no apparent reason. You should be suspicious of anyone attempting to photograph your child without your consent.
11. Someone who inappropriately makes comments about the way your child looks.

Things to teach children

Following is a list of rules that can be taught to children as early as four or five. Laura A. Ahearn created the list of rules and they can be found in her book, *Megan's Law Nationwide and...The Apple of My Eye...Childhood Sexual Abuse Prevention Program*.

Rule 1: Know who you are and where you live

Rule 2: Know what to do when lost in a store

Rule 3: Be able to identify your body parts

Rule 4: Check first before accepting gifts or going anywhere with anyone even if they are someone you know

Rule 5: Trust your inner voice, especially that yucky feeling

Rule 6: Don't be too polite

Rule 7: No secrets allowed

Rule 8: Say no and tell when touch is not ok

Rule 9: Don't give personal information out on the internet

Rule 10: Take action! It's your right

Things parents and children workers should know

Laura A. Ahearn has also created a list of those things all parents and workers with children should know. These include:

1. Don't be lulled into a false sense of security – know what resources are available under Megan's Law and know its limits.
2. Know who the predators really are and what they count on.
3. Teach your child the ten rules of safety.
4. Establish and model boundaries early.
5. Know the tricks and lures sexual predators use.
6. Know the red flags to help identify who the predators are.

If an allegation is made against a staff person, volunteer, or parent:

Many states now list clergy and church workers as mandatory reporters of child abuse. It is essential that the church develop a protocol of how to handle such allegations. Below is a suggested list of procedure should an allegation occur. This list was created by Joy Thornburg Melton in her book, *Safe Sanctuaries: Reducing the Risk of Child Abuse in the Church*.

- Notify the parents of the victim, and take any necessary steps to assure the child's safety until the parents arrive. The safety of the victim must be the church's primary concern.
- Do not confront the accused abuser with anger and hostility. Treat him or her with dignity, but immediately remove him or her from further involvement with children or youth.
- Notify the proper law enforcement or child protective services agency.
- Notify Indiana Ministries (if staff or volunteer is involved), the church's insurance agent, and the church's attorney.
- Keep a written record of the steps taken by the church in response.
- Call upon your designated spokesperson to make any necessary statements or responses to the new media.
- Prepare a brief and honest statement that can be made to the congregation without giving unnecessary details, placing blame, interfering with the victim's privacy, or violating any confidentiality concerns.
- Be prepared to cooperate fully with investigation conducted by law enforcement officials or child protective services.

When an allegation has occurred there are questions proper to ask and those that are out of bounds. Douglas J. Besharow in his book, *Recognizing Child Abuse: A Guide for the Concerned*, created the following lists:

Do's

- Make sure the interviewer is someone the child trusts
- Conduct the interview in private
- Sit next to the child, not across a table or desk
- Ask the child to clarify words/terms that you do not understand
- Be supportive, the child is likely to be frightened about telling "family secrets"
- Stress that anything that happened was not the child's fault
- Tell the child if any future action will be required
- Be truthful; do not make promises that you cannot keep

Do Not's

- Allow the child to feel "in trouble" or "at fault"
- Criticize the child's choice of words or language
- Probe or press for answers that the child seems unwilling to give
- Suggest answers to the child
- Display shock or disapproval of the parents, the child, or the situation

- Force the child to remove clothing
- Conduct the interview with a group of interviewers
- Leave the child alone with a stranger

Information to gather before making a report

Douglas J. Besharow suggests the following information be gathered prior to making a report to police, state police, or child protective services:

- The child's (or children's) name, age, sex, ethnic background, and permanent address.
- The child's (or children's) present condition and the possible need for emergency action
- The child's (or children's) present location and the location where the incidents occurred, if different from the permanent address
- The name of the parents or other persons who are responsible for the child's (or children's) care (and address, if different from the permanent address of the child)
- The name and address of the person or persons who are alleged to be responsible for the abuse or neglect
- The siblings' names, sex, ages, and present location
- The names, ages, sex, and relation to the child of other adults in the home
- The nature and extent of the suspected abuse or neglect
- Any other evidence of the alleged maltreatment
- The reason or reasons for suspecting abuse or neglect, including the physical or emotional condition of the child (or children) and statements of a child or parent
- Any other relevant statements made by the parents, the child, or significant others
- Any available information about previous injuries to the child or siblings (or other evidence of prior maltreatment)
- The names, addresses, and phone numbers of possible witnesses to the alleged maltreatment
- Any actions taken by the reporting source or others (such as placing the child in protective custody or taking photographs or X-rays)
- The reporter's name, telephone number, address, and occupation if the reporter is willing to provide this information
- Relationship of the reporter to the child and family
- Any other information that the reporter believes may be helpful

Many agencies will ask reporters to send in written statements. It is essential that all conversations and interviews be documented.

Teaching pre-teens and teens about dating

To help the youth of your church protect themselves from the possibility of date rape, Helen Benedict in her book, *Safe, Strong, and Streetwise: Sexual Safety at Home, On the Street, On Dates, On the Job, At Parties, and More*, suggests the following:

- If you are a girl, be strong in your relationship with boys. Don't let your date always make the arrangements and decisions about what to do when you go out and don't let him do all the paying, either, because that gives him power over you.
- If you are a boy, don't feel that in order to be "masculine" you have to make all the decisions and do all the paying. That idea is outdated and sexist and money shouldn't be part of a dating relationship anyway. When relationships are more equal, both partners are less likely to feel used.
- If you go out with someone you don't know well, stay in public places. If you are a girl, you will feel safer this way. If you are a boy, you will have the chance to get to know your date gradually and in a more relaxed way.
- Think about what you expect from a dating relationship.
- Decide your sexual limits and stick to them.
- Never let anyone force you into being alone with him or her against your will.
- If you are a girl, don't pretend to reject a boy sexually if you don't mean it. It confuses a boy, which isn't fair to him, and leads him to believe the myth that women never mean it when they say "no."
- If you are dating a boy who has a reputation for "scoring," be prepared for him to try to pressure you into sex.

Keeping children safe on the internet

James A Monteleone in his book, *A Parent's and Teacher's Handbook on Identifying and Preventing Child Abuse*, suggests the following safety tips for parents and workers with children or youth to help keep children safe on the internet.

- Instruct your children not to give out personal information online such as their password, full name, address, telephone number, age, gender, school name, sports team name, credit card information, or social security number.
- Talk to your children often about what they are doing online. There is no substitute for parental supervision. Be aware of what type of activity your child is involved in online.
- Provide your child with clear, simple instructions about how to avoid danger and what to do if something happens.

- Set safety rules that are appropriate for your child's age that both you and your child understand and agree to and then post these by the computer.
- Limit the amount of time your child spends online. Late-night times and excessive use of the computer by an adolescent may signal a problem.
- Make the online experience a family activity. Set up the computer in a central area of the home, such as the family room or living room and use it to plan vacations, purchase books, listen to music, preview videos, or help with research on school assignments with your children.
- Use online experiences as another way to teach responsibility, good conduct, and values.
- Use common sense when online. Remember that everything you read online may not be the truth and any offer that is too good to be true probably is not true.

Children's Online Privacy Protection Rule (COPPA)

In 1999 the Children's Online Privacy Protection Rule (COPPA) was passed by Congress to protect children under the age of 13 from being solicited or contacted by pedophiles while they are online. The act applies to commercial websites and online services that direct their collection of information primarily to children under the age of 13. The act requires these websites to contact parents notifying them of the websites policies with respect to the collection, use and disclosure of children's personal information.

The act expressly states that it applies to commercial websites and not to nonprofits. Therefore, churches are not required to comply with the act, the Federal Trade Commission encourages them to set an example by posting privacy policies and providing the protections set forth in COPPA to children and parents providing personal information at their sites.

The Federal Trade Commission attorney points out that in a civil lawsuit brought by a minor who is molested by a pedophile, a church may be sued for not complying with COPPA. While compliance is not necessary, it is possible that a court would conclude that COPPA establishes a "standard of reasonable care." So, while most nonprofit organizations (including churches) are not subject to COPPA, there are reasons why they might want to voluntarily comply.

Another safety issue that churches sometimes don't consider is putting children's and youth's pictures on their websites. No child or youth should have their picture placed on the church's website without the permission of the parent and it is best that this is written permission.

Developing protection policies for the church

It is essential that churches create policies for screening, supervising children and youth workers, training those that work with children and youth, and dealing with situations when they arise. Many insurance companies are now requiring that churches have these policies in place before renewing insurance coverage.

In developing a child protection policy, the church must realize that once a policy is created and implemented, it must be followed to the letter with no exceptions. If the policy is not followed in detail and an accusation is made, the church could find itself facing major legal liability.

The following are items that should be considered to be placed in a child protection policy:

1. Screening process

All individuals who will or potentially will have contact with children or youth must be screened. Those that would be in the “potentially” category include:

- Kitchen workers
- Secretarial staff
- Janitorial staff
- All clergy
- All lay ministerial staff

The applications used for paid staff and volunteer staff may contain different requests for information but the screening form should be identical for both. (see attached examples) The applications and screening forms contain sections requesting references. These references should be contacted and a reference check form completed for each reference individual listed. (see attached examples)

Even though the application may contain a statement giving permission to conduct a background check, it is better to have paid staff and volunteers complete a “Request for Criminal Records Check” form. An example of a request form is attached, however, it is wise to check with your local sheriff’s department and/or state police post for their specific request form to be completed at the same time.

If you should decide to create your own applications, screening forms, or request for background checks, it is essential that these be reviewed by an attorney to make sure language is correct and no questions are present that violate employment law.

If there are volunteers that only give one to five hours a year, they still need to be screened but the process can be simplified. They need to complete a form that contains the following information:

- Name
- Address
- A description of church attendance over the past five years (where have they worshipped and for how long)
- A description of volunteer church work over the past five years
- The names and addresses of two to three references

As with the other applications, references should be checked and a reference check form be completed for each.

2. Education

Because screening is relatively new and associated mainly with the secular world, many do not understand the importance of doing it in the church. Therefore, it is essential to educate the congregation as a whole and not just children and youth workers. The congregation needs to understand the need for reducing the risks of child abuse both for the children and for the ethical responsibility of the church. This educating can take many forms:

- a. Key note Sunday morning sermon
- b. Bulletin inserts
- c. Pastoral letter to members
- d. Newsletter articles
- e. Special speaker or video for a combined adult education class
- f. Press release
- g. Posters in church
- h. Special music or drama
- i. Educational seminar or workshop

Church leaders should also hold yearly training for all those working with children and youth. This yearly training should contain reviews of the following:

- A. Definition of child sexual abuse: Any sexual activity with a child – whether in the home by a caretaker, in a day care situation, a foster/residential setting, or in any other setting, including on the street by a person unknown to the child. The abuser may be an adult, an adolescent, or another child, provided the child is four years older than the victim (National Resource Center on Child Sexual Abuse, 1992)

B. Child sexual abuse includes behaviors that involve touching and non-touching aspects. Types of abuse that involve touching include:

1. Fondling
2. Oral, genital, and anal penetration
3. Intercourse
4. Forcible rape

Types of sexual abuse that do not involve touching include:

1. Verbal comments
2. Pornographic videos
3. Obscene phone calls
4. Exhibitionism
5. Allowing children to witness sexual activity

C. Effects of Child Sexual Abuse: The personal violation of child sexual abuse causes the victim to experience many losses...including loss of childhood memories, loss of healthy social contact, loss of the opportunity to learn, loss of bodily integrity, loss of identity and self-esteem, loss of trust, loss of sexual maturity, and loss of self-determination. All of these personal violations mean that victims of child sexual abuse lose the child's right to a normal childhood. In adulthood it may also mean the loss of the capacity to appreciate sexual intimacy as nurturing, holy, and loving (The Report of the Winter Commission, 1990, Vol. 1, p. 118).

D. Profile of a Child Molester: The screening process can cause screeners to focus on stereotypes of molesters so that they overlook less obvious characteristics. These characteristics include:

1. Over eighty percent of the time, the abuser is someone known to the victim.
2. Most abuse takes place within the context of an ongoing relationship.
3. The usual offender is between the ages of 20-30 years.
4. 20 percent of sex offenders begin their activity before the age of 18.
5. Child abusers often are married and have children.

E. Signs of molestation

1. Physical signs may include:
 - a. Lacerations and bruises
 - b. Nightmares
 - c. Irritation, pain, or injury to the genital area

- d. Difficulty with urination
 - e. Discomfort when sitting
 - f. Torn or bloody underclothing
 - g. Venereal disease
2. Behavioral signs may include:
 - a. Anxiety when approaching church or nursery area
 - b. Nervous or hostile behavior toward adults
 - c. Sexual self-consciousness
 - d. “acting out” of sexual behavior
 - e. withdrawal from church activities and friends
 3. Verbal signs may include: the following statements:
 - a. I don’t like [a particular church worker]
 - b. [A church worker] does things to me when we’re alone
 - c. I don’t like to be alone with [a church worker]
 - d. [A church worker] fooled around with me

3. Eliminate Negligent Supervision

Screening does not prevent churches from the liability of negligent supervision. To reduce the risk of negligent supervision the church should implement the following:

- a. Implement a two-person rule. No individual should be left with children.
- b. Churches should discourage youth or children workers from transporting children or youth alone. If a situation arises where a child or youth worker must be alone, unsupervised, with a child or youth, the worker should obtain consent from the parent or guardian to be alone with the child or youth. The worker should also notify a staff member of the situation.
- c. Church leaders should observe children/youth classes and activities randomly.
- d. Classroom doors should have windows or doors should remain open.
- e. Children workers should accompany children to restrooms, check for adults in restroom, then stand by doors to monitor who goes into the restroom while children are present.
- f. Install multi-directional mirrors to monitor hallways and doorways.
- g. Implement a parent identification rule for the nursery and children’s classes. Children can only be released to pre-authorized adults.
- h. Clear adults that will work as chaperones for overnight activities of youth.

4. Children/Youth Worker’s Policy Statement:

The child protection policy should include a detailed statement that contains the followings:

1. A description of the selection process and qualifications for children/youth group leaders. Persons who are known to have committed previous acts of sexual misconduct should be strictly prohibited from serving. Individuals who have been victims of sexual abuse may not be people who should work with children or youth. The pastor should meet with these people before they are given permission to work with children or youth. A screening procedure should be described. This is also where the “6-month rule” should be discussed.
2. A complete definition of child sexual abuse.
3. Behavior parameters for all workers. Those kinds of relationships and contacts that are strictly prohibited should be specified, along with the consequences for violating these rules. Adult volunteers should be strictly prohibited from having sole custody of a member of the children/youth group with few exceptions (e.g., a younger brother or sister of the adult volunteer, or parental permission has been obtained and a member of the church staff has been notified in advance of the meeting).
4. A description of those who are legally obligated to report reasonably suspected cases of abuse under state law. The policy should also mandate all church employees and workers to report any suspected cases of abuse to their program supervisor. This will not necessarily relieve such persons of their legal duty to report suspected cases of abuse to the state.
5. A list of other policies or procedures the church expects all workers to obey.

5. Reporting procedures:

A detailed protocol needs to be mapped out so that children/youth volunteers and paid staff know the process through which child abuse will be reported. In other words, if a child/youth worker or staff person is told about an alleged abuse or suspect abuse is occurring, who is the key individual they report to that will represent the church. In the state of Indiana, all persons are mandatory reporters so it is advisable to have the volunteer or staff person participate with the key individual in reporting the suspected abuse.

It is not the responsibility of the church to be investigators that is the role of the authorities. However, there is important information that should be gathered before reporting to authorities:

- The child’s (or children’s) name, age, sex, ethnic background, and permanent address

- The child's (or children's) present condition and the possible need for emergency action
- The child's (or children's) present location and the location where the incidents occurred, if different from the permanent address
- The name of the parents or other persons who are responsible for the child's (or children's) care (and address, if different from the permanent address of the child)
- The name and address of the person or persons who are alleged to be responsible for the abuse or neglect
- The siblings' names, sex, ages, and present location
- The names, ages, sex, and relation to the child of other adults in the home
- The nature and extent of the suspected abuse or neglect
- Any other evidence of the alleged maltreatment
- The reason or reasons for suspecting abuse or neglect, including the physical or emotional condition of the child (or children) and statements of a child or parent
- Any other relevant statements made by the parents, the child, or significant others
- Any available information about previous injuries to the child or siblings (or other evidence of prior maltreatment)
- The names, addresses, and phone numbers of possible witnesses to the alleged maltreatment
- Other individuals or agencies that may have information about the alleged maltreatment
- Any actions taken by the reporting source or others (such as placing the child in protective custody or taking photographs or X-rays)
- The reporter's name, telephone number, address, and occupation if the reporter is willing to provide this information
- Relationship of the reporter to the child and family
- Any other information that the reporter believes may be helpful

(list created by Douglas J. Besharow: *Recognizing Child Abuse: A Guide for the Concerned*)

It is essential that all conversations and information be documented, dated, and kept in a secured location in case any future legal matters should result.

6. If an allegation occurs within the church against a staff member or volunteer:

The best policy manual in the world can not keep this from occurring. A strategy needs to be designed to be able to handle such a situation effectively. The following should be considered to be a part of that strategy:

- Notify the parents of the victim, and take any necessary steps to assure the child's safety until the parents arrive. The safety of the victim must be the church's primary concern.
- Do not confront the accused abuser with anger and hostility. Treat him or her with dignity, but immediately remove him or her from further involvement with children or youth.
- Notify the proper law enforcement or child protective services agency.
- Keep a written record of the steps taken by the church in response.
- Select a spokesperson. The media will jump on a suspected child abuse case in a church. The church should select one spokesperson to which the media can be referred. The congregation should be made aware that the individual will be the one to speak for the church. The spokesperson should be provided a positional statement from the church.
- Call upon your designated spokesperson to make any necessary statements or responses to the news media.
- Prepare a brief and honest statement that can be made to the congregation without giving unnecessary details, placing blame, interfering with the victim's privacy, or violating any confidentiality concerns.
- Be prepared to cooperate fully with the investigation conducted by law enforcement officials or child protective services.
- Maintain adequate records. Make sure all personnel, paid and volunteer, files are up-to-date and accessible.
- Don't engage in denial, minimization, or blame. Stick to the positional statement of the church.
- Use an attorney. Always have the church's attorney present during questioning by investigating agencies.
- Don't be accusatory. It is not necessary to give details to the public.
- Work with your state or area Church of God office and your insurance company. Contact the Church of God state or area office and request their help with procedures.

(list modified from that created by Joy Thornburg Melton: *Safe Sanctuaries: Reducing the Risk of Child Abuse in the Church*)

It will be beneficial for the church to have an insurance agent or an attorney to review the child protection policy to insure that all needed material is included.

Previous Work Experience: Please list your previous employers from the past five years. Include the job title, a description of position duties and responsibilities, the name of the company/employer, the address of company/employer, the name of your immediate supervisor, and the dates you were employed in each position.

Previous Volunteer Experience: Please list any relevant volunteer positions you have held and list the duties you performed in each position, the name of your supervisor, the address and phone number of the volunteer organization, and the dates of your volunteer services.

Have you ever been convicted of or pled guilty to a crime, either a misdemeanor or a felony (including but not limited to drug-related charges, child abuse, other crimes of violence, theft, or motor vehicle violations)? ___ No ___ Yes

If yes, please explain:

References: Please list three individuals who are not related to you by blood or marriage as references. Please list people who have known you for at least three years.

1. Name:

Address:

Daytime Phone:

Evening Phone:

Length of time you have known reference:

Relationship to reference:

2. Name:

Address:

Daytime Phone:

Evening Phone:

Length of time you have known reference:

Relationship to reference:

3. Name:

Address:

Daytime Phone:

Evening Phone:

Length of time you have known reference:

Relationship to reference:

Waiver and Consent:

I, _____, hereby certify that the information I have provided on this application for employment is true and correct. I authorize this church to verify the information I have provided on this application by contacting the references and employers I have listed, by conducting a criminal records check, or by other means, including contacting others whom I have not listed. I authorize the references and employers listed in this application to give you whatever information they may have regarding my character and fitness for the job for which I have applied. Furthermore, I waive any rights I may have to confidentiality.

In the event that my application is accepted and I become employed by _____ Church, I agree to abide by and be bound by the policies of _____ Church and to refrain from inappropriate conduct in the performance of my duties on behalf of _____ Church.

I have read this waiver and the entire application, and I am fully aware of its contents. I sign this consent freely and under no duress or coercion.

Signature of Applicant Date

Witness Date

Recommended by Joy Thornburg Melton: Safe Sanctuaries: Reducing the Risk of Child Abuse in the Church

Example of Screening Form:

This application is to be completed by all applicants for any position (volunteer or compensated) involving the supervision or custody of minors. This is not an employment application form. Persons seeking a position in the church as a paid employee will be required to complete an employment application in addition to this screening form. It is being used to help the church provide a safe and secure environment for those children and youth who participate in our programs and use our facilities.

Personal:

Date: _____

Name:

Last	First	Middle
------	-------	--------

Identify must be confirmed with a state drivers license or other photographic identification.

Present address:

City: _____ State: _____ Zip: _____

Home phone (____) _____

Please indicate the type of youth or children's work you prefer

Please indicate the date you would be available to begin

What is the minimum length of commitment you can make?

Have you ever been convicted of or pleaded guilty to a crime?

___ Yes (If yes, please explain – (attach a separate page, if necessary)

___ No

Do you have a current driver's license?

Yes If you, please list you drives license number

No

Church History and Prior Youth Work

Name of church of which you are a member:

List (name and address) other churches you have attended regularly during the past five years:

List all previous church work involving youth (list each church's name and address, type of work performed, and dates)

List all previous non-church work involving children/youth (list each organization's name and address, type of work performed, and dates)

List any gifts, callings, training, education, or other factors that have prepared you for children or youth work:

Personal References (not former employers or relatives)

Name _____

Name _____

Address _____

Address _____

Telephone _____

Telephone _____

Suggested by Dr. James Cobble, Reducing the Risk of Child Sexual Abuse in Your Church

Example Reference Check form:

Applicant name:

Reference name:

Reference address:

Reference phone:

1. What is your relationship to the applicant?
2. How long have you known the applicant?
3. How well do you know the applicant?
4. How would you describe the applicant?
5. How would you describe the applicant's ability to relate to children and/or youth?
6. How would you describe the applicant's ability to relate to adults?
7. How would you describe the applicant's leadership abilities?
8. How would you feel about having the applicant as a volunteer worker with your child and/or youth?
9. Do you know of any characteristics that would negatively affect the applicant's ability to work with children and/or youth? If so, please describe.
10. Do you have any knowledge that the applicant has ever been convicted of a crime? If so, please describe.
11. Please list any other comments you would like to make:

Reference inquiry completed by:

Signature Date

Joy Melton: Safe Sanctuaries: Reducing the Risk of Child Abuse in the Church

Example of request for criminal records check:

I, _____, hereby authorize _____ Church to request the _____ police/sheriff's department to release information regarding any record of charges or convictions contained in its files, or in any criminal file maintained on me, whether said file is a local, state, or national file, and including but not limited to accusations and convictions for crimes committed against minors, to the fullest extent permitted by state and federal law. I do release said police/sheriff's department from all liability that may result from any such disclosure made in response to this request.

Signature of Applicant Date

Print applicant's full name:

Print all other names that have been used by applicant (if any):

Date of birth: _____ Place of birth: _____

Social Security Number (if required by sheriff's dept.) _____

Driver's license number: _____ State issuing license: _____

License expiration date: _____

Request sent to: _____

Name: _____

Address: _____

Phone: _____

Local police/sheriff's departments may have specific forms for requests.

Recommended by Joy Thornburg Melton: Safe Sanctuaries: Reducing the Risk of Child Abuse in the Church

Child Friendly Building Set-ups

When children come to church they are coming to God's house. It is the one place that they should feel safe. Many churches, especially older churches, have classroom entrances and areas that can be scary to children.

Classroom Entrances

Classrooms should be easy to see into.



Figure 10: Not a good entrance



Figure 11: Preferred entrance

If the building is older and it is not practical to install windows beside doorways, split doors or dutch doors can be installed. See the example below.



Figure 12: Glass in door



Figure 13: Split or dutch door

Two-way mirrors can also be installed. These will look like a mirror in the room but those in the hallways will be able to see into the room without distracting the children or youth in the room.



Figure 14: Two-way mirror

If the doors have glass down the sides, keep those windows clear and do not obstruct view into room by decorating the window.



Figure 15: Window is too blocked

Nursery sign in

New parents will feel more secure when they see a bright clean nursery. Churches are encouraged to implement sign-in and sign-out policies for the children. They should have a list of who can and cannot have access to the children.



Figure 16: Bright, clean nursery design



Figure 17: Nursery sign-in

To create a safe place for the church's children, church leaders should take the time to walk through their churches with the mind of a predator. If there are places where an adult can have a child and not be seen or heard, a plan should be developed to eliminate the area. This can be done through removing doors, adding lights, installing multi-directional mirrors, or having adults monitor halls during worship and study times.

Resource List

- Hunter, Mic. Abuse Boys: The Neglected Victims of Sexual Abuse. New York: Fawcett Books. 1990.
- Baker, Leigh. Protecting Your Children from Sexual Predators. New York: St. Martin's Press. 2002.
- Wooden, Kenneth. What Every Parent and Child Should Know About Preventing Sexual Abuse and Abduction. Arlington, TX: The Summit Publishing Group. 1995.
- Anderson, Bill. When Child Abuse Comes to Church: Recognizing Sexual Abuse, Knowing What to Do About It – and Possibly Preventing It from Happening. Minneapolis, MN: Bethany House Publishers. 1992.
- Cobble, James. Reducing the Risk of Child Sexual Abuse in Your Church. Matthews, NC: Church Law & Tax Report. 1993.
- Clark, Robin E. The Encyclopedia of Child Abuse. New York: Facts on File. 2001.
- Ahearn, Laura A. Megan's Law Nationwide and ...The Apple of My Eye ...Childhood Sexual Abuse Prevention Program. New York: Prevention Press USA. 2001.
- Johnson, Becca Cowan. For Their Sake: Recognizing, Responding to, and Reporting Child Abuse. Martinsville, IN: American Camping Association, Inc. 1992.
- Besharow, Douglas J. Recognizing Child Abuse: A Guide for the Concerned. New York: The Free Press. 1990.
- Monteleone, James A. A Parent's & Teacher's Handbook on Identifying and Preventing Child Abuse. St. Louis, MO: G.W. Medical Publishing. 1998.
- Hong, Marian. Family Abuse: A National Epidemic. Springfield, NJ: Enslow Publishers, Inc. 1997.
- Tower, Cynthia Crosson. Understanding Child Abuse and Neglect. Needham Heights, MA: Allyn and Bacon. 1993.
- Hyman, Irwin A. Dangerous Schools: What We Can Do About the Physical and Emotional Abuse of Our Children. San Francisco, CA: Jossey-Bass Publishers. 1999.

Snow, Captain Robert L. Family Abuse: Tough Solutions to Stop the Violence. New York: Plenum Trade. 1997.

Benedict, Helen. Safe, Strong, & Streetwise: Sexual Safety at Home, On the Street, On Dates, On the Job, At Parties, & More. Toronto, Canada: Little, Brown, and Company. 1987.

Henderson, Helene. Domestic Violence and Child Abuse Sourcebook. Detroit, MI: Omnigraphics. 2000.

Melton, Joy Thornburg. Safe Sanctuaries: Reducing the Risk of Child Abuse in the Church. Nashville, TN: Discipleship Resources. 2002.

Lanning, Kenneth. Child Molesters: A Behavioral Analysis: For Law Enforcement Officers Investigating Cases of Child Sexual Exploitation. Quantico, Virginia: Behavioral Science Unit. 1992.

Block D3

COPYRIGHT LAW

It is customary that churches run on very tight budgets. It is sometimes difficult for them to be able to purchase the amounts of printed material, hymnals, choir music, etc. that they need for their ministry. If most churches' files were gone through today, most would be guilty of having copied material. In the majority of cases, these churches could be charged with violations of the copyright law. The following sections discuss the various aspects of the copyright law and how it affects the church.

Congress enacted the Copyright Act of 1976 to protect copyrighted material and its creators. The theory of the Copyright Act is:

Unless authors are given exclusive rights to their works, they will have little if any incentive to produce artistic works, and the public itself will be the loser.⁵⁹⁹

The United States Supreme Court declared the following regarding copyright law:

The economic philosophy behind the clause empowering Congress to grant...copyrights is the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors...in the useful arts. Sacrificial days devoted to such creative activities deserve rewards, commensurate with the services rendered. Mazer v. Stein, 347 U.S. 201 (1954).⁶⁰⁰

Securing Copyright Protection

1. Initial Copyright Protection

Under the Copyright Act of 1976, authors and composers receive initial copyright protection as soon as they create an original work of authorship that is "fixed" in a "tangible medium of expression." There are then three prerequisites to initial copyright protection in a work: (1) the work must be

¹Richard R. Hammar, The Church Guide to Copyright Law, Third Edition (Matthews, NC: Christian Ministry Resources, 2001): p. 5.

⁶⁰⁰ Ibid.: p.5.

original, (2) it must be a work of authorship, and (3) it must be fixed in a tangible medium of expression.⁶⁰¹

A work is original if an author created it by his or her own skill, labor, and judgment, and not by directly copying or evasively imitating the work of another.

For a work to be entitled to initial copyright protection, it must constitute a work of authorship as defined by the Copyright Act. Section 102 of the Act provides that works of authorship include

1. literary works, such as books, periodicals, and manuscripts
2. musical works, including any accompanying words
3. dramatic works, including any accompanying music
4. pantomimes and choreographic works
5. pictorial, graphic, and sculptural works
6. motion pictures and other audiovisual works
7. sound recordings⁶⁰²

Names and titles are not subject to copyright protection. They may be entitled to protection under federal trademark law if they are affixed to or associated with products or services and serve to identify the source of the products or services in a unique way.⁶⁰³

Section 103 stipulates that compilations and derivative works also are entitled to copyright protection. A compilation is defined as “a work formed by the collection and assembling of pre-existing materials...that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship.” A derivative work is defined as “a work based upon one or more pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted.”⁶⁰⁴

2. Post-Publication Copyright Protection – Works First Published Before March 1, 1989

Under the Copyright Act of 1976, an author’s work is initially copyrighted until it is published.

⁶⁰¹ Richard R. Hammar, Pastor, Church & Law, Third Edition (Matthews, NC: Christian Ministry Resources, 2000): p. 664.

⁶⁰² *ibid.*: p. 664.

⁶⁰³ *ibid.*: p. 664.

⁶⁰⁴ *ibid.*: pp. 664-665.

The Act defines publication as “the distribution of copies...of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending.”⁶⁰⁵

For works published prior to March 1, 1989, section 401(a) of the Copyright Act specified: Whenever a work...is published in the United States or elsewhere by authority of the copyright owner, a notice of copyright as provided by this section shall be placed on all publicly distributed copies from which the work can be visually perceived, either directly or with the aid of a machine or device.⁶⁰⁶

This requirement is known as the “notice” requirement, and compliance with it is essential to the continuation of copyright protection following the publication of a work first published prior to March 1, 1989. No registration was necessary to perfect copyright protection in a work first published before March 1, 1989.⁶⁰⁷

3. Post-Publication Copyright Protection – Works First Published On or After March 1, 1989.

When the United States joined the Berne Convention on March 1, 1989, it was forced to make some adjustments to the current copyright law. Until the adjustments:

Mandatory notice of copyright has been abolished for works published for the first time on or after March 1, 1989. Failure to place a copyright notice on copies of works that are publicly distributed can no longer result in the loss of copyright.⁶⁰⁸

Even though the new law under the Berne Convention no longer requires the copyright notice, it is in the best interest of authors to make sure that it is used. The question then becomes what constitutes a valid copyright notice?

The contents and placement of a valid copyright notice are described in sections 401(b) and (c) of the Copyright Act. A valid notice consists of three elements: (1) the symbol (c), the word “Copyright,” or the abbreviation “Copr.”; and (2) the year of first publication of the work (in the case of compilations and derivative works incorporating previously published material, the year of first publication of the compilation or derivative work is sufficient); and (3) the name of the owner of the

⁶⁰⁵ *ibid.*: p. 665.

⁶⁰⁶ *ibid.*: p. 665.

⁶⁰⁷ *ibid.*: p. 665.

⁶⁰⁸ *ibid.*: p. 665.

copyright in the work, or an abbreviation by which the name can be recognized, or a generally known alternative designation of the owner.⁶⁰⁹

Section 401(c) provides that the notice shall be affixed to copies of the work “in such manner and location as to give reasonable notice of the claim of copyright.” To illustrate, Copyright Office regulations specify that a copyright notice for a work published in book form may be affixed on the title page, the page immediately following the title page, either side of the front or back cover, the first page of the main body of the work, the last page of the main body of the work, or any page between the front page and first page of the main body of the work if there are no more than 10 pages between the front page and the first page of the main body of the work and the notice is prominently displayed and set apart.⁶¹⁰

Section 405(a) of the Copyright Act specifies: with respect to copies and phonorecords publicly distributed by authority of the copyright owner before [March 1, 1989], the omission of the copyright notice described in sections 401 through 403 from copies or phonorecords publicly distributed by authority of the copyright owner does not invalidate the copyright in a work if

- (1) the notice has been omitted from no more than a relatively small number of copies...distributed to the public; or**
- (2) registration for the work has been made before or is made within five years after the publication without notice, and a reasonable effort is made to add notice to all copies...that are distributed to the public in the United States after the omission has been discovered; or**
- (3) the notice has been omitted in violation of an express requirement in writing that, as a condition of the copyright owner’s authorization of the public distribution of copies...they bear the prescribed notice.⁶¹¹**

The Deposit Requirement

The copyright Act does not require that a work be registered, however, it does require that a deposit must be made on all published works that carry the copyright notice.

The copyright owner, or the owner of the exclusive right of publication in a work, has a legal obligation to deposit in the Copyright Office, within three

⁶⁰⁹ *ibid.*: p. 666.

⁶¹⁰ *ibid.*: p. 666.

⁶¹¹ *ibid.*: pp. 666-667.

months of publication, two copies (or in the case of sound recordings, two phonorecords) for the use of the Library of Congress. Failure to make the deposit can result in fines and penalties, but does not affect copyright protection. Under section 408(b) of the Act, a single deposit can satisfy both the deposit and registration requirements. This provision requires that the single copy must be accompanied by the prescribed application and registration fee.⁶¹²

Copyright Ownership

Section 201(a) of the Copyright Act states simply that “copyright in a work...vests initially in the author or authors of the work.” There is very little difficulty in understanding this provision. The copyright law goes on to state that “the authors of a joint work are co-owners of copyright in the work.”⁶¹³

Works Made for Hire

It is not uncommon for ministers to create works of music or written word while they are working at a church. A great misunderstanding comes as to who truly owns that material. The copyright law assigns the ownership to the church since it was done on church time, church property, and possibly with church personnel.

Section 201(b) of the Copyright Act specifies that “in the case of work made for hire, the employer or other person for whom the work was prepared is considered the author...and, unless the parties have expressly agreed otherwise in a written instrument signed by them, owns all of the rights comprised in the copyright.”⁶¹⁴

The copyright law defines “work made for hire” as “a work prepared by an employee within the scope of his or her employment.” There are two requirements that must be met: (1) the person creating the work is an employee, and (2) the employee created the work within the scope of his or her employment.⁶¹⁵

1. The Church’s Tax-Exempt Status

If a church transfers the copyright in a work made for hire to an employee, this may be viewed by the IRS as “private inurement” of the church’s

⁶¹² *ibid.*: p. 666.

⁶¹³ *ibid.*: p. 668.

⁶¹⁴ *ibid.*: p. 668.

⁶¹⁵ *ibid.*: p. 669.

resources to an individual. If so, this could jeopardize the church's tax-exempt status.⁶¹⁶

1. The church transfers copyright ownership to the staff member. This may constitute private inurement. The IRS construes this requirement as follows: An organization's trustees, officers, members, founders, or contributors may not, by reason of their position, acquire any of its funds. They may, of course, receive reasonable compensation for goods or services or other expenditures in furtherance of exempt purposes. If funds are diverted from exempt purposes to private purposes, however, exemption is in jeopardy. The Code specifically forbids the inurement of earnings to the benefit of private shareholders or individuals....The prohibition of inurement, in its simplest terms, means that a private shareholder or individual cannot pocket the organization's funds except as reasonable payment for goods or services. When a church employee writes a book during office hours at the church, using church equipment, supplies, and personnel, the copyright in the work belongs to the church. If the church chooses to renounce its legal rights in the book, and transfers the copyright back to the employee, then it is relinquishing a potentially valuable asset that may produce royalty income for several years. Few if any churches would attempt to "value" the copyright and report it as additional taxable compensation to the employee, and as a result it is hard to avoid the conclusion that such arrangements result in inurement of the church's assets to a private individual. The legal effect is to jeopardize the church's tax-exempt status. This risk must not be overstated, since only a few churches have had their exempt status revoked by the IRS in the last fifty years, and none because of a transfer of copyright to an employee who created a work made for hire. But the consequences would be so undesirable that the risk should be taken seriously.⁶¹⁷
2. The church retains the copyright. The risk of inurement can be minimized if not avoided if the church retains the copyright in works made for hire, and pays a "bonus" or some other form of compensation to the author.⁶¹⁸
3. The church urges employees to do "outside work" at home. Do you have a writer or composer on staff at you church? If so, it is possible that this person is doing some writing or composing on church premises, using church equipment, during office hours. One way to avoid the problems associated with work made for hire

⁶¹⁶ Ibid.: p. 670.

⁶¹⁷ Ibid.: p. 670.

⁶¹⁸ Ibid.: p. 670.

status is to encourage staff members to do all their writing and composing at home. Tell staff members that (1) if they do any writing or composing at church during office hours, their works may be works made for hire; (2) the church owns the copyright in such works; and (3) the church can transfer copyright to the writer or composer, but this may constitute “inurement” of the church’s assets to a private individual, jeopardizing the church’s tax-exempt status. By urging staff members to do all their personal writing and composing at home, the church also will avoid the difficult question of whether works that are written partly at home and partly at the office are works made for hire.

4. Sermons. To the extent that sermons are written in a church office, during regular church hours, using church secretaries and equipment, it is possible that sermons would be considered works made for hire since they are created by an employee within the scope of employment.⁶¹⁹

2. Excessive Compensation

Staff members who retain ownership of a work made for hire because of a written transfer signed by the church may be subject to intermediate sanctions. Intermediate sanctions are excise taxes the IRS can assess against persons who receive excessive compensation from a church or other charity....If the work generates substantial income, then this may trigger intermediate sanctions. This would expose the writer or composer to an initial excise tax of 25 percent of the amount of taxable compensation that exceeds what the IRS deems to be reasonable. There is an additional 200 percent tax that can be assessed against the writer or composer if he or she does not return the excess amount to the church. Board members who authorized a transfer of the copyright to the writer or composer may be collectively assessed a tax of 10 percent of the excessive compensation up to a maximum of \$10,000.⁶²⁰

Duration of Copyright Protection

Under the copyright law that was in effect before 1978, copyright was secured either on the date a work was published (with an appropriate copyright notice), or on the date of registration if the work was registered in unpublished form. In either case, the copyright lasted for a first term of 28 years from the date it was secured. During the last (28th) year of the first term, the copyright was eligible for renewal. If renewed, the copyright was extended for a second term of 28 years. If not renewed, the copyright expired at the end of the first 28-year term. Congress enacted legislation

⁶¹⁹ *ibid.*: pp. 670-671.

⁶²⁰ *ibid.*: p. 672.

in 1998 amending the duration of copyrights. The current duration rules are as follows:

- Works created and published before 1978. The term of copyright protection for any work still in its initial or renewal copyright term as of October 27, 1998 is extended to 95 years from the date that copyright was originally secured.
- Works created but not published or registered before 1978. The term of copyright protection is the life of the author plus 70 years, but in no case will copyright expire earlier than December 31, 2002. If the work is published before December 31, 2002, the term will not expire before December 31, 2047.
- Works created on or after January 1, 1978. The term of copyright protection will endure for the life of the author plus 70 years. In the case of a joint work, the term lasts for 70 years after the last surviving author's death. For anonymous and pseudonymous works and works made for hire, the term is 95 years from the year of first publication or 120 years from the year of creation, whichever expires first.⁶²¹

Registration

The owner of a copyright in a work may register the copyright claim by delivering two complete copies of the best edition of the published work or one complete copy of an unpublished work, along with an application form and the application fee (currently \$20) to the Copyright Office.⁶²²

Section 408(a) unequivocally states that “registration is not a condition of copyright protection.” While registration is not necessary to secure copyright protection, it is advisable in some cases for a variety of reasons, including the following:

- 1. It is an inexpensive and simple procedure.**
- 2. It establishes a public record of a copyright claim.**
- 3. Section 411 of the Copyright Act provides that “no action for infringement of the copyright in any work shall be instituted until registration of the copyright claim has been made....” This is a significant advantage of registration. If the copyright claim has not been registered, the copyright owner cannot seek redress in the civil courts for acts of**

⁶²¹ *ibid.*: pp. 672-673.

⁶²² *ibid.*: p. 674.

infringement. A number of courts have held, however, that a copyright owner of an unregistered work can sue an infringer by simply registering the claim of copyright even though the infringement occurred prior to registration. This rule would not apply if the infringement suit were brought after the limitations period (generally 3 years) following the initial act of infringement.

- 4. Section 504(c) of the Copyright Act allows a copyright owner to collect “statutory damages” from an infringer in lieu of proving actual damages. Statutory damages ordinarily range from \$500 to \$20,000 per violation, and they often comprise the only meaningful measure of damages since actual damages are difficult to prove. However, section 412 specifies that “no award of statutory damages...shall be made for (1) any infringement of copyright in an unpublished work commenced before the effective date of its registration, or (2) any infringement of copyright commenced after first publication of the work and before the effective date of its registration, unless such registration is made within three months after the first publication of the work.”**
- 5. Section 410(c) provides that “in any judicial proceedings the certificate of a registration made before or within five years after first publication of the work shall constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate.” What is the significance of this rule? Simply this—a copyright claimant who has registered a claim of copyright in a work within five years before or after first publication does not have the burden of proving the validity of the copyright claim in an infringement suit.**
- 6. Section 205(c) of the Copyright Act provides that “recordation of a document in the Copyright Office gives all persons constructive notice of the facts stated in the recorded document, but only if...registration has been made for the work.” This provision means that the public is “on notice” of any transfers, licenses, mortgages, and other documents pertaining to copyrights if such documents are recorded in the Copyright Office and the underlying works are registered.**
- 7. Generally, omission of a valid copyright notice from a work first published before March 1, 1989 invalidates the**

copyright in the work. However, section 405(a)(2) of the Copyright Act provides that omission of the notice on such a work will not invalidate the copyright if “registration for the work has been made before or is made within five years after the publication without notice, and a reasonable effort is made to add notice to all copies or phonorecords that are distributed to the public in the United States after the omission has been discovered.

8. The Copyright Office reviews every application for registration to ensure that the legal formalities needed to ensure protection are satisfied. Often, the Copyright Office will call to the attention of a copyright owner an error in the registration application or in the copyright notice that can ensure that copyright protection is preserved. This review, however, is limited to the applicant’s compliance with technical requirements. The merits of a particular claim of copyright ordinarily are not evaluated.
9. Registration of a copyright in some cases may enhance the marketability of an author’s or composer’s work. For example, a person checking Copyright Office records on a particular subject may inadvertently find a work, and contact the copyright owner regarding a publishing opportunity.
10. Registration of a musical work may entitle the copyright owner to “compulsory royalty payments” in the event that someone else makes a recording of the work. This provision has special relevance in the context of audio recording of church worship services in which copyrighted music is performed.⁶²³

To register a work, send the following three items in the same envelope or package to the Register of Copyrights, Copyright Office, Library of Congress, Washington, D.C. 20559:

- (a) A properly completed application form. Complete the application using black ink or a typewriter, and either an original Copyright Office form or a clear photocopy made on a good grade of white paper. Applications not meeting these requirements will be returned. There are several registration forms. The more commonly used forms include: (a) Form TX for non-dramatic literary works (e.g., compilations, computer programs, contributions to

⁶²³ *ibid.*: pp. 674-675.

periodicals, dissertations, fiction, lectures, letters, nonfiction, poetry, sermons, song lyrics without music), (b) Form PA for published and unpublished works of the performing arts (musical and dramatic works, choreographic works, motion pictures and other audiovisual works), and (c) Form SR for published and unpublished sound recordings (e.g., music, sermons).

(b) A nonrefundable filing fee of \$20 per application. At the time of publication of this text, a proposal was pending to increase the filing fee to \$30 for most works.

(c) A nonrefundable deposit of the work being registered. The deposit requirements vary in particular situations. Generally, two copies of the work must be filed along with the registration application. Section 408(b) of the Copyright Act specifies that the deposit and registration requirements can be satisfied simultaneously.⁶²⁴

The Copyright Owner's Exclusive Rights

Section 106 of the Copyright Act gives a copyright owner the following five "exclusive rights":

(a) to reproduce the copyrighted work in copies or phonorecords;

(b) to prepare derivative works based upon the copyrighted work;

(c) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

(d) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and

(e) in the case of literary, musical dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.⁶²⁵

⁶²⁴ *ibid.*: p. 675.

⁶²⁵ *ibid.*: p. 676.

Infringement

Section 501 of the Copyright Act states that “anyone who violates any of the exclusive rights of the copyright owner...is an infringer of the copyright.”⁶²⁶

Many churches are guilty of infringement on copyrights because of creating overheads, copying music for choirs or specials, copying songs for worship, or copying Sunday School or lesson material. Ministers can be guilty of infringement by placing parts of sections from books, etc. in their sermons or articles without giving proper credit to the original author.

The Copyright Act and courts have defined the following to be examples of infringement:

- (1) two identical bars of a musical work;**
- (2) four notes and two words, which comprised the “heart of the composition;”**
- (3) three sentences (that were used for advertising purposes);**
- (4) three sentences;**
- (5) eight sentences;**
- (6) less than one percent of the copyrighted work; and**
- (7) the phrase “put on a happy face.”⁶²⁷**

The following examples do not constitute copyright infringement:

- (1) a sentence and a half;**
- (2) sixteen words; and**
- (3) two sentences.⁶²⁸**

Section 102(a) of the Copyright Act states that copyright protection subsists in original “musical works, including any accompanying words,” that are reduced to a tangible form. Persons who compose both the music and lyrics of an original hymn are entitled to copyright protection for both.

⁶²⁶ *ibid.*: p. 676.

⁶²⁷ *ibid.*: p. 677.

⁶²⁸ *ibid.*: p. 677.

This has important consequences. It means primarily, that no one can make copies of either the music or lyrics without authorization.⁶²⁹

It is also important to recognize that one of the copyright owner's exclusive rights is the right to prepare derivative works based upon the copyrighted work. Derivative works include musical arrangements. Therefore, it is not permissible for anyone other than the copyright owner or one whom the copyright owner has authorized to create an arrangement of a copyrighted musical work.⁶³⁰

It is permissible to make arrangements of preexisting musical works if the preexisting work is in the public domain or if the copyright owner of the preexisting work grants permission. Section 103 of the Act states that lawfully made derivative works are entitled to copyright protection if they otherwise qualify. Section 103 also stipulates that copyright protection in a derivative work extends only to the material contributed by the author of such work as distinguished from the preexisting material employed in the work. Thus, although a musical arrangement of a public domain song is subject to copyright protection, the copyright protection extends only to the new musical score and not to the lyrics of the preexisting work. As a result, churches can copy the lyrics of such arrangements without infringing the arranger's copyright.⁶³¹

The “Religious Service” Exemption to Copyright Infringement

Section 110(3) of the Copyright Act specifies that the “performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly” is not an infringement of copyright. Performance of a nondramatic literary work means reading from a book or periodical in a nondramatic manner.⁶³²

To be exempted under section 110, a performance or display must be “in the course of services,” and thus activities at a place of worship that are for social, educational, fundraising, or entertainment purposes are excluded.⁶³³

The exemption provided by section 110 exempts only religious performances in the course of religious services from copyright infringement. The Act states that to perform a work means to recite or render it. Performance of a copyrighted hymn or choral arrangement thus

⁶²⁹ *ibid.*: p. 678.

⁶³⁰ *ibid.*: p. 678.

⁶³¹ *ibid.*: p. 678.

⁶³² *ibid.*: p. 681.

⁶³³ *ibid.*: p. 681.

means to sing it, and performances of a copyrighted cantata means to present it. There is therefore no license to copy a copyrighted work, such as by duplicating a single piece of music for all of the members of a choir, since duplication does not constitute a performance even though the duplicated copies may eventually be used in a performance.⁶³⁴

Other Exceptions to Copyright Infringement

1. Fair Use

Section 107 of the Copyright Act specifies that the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified [in section 106], for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include – (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes; (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and (4) the effect of the use upon the potential market for or value of the copyrighted work.⁶³⁵

2. Religious Displays

Section 109(c) provides that “the owner of a particular copy lawfully made...is entitled, without the authority of the copyright owner, to display that copy publicly, either directly or by the projection of no more than one image at a time, to viewers present at the place where the copy is located.” Section 109(d) provides further that the privilege granted under section 109(c) does not, unless authorized by the copyright owner, “extend to any person who has acquired possession of the copy or phonorecord from the copyright owner, by rental, lease, loan, or otherwise, without acquiring ownership of it.” This section is of considerable relevance to many churches, and particularly to those that use transparencies and slides of copyrighted music in the course of worship services. Recall that one of the exclusive rights of a copyright owner is the right to display a copyrighted work publicly. Section 109(c) limits this exclusive right by adopting the general principle that the lawful owner of a copy of a copyrighted work should be able to put the copy on public display without the consent of the copyright owner.⁶³⁶

⁶³⁴ *ibid.*: p. 682.

⁶³⁵ *ibid.*: p. 683.

⁶³⁶ *ibid.*: p. 686.

Section 109(c) would authorize the use of an opaque projector to display a copy of a musical work in the course of choir rehearsals or church services since the opaque projector displays an image of a lawfully made copy consisting ordinarily of either sheet music or a page in a hymnal. But if a church makes a transparency of an existing copyrighted musical work without authorization, such a transparency would not be a lawfully made copy and thus could not be displayed without infringing the owner's copyright. Section 109(b) would authorize the display of a transparency in the course of choir rehearsals or church services if the transparency constituted a lawfully made copy. This could occur in three ways. First, a transparency purchased from an authorized vendor would be a lawful copy and could be displayed publicly. Second, a transparency of a public domain work could be fabricated and displayed. Third, a transparency made with the express permission of the copyright owner would be a lawful copy.⁶³⁷

3. The Nonprofit Performance Exception

Section 110(4) contains a general exception to the exclusive right to a copyright owner to publicly perform his or her copyrighted work. It provides: Performance of a nondramatic literary or musical work otherwise than in a transmission to the public, without any purpose of direct or indirect commercial advantage and without payment of any fee or other compensation for the performance to any of its performers, promoters, or organizers, [does not constitute copyright infringement] if – (A) there is not direct or indirect admission charge; or (B) the proceeds, after deducting the reasonable costs of producing the performance, are used exclusively for educational, religious, or charitable purposes and not for private financial gain, except where the copyright owner has served notice of objection to the performance under the following conditions; (1) the notice shall be in writing and signed by the copyright owner or such owner's duly authorized agent; and (2) the notice shall be served on the person responsible for the performance at least seven days before the date of the performance, and shall state the reasons for the objection; and (3) the notice shall comply, in form, content, and manner of service, with requirements that the Register of Copyrights shall prescribe by regulation.⁶³⁸

4. Authorization From Copyright Owner

Churches may gain permission to copy copyrighted material by contacting the copyright owner directly or by becoming a member of such a group as the Christian Copyright Licensing, Inc. If a church becomes a member of a group like CCLI, the church submits a list of copied material throughout

⁶³⁷ *ibid.*: p. 687.

⁶³⁸ *ibid.*: pp. 687-688.

the year to CCLI and CCLI compensates the copyright owner for the use of their material. However, churches must understand exactly what such a company covers and what it does not.

A CCLI license does authorize a church to do the following:

- ❑ **Print songs and hymns in bulletins, programs, liturgies, and songsheets.**
- ❑ **Create your own customized songbooks or hymnals.**
- ❑ **Create overhead transparencies, slides, or use any other format whereby songs are visually projected, such as computer graphics and projection.**
- ❑ **Arrange, print and copy your own arrangements, vocal and instrumental, of songs where no published version is available.**
- ❑ **Record your worship services by audio or video means, provided you only record “live” music (instrumental and vocal). Accompaniment “tracks” cannot be reproduced. You may also charge up to \$4.00 each for audio tapes (cassettes) and \$12.00 each for video tapes.⁶³⁹**

A CCLI license does not authorize a church to do the following:

- ❑ **Photocopy or duplicate octavos, cantatas, musicals, handbell music, keyboard arrangements, vocal scores, orchestrations, or other instrumental works.**
- ❑ **Translate songs from English into another language. This can only be done with the approval of the respective publisher.**
- ❑ **Rent, sell, or lend copies made under the license to groups outside the church or to other churches. (It is permissible to distribute tapes to shut-ins, missionaries, or others outside the church.)**
- ❑ **Assign or transfer the license to another church or group without CCLI’s approval.⁶⁴⁰**

Choirs

⁶³⁹ *ibid.*: p. 690.

⁶⁴⁰ *ibid.*: p. 690.

The activities of church choirs often raise questions under copyright law. The major areas of concern are as follows: (1) choir directors cannot make unauthorized copies of copyrighted music for members of the choir without infringing upon the copyright owner's exclusive right to make copies of his or her work; (2) choir directors cannot make unauthorized transparencies of copyrighted music for use during choir rehearsals; (3) choirs are free to perform copyrighted music in the course of church services, but if the service is recorded and copies of the recording are sold or otherwise distributed to others without authorization from the copyright owner, infringement may occur; (4) choir directors should not alter or make arrangements of copyrighted works, since such actions may constitute an infringement upon the copyright owner's exclusive right to make derivative works.⁶⁴¹

Public Domain

Works that have lost their copyright protection, or that never were eligible for copyright protection, are said to be in the "public domain," which is another way of saying that they may be copied, performed, or used in any other way without anyone's authorization. A word of caution is in order. Do not assume that a particular work is in fact in the public domain without adequate proof.⁶⁴²

Rehearsal Tapes

Some choir directors, in an effort to assist choir members in learning their parts, make copies of the accompaniment tape for the choir members to take home with them. Clearly, such a practice infringes upon the copyright that exists in the underlying work and perhaps in the sound recording as well, unless authorization is obtained in advance.⁶⁴³

Software

Piracy of computer software is costing U.S. software owners billions each year. Almost every church has moved into the advanced technology of the 21st century. The costs of becoming techno savvy is great and many try to conserve costs by only purchasing one copy of a computer program and then installing it on multiple computers. This is copyright infringement.

A good rule to follow is that if a copyrighted software program can be used simultaneously by two or more persons then you

⁶⁴¹ Richard R. Hammar, The Church Guide to Copyright Law, Third Edition (Matthews, NC: Christian Ministry Resources, 2001): p126.

⁶⁴² *ibid.*: p. 135.

⁶⁴³ *ibid.*: p. 135

have committed copyright infringement, because the only way that this can happen is for one or more copies to have been made.⁶⁴⁴

Penalties

A person caught infringing on a copyright can face the following:

civil penalties of up to \$150,000 per violation, and criminal penalties of up to \$250,000 and a prison term of up to 5 years.⁶⁴⁵

When Software can be Copied

There are some instances when software manufacturers will allow for copies to be made. These include:

1. The intangible copy made in a computer's random access memory (RAM)

Section 117 of the Copyright Act specifies that it is not an infringement for the owner of a software program to make the "intangible copy" of the program in a computer's random access memory (RAM) that is needed to operate the "program."⁶⁴⁶

2. Archival copies

Section 117 of the Copyright Act specifies that it is not an infringement for the owner of a software program to make a single backup copy for archival purposes.⁶⁴⁷

3. Authorization by the copyright owner

Individual copyright owners may give permission to make a copy of the software. Instances where this might occur include:

- a) "site" licenses (sometimes called "concurrent use" licenses) that authorize employers to make up to a specified number of copies for their employees;
- b) "shareware," which is software that users are allowed to copy on the condition that they pay the copyright owner a fee;

⁶⁴⁴ *ibid.*: p. 108.

⁶⁴⁵ *ibid.*: p. 110.

⁶⁴⁶ *ibid.*: p. 110.

⁶⁴⁷ *ibid.*: p. 110.

- c) “freeware,” which is the same as shareware except that no fee is expected or required;
- d) a “shrinkwrap license” that comes with computer software and that in some cases may authorize a purchaser to make a limited number of copies under specified circumstances.⁶⁴⁸

4. Software in the Public Domain

Software in the public domain has either lost its copyright protection, or never had it. This will be rare for any software created since March of 1989 when the Berne Treaty became effective, since a copyright notice is no longer required to maintain copyright protection. This means that the omission of a copyright notice on software will not result in the loss of copyright protection.⁶⁴⁹

Creating a Software Policy

Churches are encouraged to develop a software policy for all church computers and employees. Richard Hammar recommends a policy like the one below on pages 112 and 113 of his book, *The Church Guide to Copyright Law*:

Software Policy

Most software programs available for use on computers owned by the church are protected by federal copyright law. Churches are not exempt from these laws. In addition, software provided by the church for use by staff may be used only as specified in the applicable software license. It is the policy of the church to respect the copyright protections given to software owners by federal law. As a result, the church expects all staff to abide by this policy.

1. Prohibitions. Church staff are prohibited from engaging in any one or more of the following acts:

⁶⁴⁸ *ibid.*: p. 110.

⁶⁴⁹ *ibid.*: p. 110.

- a) Making unauthorized copies of church-provided software, including the downloading of church-owned software programs on an employee's personal computer at his or her home. The making of one archival copy of a software program is allowed so long as it is made by the user of the original program, kept with the original program, not further duplicated, and not used as a working copy unless the original is lost or destroyed. Staff are permitted to download a software program on a replacement computer so long as the program is deleted on the previously used computer.
- b) Making unauthorized copies of software owned by a staff member for use on a church computer.
- c) Using unauthorized copies of software programs.
- d) Allowing persons who are not church staff members to make duplicate copies of church-provided software without the express written permission of the copyright owner.
- e) Using church equipment to make unauthorized copies of software.
- f) Using unauthorized copies of software on church-owned computers or on personal computers on church property.
- g) Modifying a program to enable several persons to simultaneously access the program by means of a network or otherwise without the express written permission of the copyright owner.
- h) Modifying the contents of a computer program without the express written permission of the copyright owner.

2. Reporting of known or suspected violations. Church staff shall report to the senior pastor or business administrator any known or suspected violations of this policy.

3. Violations of this policy. Any staff member who violates this policy is subject to disciplinary action. In addition, persons who violate U.S. copyright law and software licensing agreements may be subject to civil and criminal liability.

4. Responsibilities of the church. The church will investigate any known or suspected violation of this policy. It also will apprise all current and future staff (having access to church-owned computers) of this policy.

5. Definitions. As used in this policy, the term "staff" refers to employees, independent contractors, volunteers, members, and others who are allowed to use a computer owned by the church. The term "unauthorized copy" refers to copies of copyrighted software that are made without the express authorization of the copyright owner, whether made on discs, CDs, tapes, or in a computer's permanent memory. The term "unauthorized copy" does not refer to software that is in the public domain or that is "freeware."

Employee's Acceptance of Software Policy

I have been given a copy of the church's Software Policy; I have read and understand all of its provisions; I agree to comply fully with the Software Policy; and in consideration of my continuing employment I understand and agree that any violation on my part of the Software Policy may result in my discipline, including dismissal.

employee signature

date

The Internet

The internet is a wonderful asset in its capabilities to speed research and to connect world in moments. However, few stop to consider that images or items that are downloaded and then used in newsletters, sermons, multi-media displays, etc. may be copyrighted material. Also, the internet is filled with sites that should never enter a church or a private home. To help regulate the usage of the internet in the church, Richard Hammar suggests in his book, *The Church Guide to Copyright Law*, the following policy on page 121.

Employee Internet Usage Policy

As part of this organization's commitment to the utilization of new technologies, many/all of our employees have access to the Internet. In order to ensure compliance with the copyright law, and protect ourselves from being victimized by the threat of viruses or hacking into our server, the following is effective immediately:

1. It is [church's name] policy to limit Internet access to official business. Employees are authorized to access the Internet, for personal business, after-hours, in strict compliance with the other terms of this policy. The introduction of viruses, or malicious tampering with any computer system, is expressly prohibited. Any such activity will immediately result in termination of employment.
2. Employees using [church's name] accounts are acting as representatives of the [church's name]. As such, employees should act accordingly so as not to damage the reputation of the organization.
3. Files which are downloaded from the Internet must be scanned with virus detection software before installation or execution. All appropriate precautions should be taken to detect for a virus and, if necessary, to prevent its spread.
4. The truth or accuracy of information on the Internet and in email should be considered suspect until confirmed by a separate (reliable) source.
5. Employees shall not place company material (copyrighted software, internal correspondence, etc.) on any publicly accessible Internet computer without prior permission.
6. Alternate Internet Service Provider connections to [church's name] internal network are not permitted unless expressly authorized and properly protected by a firewall or other appropriate security device(s).
7. The Internet does not guarantee the privacy and confidentiality of information. Sensitive material transferred over the Internet may be at risk of detection by a third-party. Employees must exercise caution and care when transferring such material in any form.
8. Unless otherwise noted, all software on the Internet should be considered copyrighted work. Therefore, employees are prohibited from downloading software and/or modifying any such files without permission from the copyright holder.
9. Any infringing activity by an employee may be the responsibility of the organization. Therefore, this organization may choose to hold the employee liable for their actions.
10. This organization reserves the right to inspect an employee's computer system for violations of this policy.

I have read [church's name] anti-piracy statement and agree to abide by it as consideration for my continued employment by [church's name]. I understand that violation of any above policies may result in my termination.

user signature

date

Resources

Hammar, Richard R. Pastor, Church & Law, Third Edition. North Carolina: Christian Ministry Resources, 2000.

Hammar, Richard R. The Church Guide to Copyright Law, Third Edition. North Carolina: Christian Ministry Resources, 2001.

Created April 2005

Block D4

HIPAA

Definition

Technology is a wonderful thing but can also be a destructive device. The country has already seen how technology is being utilized to destroy people's lives through identity theft.

Congress recognized that technology could be used to access health records. Therefore the Department of Health and Human Services (HHS) set out to develop policies to guard against this invasion of privacy. The HHS released its first version of the Privacy Rule in December of 2000 and it went into effective on April 14, 2001. Various issues were raised with this version so in August of 2002 a final version was released which became effective on April 14, 2003. The purpose of this Privacy Rule was to guard against the misuse of health information.

The Health Insurance Portability and Accountability Act (HIPAA) requires:

1. Patients must give specific authorization before entities covered by this regulation could use or disclose protected information in most non-routine circumstances, such as releasing information to an employee or for use in marketing activities.
2. Hospitals will be required to follow the rule's standards for the use and disclosure of personal health information.
3. Hospitals will need to provide patients with written notice of their privacy practices and patients' privacy rights. The notice will contain information that could be useful to patients choosing a health plan, doctor or other provider. Patients would generally be asked to sign or otherwise acknowledge receipt of the privacy notice from direct treatment providers.
4. Patients will be able to access their personal medical records and request changes to correct any errors. In addition, patients generally could request an accounting of non-routine uses and disclosures of their health information.

How does HIPAA affect clergy?

The HHS comments:

"Under the final rule, we also establish provisions for disclosure of directory information to clergy that are slightly different from those which apply for disclosure to the general public. Subject to the individual's right

to object or restrict the disclosure, the final rule permits a covered entity to disclose to a member of the clergy; (1) the individual's name; (2) the individual's general condition in terms that do not communicate specific medical information about the individual; (3) the individual's location in the facility; and (4) the individual's religious affiliation. A disclosure of directory information may be made to members of the clergy even if they do not inquire about an individual by name. We note that the rule in no way requires a covered health care provider to inquire about the religious affiliation of an individual, nor must individuals supply that information to the facility. Individuals are free to determine whether they want their religious affiliation disclosed to clergy through facility directories. We believe that allowing clergy access to patient information pursuant to this section does not violate the Establishment Clause because the exemption from the final rule's authorization requirement for disclosure to clergy of the specified protected health information is a permissible religious accommodation. The purpose and effect of this provision is to alleviate significant governmental interference with the exercise of religion, and we anticipate that the exemption would rarely, if ever, impose any significant burdens on patients or other individuals."

How does HIPAA affect churches?

Many churches post prayer lists in bulletins, newsletters, websites, or announce prayer concerns from the pulpit. These postings do not violate HIPAA, however, if a church releases unauthorized information about a member, it could constitute invasion of privacy. It is better for churches to create a simple form (see example on next page) which asks the individual or family member for specifics on what medical information they wish to have released to the congregation. This step will help the church from possible liability. The church should maintain a list of those individuals that object to having any information released.

Medical Information Release Form for
_____ Church of God
Address

___ No, I do not want my name released for prayer chains and newsletter or bulletin prayer lists.

___ Yes, I would like my name placed on the prayer chain and newsletter or bulletin prayer lists, however, I do not wish to have any specific medical information released.

___ Yes, I would like my name placed on the prayer chain and newsletter or bulletin prayer lists and I give you permission to release the following medical information:

Signature

Date

Block E1

RESOLVING CHURCH CONFLICT CONGREGATIONAL AND/OR PASTORAL (Recognizing, Diagnosing, Disciplining, and Reconciling)

Introduction

Situation #1

Jim is a young pastor that has a great heart for the Lord. He and his wife Ruth have moved to a congregation that normally sees about 100 worshippers each Sunday morning. They are excited about their new ministry and like most experience a time of sweet courtship.

It does not take long for Jim to discover that there is an embedded standard of leadership that fosters stagnancy and ultimately, and repeatedly, defeats every effort for growing the Kingdom of God in that location. The familial hierarchy controls expenditures and determines present programming. The lack of Holy Spirit influence has affected Jim and he seeks to challenge the current leadership base.

Because Jim has been trained under strong autocratic leadership and his models for ministry have largely been congregations that function similarly, Jim proceeds to act in like fashion. He formally introduces a new standard for leadership. In presenting the plan to the congregation, it is done in such a way that to accept it is God's will and to reject it is a device of Satan.

As a result the standard is resentfully accepted. As members of the leadership board are quickly changed, the atmosphere in the congregation changes from anticipation and hope to anger, resentment and distrust.

Situation #2

Cyrus and Cybal are leading a congregation of 200. They have several years of experience and are vibrant in their relationships with the congregation. Overall, their ministry appears to be proceeding in a positive direction.

One area of contention, however, is an organist that has been playing for worship for fifty plus years. Not only does she control the organ bench but also her control of volume, tempo and mood affects congregational worship.

Cyrus has tried to guide her and has encouraged several worship adjustments that have only increased tension between them and produced a visible tug of war.

Not aware of another way of dealing with the conflict, Cyrus complains to others in the congregation and tries to have the elderly organist officially removed from her position. She and her husband have significant influence in this congregation and now two campaigns are being waged. While the pastor is seeking to remove her from the organ bench, a group of former friends are now seeking to remove him from pastoral leadership.

Situation #3

They have both sensed God calling them into ministry. Perry and Shelley have excellent skills from their professional roles that would be advantageous in a pastoral setting. As they dialogue with congregations, they have discovered that their past marriage relationships are hindering their future ministry. Both have been divorced and although Perry's was due to his wife's infidelity and Shelley's happened before her coming to Christ they have created polarized opinions in the congregation where they were invited to candidate.

Members of the congregation are calling each other and seeking to gather support for a congregational vote on the issue.

Situation #4

Lupe was in a very difficult situation. Her husband, Hector was experiencing problems of his own and had expressed his anger and frustration on the family. For the safety of herself and her children, she was advised to move out and take her four children into a safe and healthy setting.

Unfortunately, Lupe has been talking with a male friend who has been seeking to provide comfort. While there has been no sexual impropriety, there has been what many might call an emotional adultery.

Lupe has since divorced her previous husband. She continues to see her male friend and receive comfort and companionship. At church, she has friends but there are others that see that entire process as flawed and filled with sin. While many are non-committal there are others that are choosing positions at either end of the pendulum. Some want to totally ignore the choices that Lupe has made and want to proceed as if nothing has happened. Others are adamant in calling for church discipline, she has divorced her husband, is in an inappropriate relationship, and is not qualified for any type of leadership in the Kingdom.

As you can see, conflict can arise from within the best of situations and even in the midst of the closest relationships. Our choices may dispel or enhance conflict and our responses in handling the conflict will feed the conflagration or use the fire to create new and productive growth.

It is significant to note, as well, that while conflict can be destructive and disruptive, it can also force us to deal with difficult issues and situations; many of which need to be addressed. The conflict can prove to be advantageous, especially when approached with graciousness, patience, and an eye for the future.

Recognizing

Kenneth C. Newberger in a *Churchstaffing* email article wrote about the perfect church. He claimed that it was unattainable and that a better goal would be that of building a “healthy” church. The goal he says is “a sharpening of us all.”⁶⁵⁰

Newberger tells us that “from an organizational perspective, life in the church can be broken down into four major categories.”⁶⁵¹

STRUCTURE

*In this category, we are talking about the church’s “set-up.” What are the recognized offices of the church? How were the individual’s holding the office selected and for how long? How much authority does each office hold in relation to the others? Do board decisions require unanimity or a simple majority? How many staff does the church have? Who creates job descriptions? Who performs job evaluations? How much authority does the congregation have? What are the church’s formal modes of communication and feedback? These and a host of other questions all relate to the operational environment and organizational structure of the church.*⁶⁵²

Clarity in our process of developing structure will help to limit conflict. Thus the defining of our structure, whether that is bylaws, policies, job descriptions, or more, will not preclude all conflict but will help to define the types of conflict encountered.

CULTURE

Culture speaks to the collective mindset of the church community. What is the worldview that members share? What are the core theological beliefs which members accept? What is the vision and mission of the church which members are asked to subscribe to? What values and norms are held in highest esteem? How are members expected to behave? How are members expected to dress when they come to church? What lifestyles are tolerated and which are frowned upon? Who is held up as

⁶⁵⁰ Newberger, Kenneth C., *Churchstaffing*, “Building The Perfect Church,” January 27, 2005, p.

1.

⁶⁵¹ Ibid. p. 1.

⁶⁵² Ibid. p. 1.

*heroes or models to follow? How free do members to express their opinions? What are traditions and customs of the church? What is the prevailing attitude with respect to change? What is the style of worship music? Is the church charismatic or non-charismatic? What is the prevailing thinking related to social issues (e.g. abortion, gay marriage, creationism vs. evolution)? What is the general attitude of members toward outreach and assimilating newcomers? These and a host of other questions relate to the beliefs and perceptions held by the congregation.*⁶⁵³

The perceptions of our community: social mores and regional standards, combined with the “sacred cows” created by our faith groups provide fodder for a meals of tasty conflict. Understanding and recognizing the issues gives way to opportunities for mediation and potential reconciliation.

INTERPERSONAL RELATIONSHIPS

*This addresses how well we relate to and connect with one another. How comfortable do we feel in the other's presence? How well do we work together? How competitive? Do we hold grudges? Do we put others needs ahead of our own? How open and transparent are we with each other? How willing are we to protect another's reputation against unsubstantiated allegations? Do we do unto others as we would want them do unto us?*⁶⁵⁴

While the first two areas are more easily monitored through written and often time's formal documents, this area is extremely difficult to control. True, the Bible does give us a number of scriptural teachings to guide our actions and our statements. Nevertheless, interpretation of scripture and the volatile nature of human expression will, left unguarded, wreak havoc in our gatherings and in our relationships.

THE INDIVIDUAL PERSON

This category is all about each unique person. What is a person's perceptions of reality and interpretation of events? What is that person's understanding of God and his or her relationship to Him? How does the person view himself or herself? How does he/she view others? What motivates the person? What is the person's

⁶⁵³ Ibid. p. 2.

⁶⁵⁴ Ibid. p. 2.

*temperament? Does he or she clutch at power? Is a person a team player or a leader, a conformist or an ardent individualist? How honest? How sensitive to other people's feelings? How self-centered or giving? What is the individual's gifts and capabilities? What is his or her weaknesses and particular styles of sinning? How competent is this person in his or her role? Is it easy or difficult to satisfy this person?*⁶⁵⁵

As with interpersonal relationships, this is again a difficult area to control. Each individual's personality, environment, training, and spiritual development affect the degree to which tolerance and partnership is practiced or ignored. The depth of disagreement or conflict will vary and ultimate resolution becomes a matter of personal choice rather than a decision or mandate of an organization or governing body.

Diagnosing

What are the signs of conflict? Is there a way to measure the severity? How will I know when to respond?

Knowing one's condition and accepting an honest appraisal or diagnosis is vital toward a restoration of health. A desire to "win" at all costs almost always ends in a "loss" for all parties. Thus it is our desire to promote wholeness and health rather than a sense of justice. That is not to say that fairness and fair play are not important but simply an acknowledgement of the destructive power that individuals can wield when waging an holy war.

Ron Susek wrote *FireStorm*, a book about preventing and overcoming church conflicts. He writes, "Firestorms have an observable lifecycle...patterns in human relationships reveal where a group is in the life cycle of a firestorm."⁶⁵⁶

SPARKS – Phase 1

Fires generally start from a small spark.⁶⁵⁷

Whether it is a conflict in the pastoral home or in the home of congregational members. Whether it is between clergy and laity or within the membership. Whether it is theological, social, emotional or financial, the spark ignites a flame that potentially divides and destroys.

⁶⁵⁵ Ibid. p. 3.

⁶⁵⁶ Susek, Ron, *FireStorm*, Baker Books, Grand Rapids, 1999, p. 15.

⁶⁵⁷ Ibid. p. 17

“The unhappy people generally lack the clout, desire, or fortitude to set a firestorm into motion, so they use small power plays to express their grievance:

- *They quit the choir.*
- *They stop giving.*
- *They complain to family and friends.*
- *They formally complain to the board.*
- *They leave the church.*

Most people who raise issues...intend good, not harm for the church. They simply want to vent and resolve their grievances, after which they will resume normal participation. If they are not satisfied, they may withdraw from involvement. Above all they are not troublemakers.”⁶⁵⁸

The Natural Dynamics

1. Real, God-given differences exist in people:

- *Goals*
- *Needs*
- *Perspectives*
- *Values*
- *Methods*
- *Interests*⁶⁵⁹

Notice, that these are not evil differences but those that may appear through our God-given gifts and abilities.⁶⁶⁰ The very strengths that make us unique and useful to the Kingdom of God may become an irritant and lead to strife. Please note, “Not all firestorms start with malicious intent, just a lack of maturity in handling these differences. If leadership fails here, people’s dispositions will change from collaborative to adversarial.”⁶⁶¹

At this point, pastoral leadership can become a healing balm or an adversarial role that incites or at a minimum creates smoldering coals with warning smoke and heat. Susek says, “True pastoral leadership nurtures the best in people, even if the people’s various perspectives cause the pastor’s path for the church to meander like a stream in directions that don’t fit his straight-line goals. A pastor must be primarily given to the people’s good and not his own inflexible goals.”⁶⁶²

⁶⁵⁸ Ibid, p. 25-26.

⁶⁵⁹ Ibid, p. 26.

⁶⁶⁰ Ibid, p. 26.

⁶⁶¹ Ibid, p. 27.

⁶⁶² Ibid, p. 27.

Church leadership is given an awesome responsibility. The task of directing the body is a wonderful gift from God. Still, if leadership dominates, people feel they are doing the leader' ministry and not being equipped to do their own ministry, resulting in either anger or ambivalence.⁶⁶³

Ephesians 4:11-12 - *It was he who gave some to be apostles, some to be prophets, some to be evangelists, and some to be pastors and teachers, to prepare God's people for works of service, so that the body of Christ may be built up¹*

2. *When problems emerge, most people are still focused on issues.*
3. *People use respectful, considerate, noncondemning language.*
4. *In a desire to solve the problem, both sides are not threatened by sharing information and ideas.*
5. *People remain rational in problem-solving. Resolution comes either through informal, personal settlements or in formal ways, such as voting.*
6. *People are focused on a resolution that can give everyone a sense of winning.*⁶⁶⁴

Recommendations for Phase 1

- *Never allow church growth to shift the emphasis away from the value of the individual.*
- *Hold special meetings throughout the year—listen to the hearts of the people and communicate the results through leadership decisions.*
- *“Discovering the Real You” is a video series that can be helpful in resolving conflict.*⁶⁶⁵
- *Hold periodic leadership retreats, not for business but for spiritual and relational development.*
- *Periodically study the biblical purpose and function of the leadership board.*
- *Promptly respond to complaints and concerns with fairness and justice.*
- *Conduct an exit interview to find out why people are leaving your church.*

⁶⁶³ Ibid, p. 27.

⁶⁶⁴ Susek, p. 28.

⁶⁶⁵ Susek, Ron. “Discovering the Real You” video series. Gettysburg, PA: Susek Evangelistic Association, 1991.

- *At least once a year, take the board and church through the approved master plan.*
- *Keep the staff clear in direction and united in spirit. (Personal hidden agendas among staff are among the greatest causes of conflict.)⁶⁶⁶*

IGNITING A FIRESTORM – Phase 2

Sparks left unattended have a tendency of falling on dry tinder and potentially developing into a fire of magnitude. In the church, thoughts that once were thought small and inconsequential can become major issues that people are willing to literally give their lives and futures to support.

Natural Dynamics

1. *People feel uneasy with each other because perceived unfairness or hurt is involved.*
2. *Diversity starts to be despised, not respected. Differences are accentuated as bad, not good.*
3. *People seek out those who agree with their position.*
4. *The groups discuss strategies for handling future meetings.*
5. *People identify with the problem so completely that, if things don't go their way, personal loss is felt.*
6. *Language becomes less specific and more general.*
7. *Opposition is depersonalized by characterization.*
8. *People stop freely sharing information so the opposing view cannot gain an advantage.*
9. *Coalitions form, but the well-being of the ministry is still paramount.*
10. *People lose interest in resolve and become concerned about how they will look or fare in the growing conflict.⁶⁶⁷*

“While phase one can continue for an indefinite number of years, phase two allows only a narrow window of time for stopping the newly arrived firestorm.”⁶⁶⁸ Thus the recognition of this phase is extremely important to personal, pastoral and congregational health.

Recommendations

- *Do not take a wait-and-see posture, or you will lose.*

⁶⁶⁶ Susek. *FireStorm*, p. 29.

⁶⁶⁷ *Ibid.* p. 37-38.

⁶⁶⁸ *Ibid.* p. 38.

- *Acknowledge that there is a problem and call for fasting and prayer.*
- *Hold spiritual life meetings with a neutral visiting speaker.*
- *Exercise church discipline when it is appropriate.*
- *Invite a neutral mediator to help settle the disturbance.*⁶⁶⁹

FIRESTORM IN FULL FURY – Phase 3

“Once the firestorm erupts, chances of a good recovery virtually disappear. Deep losses are almost inevitable.”⁶⁷⁰ At this point relationships are not only threatened, many have already been abused and destroyed. “The church will be devoured if the leaders either do not or can not insist upon doing all things in a right spirit—a biblical mandate.”⁶⁷¹

Natural dynamics

1. *People who were civil and Christ-like in peaceful times now treat each other in godless ways.*
2. *People become identified with strong positions, believing their reputations are on the line.*
3. *Casual disagreements become sharp divisions.*
4. *Issues are presented as an either-or-ultimatum.*
5. *Organizational structure is used as a weapon for defeating the other side.*
6. *Perception becomes the new reality. Truth is no longer the main issue.*
7. *People take up a “holy cause,” with each side believing itself to be absolutely right.*
8. *Powerless antagonists attach themselves to causes led by respected people, giving them undeserved credibility.*
9. *Winning becomes so important that serving, loving, or going the extra mile is spurned.*
10. *Each side is sure it knows the wrongful motives and strategies of the other.*
11. *The pastor is generally put into a no-win position and cannot lead the church out of the crisis alone. (Even if the firestorm is over an issue other than the pastor, by nature of his position, he is caught in the middle and shot at from both sides.)*⁶⁷²

⁶⁶⁹ Ibid. p. 38.

⁶⁷⁰ Ibid. p. 39.

⁶⁷¹ Ibid. p. 44-45.b

⁶⁷² Ibid. p. 46-47.

Recommendations

- *Immediately seek a crisis management consultant.*
- *Prayerfully determine if there is an evil core to the firestorm, and start church discipline.*
- *Keep a strong balance between grace and justice.*
- *Consult with a Christian attorney to avoid an unnecessary lawsuit resulting from the manner in which issues are handled.*
- *Do not be indecisive about issues.*⁶⁷³

FUELING THE FIRE – Phase 4

“Offended people produce much fruit, such as hurt, anger, outrage, jealousy, resentment, strife, bitterness, hatred, and envy. Some of the consequences of picking up an offense are insults, attacks, wounding, division, separation, broken relationships, betrayal, and backsliding.”⁶⁷⁴

Once a firestorm has picked up speed it creates from within dynamics that fuel the fire and drive it to deeper destruction. Much like the reported wildfires of southern California, much of our efforts now becomes directed at limiting the destruction and directing the path of the conflagration rather than at extinguishing a fire that appears unstoppable.

Natural Dynamics

1. *Once the conflict has spread to 10 percent of the leadership and 20 percent of the congregation, the storm is full-blown.*
2. *Facts are hard to find, because arguments have become intensely emotional.*
3. *Objectivity and moderation are viewed with suspicion.*
4. *Each side is sure the other side will not change, so fighting is seen as the only option.*
5. *Permanent damage is done.*
6. *A subgroup’s power and advantage become more important than the parent organization.*
7. *Irreparable harm comes to the main organization as the damage becomes external.*
8. *People have little perception of other’s pain because of detachment from the opposition and lack of communication. (The opposition is an object no longer given “people” status.)*

⁶⁷³ Ibid. p. 47.

⁶⁷⁴ Bevere, John. *The Bait of Satan*. Creation House, Lake Mary, Florida, 1997, p. xiv.

9. *Specific issues melt into vague principles and ideologies, as personal perspective, bias, and opinion are elevated to doctrinal status.*
10. *Distinguishing the difference between satanic activity and human behavior isn't easy, making the spiritual struggle hard to define.*
11. *Talk about needing revival generally is based upon the simplistic view of God bringing about a quick and easy solution that will get others to see the error of their ways.*
12. *Board members, overreacting, often improperly use church discipline as a weapon.*
13. *The departed people will be viewed as weak or sinful by the remnant.*⁶⁷⁵

Recommendations

- *Work closely with a consultant. (The greater the authority granted to him or her at this point, the better are their chances of helping deliver the ministry.)*
- *Teach solid, biblical truths about our spiritual battle with darkness.*
- *Do not let people blame the whole situation on Satan.*
- *Set up a conference on spiritual warfare, and invite one of the growing list of biblically responsible teachers to speak.*
- *Do not permit Scripture to be used as a weapon between factions, unless biblical absolutes are being violated.*
- *The faithful who are not involved in the controversy need ongoing ministry.*
- *Do not let the conflict become the pulpit theme.*
- *Call the congregation to days of fasting and prayer.*
- *Each leader, including the pastor, must determine whether it's best to stay or leave. Sometimes departing is best for both parties.*⁶⁷⁶

THE FINAL BURN – Phase 5

There is very little that happens within the church body that affects our witness more than an internal conflict that leads to litigation. It is more than sad when the world is forced to step in and settle a church issue. Nevertheless, a firestorm will sometimes burn with such fury and without abatement resulting in court proceedings.

⁶⁷⁵ Ibid. p. 51-52.

⁶⁷⁶ Ibid. p. 52-53.

Natural Dynamics

1. *Conflict may lead to litigation. (Avoid litigation if possible, because attorneys are not trained to be sensitive to emotions or spirituality.)*
2. *The object now between the groups is to discredit and destroy the opposition.*
3. *The deeper the conflict, the more formal becomes the effort for resolution.*
4. *An outside party officiates the dismantling of the organization.*
5. *At this point in the conflict, the issues are crystal clear to each side, with each side feeling confirmed in its position.*⁶⁷⁷

Recommendations

- *Make it difficult for the flames to spread by eliminating oxygen. Pull people back from the simple “we-are-right, they-are-wrong” mind-set by getting them to see the complexity of the situation. (Set up a task force to discover each group’s complaint.)*
- *Hire a neutral consultant to start a fact-finding procedure and assure fairness to all parties. (No progress will come until people have been thoroughly and respectfully heard.)*
- *Set biblical guidelines to which all who believe the Bible will submit, and set forth Scripture and prayer for each side to consider.*
- *Help people take ownership of their own fallibility.*
- *Properly placed humor can often help break down tensions. (But it must not favor either side.)*
- *The efforts here are designed to turn people’s attention away from destroying the perceived enemy and get them to refocus on problem solving, not conquering.*
- *Do not hesitate to terminate nonfunctioning ministries or sell excess property. It is essential to preserve potential resources for future ministry.*⁶⁷⁸

REBUILDING – Phase 6

The firestorm has been extinguished. What is to be done now? Is there a winner and loser? What is necessary for continuing on in our ministry? How should the members treat each other?

⁶⁷⁷ Ibid. p. 58-59.

⁶⁷⁸ Ibid. p. 59.

However unfortunate that anyone finds himself or herself in such a circumstance, it is still a very real conclusion to choices that have been made. Susek wrote, “God will not bless our future if we do not do his work well in the present.”⁶⁷⁹ Therefore, even in the midst of the embers it becomes our responsibility to seek out God’s wisdom for rebuilding or reconstruction.

Natural Dynamics

1. *One group may start a new church, while others scatter to other churches.*
2. *Some people (often the youth of the families involved) are lost to the faith due to bitterness.*
3. *There is a period of struggle as different personalities emerge and attempt to remedy the problem or save the ministry.*
4. *A faithful remnant will stay with the property and ministry as it either dies or struggles on with minimal effectiveness.*
5. *Resentments will linger between the ones who stayed and the ones who departed.*
6. *With proper leadership and time, the church can reemerge.*⁶⁸⁰

Recommendations

- *If the pastor resigns, it is vital to hire an interim pastor, or the cycle can start all over again.*
- *Invite a special speaker to assist you in a series of meetings geared to the healing of the remnant.*⁶⁸¹

DISCIPLINING

The application of discipline can be varied. While in some cases a simple teaching or mentored experience, discipline can be as serious and severe as a church leadership action removing another from leadership or ultimately excluding someone from the fellowship of the body.

ACTIONS THE BOARD CAN TAKE

Overcoming Personal Hesitation

⁶⁷⁹ Ibid. p. 63.

⁶⁸⁰ Ibid. p. 66.

⁶⁸¹ Ibid. p. 66.

- *The first hindrance is failure to distinguish between being a peacekeeper and a peacemaker. (Peacekeepers tend to be passive, preferring to avoid conflict. Peacemakers tackle conflict head-on, determined to bring peace based upon truth, mutual understanding, and forgiveness.)*
- *The second hindrance is indecision. (Leadership must rely upon bold, clear thinking when time is not a friend.)*
- *The third hindrance is board division. (Various reasons such as: conflicting perceptions of the problem, insufficient information, loyalties to people who are to be disciplined, pressure from factions in the church, or family complications with people to be disciplined.)*
- *The fourth hindrance is ambivalence about the difference between judgment and judgmentalism. (A board cannot condemn to heaven or hell but has a right and a responsibility to evaluate wrongdoing.)*

Statement of Purpose

A written statement of purpose for church discipline will alleviate a number of complaints and frustrations. Susek gives us a suggested form: “We will enact church discipline, not for punishment or retribution, but for the purpose of:

- *Repentance: To see the offender turn from wrongful behavior.*
- *Redemption: To bring the offender into a right relationship with God.*
- *Restitution: To bring justice where someone suffered wrong or loss.*
- *Restoration: To reestablish fellowship.⁶⁸²*

Personal Preparation

- *Maintain a quiet, humble spirit before the Lord.*
- *Foster true dependence upon the Lord.*
- *Experience the leadership of the Holy Spirit.*
- *Plead for the repentance of each one facing discipline.⁶⁸³*

Prepare Your Case Well

⁶⁸² Ibid. p. 128.

⁶⁸³ Ibid. p. 129.

- *Discover the truth.*
- *Have all assertions validated.*
- *Insist that the accuser face the accused. (Unless it is unwise, such as a child having to face a molester.)*
- *Gain the offender's viewpoint during the preparation period.*
- *Come to the table with the issues clearly spelled out and provable.*
- *Put the charges in print to avoid emotional misstatement.*
- *Destroy the file when the matter reaches closure. (Love keeps no records of wrongs—1 Corinthians 13:5.)⁶⁸⁴*

The Matthew 18 Formula

Matthew 18:15-20 - *"If your brother sins against you, go and show him his fault, just between the two of you. If he listens to you, you have won your brother over. ¹⁶But if he will not listen, take one or two others along, so that 'every matter may be established by the testimony of two or three witnesses.' ¹⁷If he refuses to listen to them, tell it to the church; and if he refuses to listen even to the church, treat him as you would a pagan or a tax collector. ¹⁸"I tell you the truth, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven. ¹⁹"Again, I tell you that if two of you on earth agree about anything you ask for, it will be done for you by my Father in heaven. ²⁰For where two or three come together in my name, there am I with them."*¹

- *An offended person is to approach the offender one-on-one to show him his fault. The purpose is to win the brother.*
- *If the brother will not listen, then one or two other persons are to be taken along to establish every matter by the testimony of two or three witnesses.*
- *If the offender refuses to listen to the small group, then the matter is to be told to the church.*
- *If the offender will not listen to the church, then he is to be put out of the fellowship.⁶⁸⁵*

There are several positive reinforcements that result from this pattern of confrontation:

⁶⁸⁴ Ibid. p. 130.

⁶⁸⁵ Susek, *FireStorm*. p. 130.

1. Every effort is made to preserve the offender's dignity.
2. The offended person is to confront the offender.
3. The expectation of closure is established.
4. Every step of the process is for redemption, repentance, restitution, and restoration.⁶⁸⁶
 - *Call Evil by Its Name.* (Too often disagreement is marked as evil. This is generally not an accurate assumption. "The mark of this evil is unreasonableness that cannot be diminished.")⁶⁸⁷
 - *Carry out your work with mercy, grace, and justice.*
 - *You have no control over a person's response. You can only control your motive and method.*
 - *It is important to have your plan of action in place.*
 - *Be prepared to implement the ultimate consequence.* (The worst consequence to impose upon an unrepentant person is handing the person over to Satan. Notice however, that even in extreme discipline, the motive is redemptive.)⁶⁸⁸

ACTIONS THE PASTOR CAN TAKE

More than Conflict Management

Pastors are bound to a higher standard. Their work is not a matter of getting problematic sheep off their back, but of teaching people who act like wolves how to become or return to being sheep.

- *Step Out: Set a spiritual example.*
- *Step In: Mediate the conflict.*
- *Step Over: Rise above the conflict.*
- *Step Up: Confront the conflict.*⁶⁸⁹
- *Step Back: Let the conflict burn itself out.* (Do not become the sacrificial lamb but enable conflicting groups to confront their dysfunction.)⁶⁹⁰
- *Step Down: Resign from the conflict.* (Can be effective when factions are not responding to God's Word and it seems useless to hope for repentance and reconciliation.)
 - *If you resign too soon, you may not be in the position to give the church an accurate picture of its problem.*

⁶⁸⁶ Ibid. p. 130-131.

⁶⁸⁷ Ibid. p. 131.

⁶⁸⁸ Ibid. p.131-133.

⁶⁸⁹ Ibid. p. 136.

⁶⁹⁰ Ibid. p. 143.

- *If you resign too late, then you will be viewed as the problem and your resignation will not carry a positive impact.*
- *There is no room for a caustic approach, only a clear, unimpassioned statement of the facts.*⁶⁹¹

Each leader will need to decide which approach is appropriate for them in their particular situation. An article in Christianity Today on “Navigational Errors” gives some insight into the pastoral decision.

1. *Don't let threats dictate actions*
2. *Avoid the unanimity trap*
3. *Amid a crisis, don't seek affirmation of your leadership*
4. *Don't invoke the family factor*
5. *Take control of heated meetings*
6. *Don't talk about leaving*⁶⁹²

ACTIONS THE CHURCH CAN TAKE

God has established ways for the laity to be effective amid the crisis, perhaps even more so than those in leadership positions.⁶⁹³

Power and Position

- *Those lacking the position of leadership still have the power to lead.*
- *Servant leadership is a lifestyle that is available to every believer, because Jesus originated the concept for every disciple.*
- *It is the power of the towel. If people were resolved to serve one another, no issue could divide the household.*
- *There is never agreement and peace when the god of self in one person is forced to surrender to the god of self in another.*⁶⁹⁴

Matthew 20:26-28 - *“Not so with you. Instead, whoever wants to become great among you must be your servant, ²⁷and whoever wants to be first must be your slave-- ²⁸just as the Son of Man did not come to be served, but to serve, and to give his life as a ransom for many.”*

⁶⁹¹ Ibid. p. 145-146.

⁶⁹² *Christianity Today International/Leadership Journal*. “Navigational Errors” Fall 2004, Vol. XXV, No.

4, P. 28.

⁶⁹³ Susek. *FireStorm*. p. 147

⁶⁹⁴ Ibid. p. 147-149.

- Jesus addressed the desire for greatness with one word—“serve.”
- It is a death to self so that Christ, the great towel bearer, can be formed in you.
- This requires a broken boldness: broken of all self-rule and bold in the Holy Spirit.⁶⁹⁵

RECONCILIATION (WELLNESS)

Visualize a large manufacturing plant in (_____) that produces shoes. The management has invested great sums of money and many man-hours into the plant to produce the finest shoes possible. Money has been spent on salaries for the employees, machinery for shoemaking, and materials from which the shoes are to be made. The plant is now in operation with hundreds of workers scurrying to and fro. Machines are running full blast, and the activity is at a maximum.

One day the president asks the production manager, “How many shoes have you produced so far?”

“None,” the manager answers.

“None?” the president exclaims. “How long have we been in operation?”

“Two years.”

“Two years? And still no shoes?”

“That’s right,” the manager says, “no shoes, but we are really busy. In fact, we have been so busy that we are all nearly tired out.”⁶⁹⁶

Imagine now congregations that are functioning every day of every week but never witnessing a new birth in Christ or never creating a disciple for the kingdom of God. Imagine those suffering servants that are devoting huge sums of time and dollars but are so committed to unhealthy practices and relational conflicts that there is no time or heart for true and Godly ministry.

Through a ministry of Wellness Teams intervention it is hoped that congregations and their leadership will find reconciliation and be restored to positive, aggressive, successful and kingdom building ministry.

⁶⁹⁵ Ibid. p. 149-152.

⁶⁹⁶ Eims, Leroy. *The Lost Art of Disciple Making*. Zondervan, Grand Rapids, 1978. p. 59.

MISSION-PURPOSE

The mission/purpose of the Wellness Team is to...

1. *Extend compassion and care to pastors, their families and to congregations in need*
2. *Listen with an empathy and sensitivity to concerns & complaints*
3. *Serve as a mediator*
4. *Provide a therapeutic diagnosis*
5. *Present several possible recovery scenarios*
6. *Assist in implementing an accepted recovery plan*
7. *Remain in a supportive posture until health has been restored*

GOALS

The primary Goals of the Wellness Team are to...

1. *Enhance congregational health*
2. *Sustain pastoral and pastoral family health*
3. *Provide conflict resolution*
4. *Teach appropriate behavioral responses*
5. *Teach appropriate administrative/management procedures*
6. *Encourage spiritual growth*

OBJECTIVES

The objectives of the Wellness Team are...

1. *To enable congregations to experience positive relations with themselves, their pastoral teams, their pastoral families, and with their community.*
2. *To position congregations for continued health maintenance.*
3. *To enable pastors, leaders and their families to experience positive relations with each other and with the congregations they serve.*
4. *To promote, encourage and enable pastors and their families to experience therapeutic interventions that will facilitate reconciliation, restoration and in some cases reformation.*
5. *To act as a bridge between conflicting parties.*
6. *To arbitrate in situations of deadlock.*
7. *To model appropriate behavioral responses.*
8. *To patiently reveal and seek to eliminate inappropriate behavioral responses.*

9. *To eliminate poor administrative/management structures and procedures.*
10. *To provide and promote culturally and spiritually appropriate administrative/management structures and procedures.*
11. *To encourage spiritual development*
12. *To promote activities, training events, teaching tools, and other resources that will support spiritual development.*

OUTCOMES

The proposed and anticipated outcomes of the Wellness Team include...

1. *Resolution of conflicting parties*
2. *Restored health to pastors, pastoral families, and congregations*
3. *Development and implementation of a positive and aggressive ministry plan*
4. *A collegial partnership with the congregation, other congregations, and with State Ministries of the Church of God.⁶⁹⁷*

Models of a Healthy Future (Recovery Scenario)

A Wellness Team met to compare their findings and to seek for patterns from the interviews that might suggest areas of woundedness in a congregation of the Church of God. While we discovered a people who had great passion for the church, and numbers of people who indicated their great love for God, we also felt the pain of all and our sympathetic responses laid a great weight upon our shoulders. The potential of the congregation is diminished by the ill health currently being experienced. The possibility for healing and wholeness is still there and it is our hope that passion for Christ, submission to his teachings, and learning good spiritual health habits and skills will enable healing and reconciliation.

The intent of the team and of this scenario is not to assign blame for past problems. Our primary intent and hope as we offer this scenario is to promote healing, wholeness and a focus on God's future.

We recommend a complete acceptance of our full recommendations.

⁶⁹⁷ Brink, Robert. *Introduction to Wellness Teams*: written for Indiana Ministries of the Church of God, 2003.

LEADERSHIP RECOMMENDATIONS

Developed skills in this area would help to create parameters, boundaries, and would enable the congregation to experience creative conflict that would aid growth efforts and lessen the amount of both intentional and unintentional wounding.

L.1. Character Development

As the heart, health, and organization of the church moves toward greater wellness, it is essential that Christian character be an important quality. Respect for differences will warm the hearts of worshipers. Servant hearts are filled with love, honesty, respect, integrity, compassion, desire to go the extra mile, faith, optimism, and dignity. The fruits of the Spirit should be seen in lives. This is a continuing teaching process that stresses high accountability.

(Sunday School Class Electives, Small Group Bible Studies, Wednesday Evening Adult Lessons and Preaching Series)

L.2. Common Values and Mission Statement

It is significant for the congregation to understand what it values most and what it wants to accomplish. A clear vision statement that communicates the common values of the congregation will help to define ministry objectives.

(Workshops & Conferences could help leadership walk through this process and discover the common values that will help direct future ministry. Indiana Ministries could provide some of this – Many of our resource pastors have led several congregations through this process in a workshop form.)

L.3. Governance and Management Principles

Techniques for handling issues and managing people are essential in today's churches. Congregational participants, committee and board members could realize the value and support of additional skills in: Preparing agendas for meetings, How to conduct a meeting, How to use time wisely during a meeting, etc. There are many leaders in the Church of God who could facilitate workshops as well as many resources that are available for the local congregational.

(Through INJOY Ministries, Dr. Stan Toler provides the *“Church Operations Manual”* and George Cladis has written an excellent

book entitled “*Leading the Team Based Church*”. Indiana Ministries makes “*The ABC’s of Church Management*” available; Carl F. George and Robert E. Logan have put together an audio training called “*How to Lead and Manage The Local Church*”))

L.4. Job Descriptions for Ministry Leaders

Knowing the task one is expected to accomplish and the accountability and responsibility relationships essential to success, there needs to be clear written job descriptions for all positions of leadership.

(A notebook with additional computer disks is available by Carolyn Weese and Don Riddell. It is called *Job Descriptions: A Development Guide for the Local Church* [Multi-Staff Ministries at 3819 North 154th Lane, Goodyear, AZ 85338]. Another excellent resource is through the *Networking* Ministry of Bill Hybels and the Willow Creek Community Church.)

L.5. Increased Communication

Clear, honest communication will help to eliminate a great deal of conflict and build trust.

(The more information made available, the more confidence the people will place in their leadership. —Posted reports, financial accountability, newsletter info, vocal announcements, etc.)

L.6. Enhanced Leadership Skills

Every time a person’s leadership ability is enhanced the church will benefit. Encourage, enable and empower those with leadership skills. Help people to develop leadership skills by building annual leadership training events into the church budget. It can only make the congregation stronger, better and more financially secure.

(Indiana Ministries can offer many suggestions for leadership development. *SHAPE* [Sustaining Health and Pastoral Excellence] is a great way to build a pastor’s skills; *Institute for Servant Leadership* is a three-year training program via Indiana Ministries; area colleges frequently sponsor seminars [Anderson University, Taylor University, etc.]; many church groups and mega-churches are providing leadership training through video simulcasts.)

SPIRITUAL LIFE RECOMMENDATIONS

S.1 Personal Spiritual Growth

The spiritual vitality of the church comes under direct assault when there is division and strife in the local body of believers. Personal spiritual growth is the foundation of a spiritual church. Everyone must be growing in his or her personal relationship with the Lord Jesus Christ. There must be built in devotional programming to facilitate this growth.

S.2. Spirituality in Administration

There is often a pattern in the congregation of seeing some tasks in the church as spiritual in nature, and others as not. A much healthier perspective would be for the church to begin to see everything that is done in the church as being spiritually important to the church's life. Correspondingly, the need for spiritual vitality, which includes honesty, integrity, and a servant spirit in each member of each board and committee, is crucial.

S.3. Pastor/People Relationship

Healthy relationships between the pastor's family and the congregation must be developed for the well being of the congregation. The development of trust, loving care and merciful sharing takes intentional work over time. Proper respect must be given to God's servants and they should offer the same respect to parishioners.

1 Timothy 5:17-20 (NIV) - *The elders who direct the affairs of the church well are worthy of double honor, especially those whose work is preaching and teaching. [18] For the Scripture says, "Do not muzzle the ox while it is treading out the grain," and "The worker deserves his wages." [19] Do not entertain an accusation against an elder unless it is brought by two or three witnesses. [20] Those who sin are to be rebuked publicly, so that the others may take warning.*

Mutual accountability for pastors and all leaders will help to develop vision and ministry.

S.4. Organizational Philosophy and Functioning

Leadership positions within the congregation must be for the sole purpose of serving others for Jesus Christ. A philosophical change that moves leadership positions from positions of power and control to positions of servanthood is needed.

John 13:1-17 - *It was just before the Passover Feast. Jesus knew that the time had come for him to leave this world and go to the Father. Having loved his own who were in the world, he now showed them the full extent of his love. [2] The evening meal was being served, and the devil had already prompted Judas Iscariot, son of Simon, to betray Jesus. [3] Jesus knew that the Father had put all things under his power, and that he had come from God and was returning to God; [4] so he got up from the meal, took off his outer clothing, and wrapped a towel around his waist. [5] After that, he poured water into a basin and began to wash his disciples' feet, drying them with the towel that was wrapped around him.*

[6] He came to Simon Peter, who said to him, "Lord, are you going to wash my feet?" [7] Jesus replied, "You do not realize now what I am doing, but later you will understand." [8] "No," said Peter, "you shall never wash my feet." Jesus answered, "Unless I wash you, you have no part with me." [9] "Then, Lord," Simon Peter replied, "not just my feet but my hands and my head as well!"

[10] Jesus answered, "A person who has had a bath needs only to wash his feet; his whole body is clean. And you are clean, though not every one of you." [11] For he knew who was going to betray him, and that was why he said not every one was clean. [12] When he had finished washing their feet, he put on his clothes and returned to his place. "Do you understand what I have done for you?" he asked them. [13] "You call me 'Teacher' and 'Lord,' and rightly so, for that is what I am. [14] Now that I, your Lord and Teacher, have washed your feet, you also should wash one another's feet. [15] I have set you an example that you should do as I have done for you. [16] I tell you the truth, no servant is greater than his master, nor is a messenger greater than the one who sent him. [17] Now that you know these things, you will be blessed if you do them."

The leadership should empower other individual and groups to do ministry effectively.

(Helpful resources we recommend are the 100 Days of Prayer, Great Commandment Ministry by Intimate Life Ministries as well as many others available from the State office.)

WORSHIP RECOMMENDATIONS

A healthy church will participate in worship that is holistic. Holistic worship ministers to God in a way that enables all the people to find their point of adoration. It is not a style, it is not a single way of worship and it is not something that is inflexible or exclusionary. It is worship that includes the whole congregation by including aspects that minister to their varied personalities.

A person planning holistic worship recognizes that God is big enough to reach each person within the context of that day's worship. Paul wrote in Ephesians 5:19;

Ephesians 5:19 - *“Speak to one another with psalms, hymns and spiritual songs. Sing and make music in your heart to the Lord, always giving thanks to God the Father for everything, in the name of our Lord Jesus Christ. Submit to one another out of reverence for Christ.”*

These elements need to be remembered in planning and participating. This is a continuing teaching process that stresses high accountability in worship:

W.1. Worship is about God first the congregation second and the individual third.

- *Not everyone has the same tastes. But that doesn't mean that one's tastes in worship are more or less spiritual than someone else.*
- *Everyone expresses relationship with God in worship differently. Some are demonstrative and others are reserved. One is not necessarily better than another.*

- *Each of us brings different needs to public worship. One person may need to celebrate what God has done in their life and another may need to cry out to God in their pain and hurt. Worship must allow each.*
- *One may not like the style of a given part of the worship service, but one should have love for the person that is being ministered to by it.*
- *If someone doesn't get fed by worship it is not anyone's fault but their own. The Holy Spirit wants to speak to us all the time and in many ways.*

W.2. I will not be the one who is responsible for bringing division into worship.

I will submit to God and to others. By being conscientious of others I will be conscientious of God.

(There are many good worship training resources and programs available through Mainstay ministries, Natural Church Development and the Church of God Task Force on Worship. There are also several qualified music ministers within the state that would be helpful in working with your current leadership and congregation.)

STRUCTURE AND ORGANIZATIONAL RECOMMENDATIONS

The concerns identified by the congregation during interviews with the wellness team noted several structural or organizational problems. It is recommended that the congregation suspends its current by-laws for one year and operate under the guidance of a leadership committee. Everything that must be done will fall under the control of the leadership committee. The leadership committee will be made up of four congregational members, the senior pastor and two members from the wellness team. During the year, bylaw revisions, structural changes and other administrative problems will be addressed. At the end of one year the old bylaws may be reinstated or the congregation may implement the newly developed bylaws and policies.

Items to be considered by the Steering committee will include:

- Revision of the bylaws
- Leadership development
- Gifts Survey of the Congregation
- Assessment of Key Ministries for the Congregation
- Develop an understanding of the Historic Vision/Foundations of the Church of God
- Develop a Pro-Active Approach to conflict management

Conclusion:

It is not the intent of the Wellness Team to provide an all-inclusive list of resources but instead to introduce a few possibilities and to encourage you to explore and experience. May God bless you in your journey!⁶⁹⁸

⁶⁹⁸ Brink, Robert. *Recovery Scenario*: Written for Indiana Ministries of the Church of God. 2003.

WELLNESS TEAM PROPOSAL
FOR

(Name) _____ **CHURCH OF GOD**
(City) _____, **(State)**

Prepared by: (Wellness Team Leader)

Date:

The Church of God in (City), (State) offers valuable ministry to the community and maintains a mainstream involvement with other Church of God congregations in (State). Pastoral and lay leaders have made strategic contributions of skill and gifted ministry to a vast array of community, district, state, and national ministries.

We, in the (State or Regional) Office, hold the congregation as a valuable family in the Kingdom of God. Therefore, the offer of "consultative services" bares no open or hidden suggestion of disrespect or interventive control. Rather, the philosophy of (State) Ministries is one of being a ready resource for congregational life.

The following descriptive outline is intended to be informative. The remarks are not to be taken, as concrete or final, they are offered as an introduction to a process that all of us hope will lead toward, greater health and prove to be a window of opportunity for the faith journey and mission adventure of the pastor, leaders, and congregation.

WELLNESS TEAM

Four (4) members

Selected by State Church of God Leadership

Team Members:

These friends of the congregation will be persons that are deserving of the confidence and trust that you would expect displayed for such individuals. The pastoral, lay leadership, and congregational members of

Church will find themselves very comfortable with the experience, gifts, and compassion for the church that these persons will bring to the task.

DURATION

Wellness Teams enable the congregation to work together on process as opposed to what some call a “quick fix” approach. The Team is committed to a length of time that has few, if any, constraints.

TASKS:

I. Diagnostic Listening

*Interviews with a variety of persons

- Pastoral Staff
- Leadership Structure of the congregation
- Congregational Members
- Persons no longer attending the congregation
- Former pastors

*Informational Research

- Historical Evaluations
- Bylaws
- Official Actions of Leadership Groups
- Ministry Programming
- Staff Relationships & Staff Development

2. Strategic Planning

*Body Life

*Leadership

- Style
- Assessment
- Transition Perspectives

*Bylaws Assessment

*Polity Reconfiguration

*Worship, Discipleship, and Nurture

*Change Issues

3. Futuristic Visioning

*Vision Casting

*Leadership Development

*Church Health

*Ministry Planning

*Concluding Positional Report

- Pastoral Staff
- Congregational Leadership
- Department of Church Growth/Wellness Team Task Force⁶⁹⁹

BLOCK CONCLUSION

Gene Wood in *Leading Turnaround Churches* wrote about strategic principles that he discovered through the game of Chess. As a metaphor for life and ministry he believes the strategic principles it teaches include:

- *Conflict need not be raucous or physical. Chess is a very civil competition.*
- *Losing your temper is taboo.*
- *The goal is to protect the king at all costs. (Jesus is the King.)*
- *The pieces on the board have different capabilities.*
- *The game is both defensive and offensive.*
- *Occasionally pieces should be sacrificed for the ultimate good. Other times pieces are traded. (Think of chess pieces as issues, not people. Not every issue is worth dying for.)*
- *It is possible to regain a lost piece, but it is not probable or to be assumed. Once a piece is lost, let it go. Stay focused.*
- *You cannot play the game without losing some pieces.*
- *Every piece moved on the board changes the game permanently and radically.*

Remember, chess is an emotionally demanding game in part because it requires such thought, constant re-evaluation, and self restraint.⁷⁰⁰

While conflict is inevitable it can become an opportunity for growth, testing, and a building of our faith. It should not be avoided but faced with humility, partnership within the body of Christ, and a dependence upon God.

⁶⁹⁹ Brink, Robert. *Wellness Team Proposal*: Adapted from Richard Shockey of Indiana Ministries of the Church of God and Written for Indiana Ministries of the Church of God. 2003.

⁷⁰⁰ Wood, Gene. *Leading Turnaround Churches*. Church Smart Resources, St. Charles, Illinois, 2001. p. 44-45.