

# MINIMIZING LIABILITY TO THE CONGREGATION

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Following are recommendations to follow or be incorporated in policies approved by the congregation board in order to minimize the exposure to liability. Copies of approved policies should be provided to members directly affected by the policies and a record set should be maintained in the congregation office for public inspection.

## A. Basic Organizational Documents

1. Articles of Incorporation. Incorporating in your state will help to shield the officers and members of the congregation from personal liability in a lawsuit against the congregation. The biblical purpose for the congregation set forth in the Articles helps to establish the congregation's right to protection under the First Amendment.
2. I.R.S. tax exemption approval. Becoming approved as tax exempt under section 501(c)(3) of the Internal Revenue Code will keep thousands of dollars more available for ministry and assure donors of being able to deduct contributions from their personal income tax filings.
3. Bylaws. The bylaws reinforce the congregation's constitutional protection by setting forth the standards and procedures by which the congregation is managed. The meaning of words needs to be as specific as possible to minimize the possibility of disputes over language. At a minimum, congregation by-laws should include the following subjects or sections:
  - a. Qualifications, selection, discipline and expulsion of members;
  - b. Time and place of annual business meetings; the calling of special business meetings; and notice for annual and special meetings;
  - c. Quorums and voting rights (see B.7 and B.8 below);
  - d. Selection, tenure, and removal of officers and directors; and the filling of vacancies;
  - e. Responsibilities of officers and directors;
  - f. Method of amending bylaws;
  - g. Purchase, transfer and disposal of congregation property;
  - h. Optional, but important sections, should provide for adoption of a specific parliamentary procedure, settlement of disputes between members through mediation or arbitration, how contracts and other legal documents are to be approved and signed, an annual audit of financial records, an indemnification clause, and specification of the congregation's fiscal year.
4. Formal membership records. Voluntary association in formal membership establishes the congregation's right to govern members and employees according to the standards of its bylaws.

## B. Congregational Meetings

1. Purpose. General or special meetings of the congregation's membership may be called for any organizational business.
2. Authority. Congregation members only exercise authority when acting at a meeting convened according to the procedural requirements in the congregation's charter and bylaws. Actions taken at irregularly called meetings generally are considered invalid unless subsequently ratified or affirmed at a duly convened meeting.

3. Presiding Officer. The pastor of the congregation, or the senior pastor of a congregation having more than one pastor on its staff, is legally authorized to preside at membership meetings if authorized by (1) the congregation charter or bylaws, (2) established congregation custom, (3) applicable state nonprofit corporation law or (4) the doctrine of inherent authority.
4. Participation. Members have a right to express their views at congregation meetings since the very purpose of such meetings is to arrive at decisions through a free and open exchange of ideas. (In *Randolph v. Mount Zion Baptist Congregation*, 53 .2d 206 N.J. 1947, the court held that the leaders of two opposing factions within a congregation had no authority to agree that a congregation membership meeting would be conducted without discussion.)
5. Agenda. The congregation may use Robert's Rules of Order, determine its own order of business for regular meetings or the Pastor can submit an agenda for a special meeting subject to allowance for full discussion.
6. Notice. A congregation 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 congregation custom. Failure to follow applicable notice requirements will render any action taken at the improperly called meeting invalid.
7. Quorum. The quorum is the minimum number of members required to be present in order to transact business, whether the group be a committee, board or congregation. The quorum should be specified in the Bylaws for each deliberative body, but if the congregation has no bylaws or established custom concerning quorums, then the quorum consists of a majority of those entitled to participate in the deliberative body and decide the congregation's business. The quorum issue may be sidestepped by having a written policy that the majority of the members present at a duly called meeting may decide any issue.
8. Voting. Unless otherwise restricted by charter, bylaw, statute or custom, every member has a right to vote at a duly called meeting of the congregation at which a quorum is present. Proxy voting, that is voting by means of a substitute, should not be allowed (*Robert's Rules of Order* specifically discourages it.). A problem could be created if the congregation's bylaws do not specifically prohibit the use of proxy voting. Since issues are determined by a majority, it's also very important for the bylaws to define what a majority of members means, whether the majority of total membership or the majority of those members present at a meeting. Some issues are so important, though, that the congregation might consider imposing a super-majority vote requirement, such as two-thirds of eligible members present at a duly-called meeting.

### **C. Congregation Sponsored Activities**

1. Sponsorship implies endorsement and approval. And, because of its endorsement the corporation is willing to assume appropriate responsibility for the safety of participants when they are on congregation property, using congregation property or being supervised by congregation members.
2. Only those activities officially approved by the ruling board of the congregation should be considered congregation-sponsored with that fact duly recorded in the Minutes of the board.

3. The congregation board may at its discretion require any group, organization or individual requesting use of congregation facilities to purchase liability insurance or a surety bond for the activity to avoid any question about congregation sponsorship or to pay a fee to the congregation that will reimburse the congregation's liability insurance expense.

**D. Management of Contracts**

1. Contracts between the congregation and other parties should only be entered into with the authority of the congregation board.
2. When a designated representative of the congregation signs a contract on behalf of the congregation, the signer must insure that the congregation is clearly and properly identified in the contract and sign the contract by disclosing their representative capacity.

**SAMPLE SIGNATURE BLOCK**

By \_\_\_\_\_  
(signature)  
  
\_\_\_\_\_  
(printed name)  
  
\_\_\_\_\_  
(office or title)  
  
\_\_\_\_\_  
(date)

3. Signature cards at banks or other credit institutions must be kept current and reviewed not less than annually for updating. Only persons authorized by the congregation board should be permitted to sign signature cards.
4. Any contract to employ a pastor, staff person or hourly employee should clearly set forth the nature of the services or responsibilities to be performed, the compensation to be paid and the term of employment. Termination of an employment contract may only be done in accordance with the personnel standards which were incorporated into the contract. Employees should be informed before employment of the termination procedures.
5. Contracts to remodel or construct congregation facilities should be formally drawn by an attorney to assure that all legal requirements are met. The contract should require the contractor to provide liability insurance and worker's compensation for his workers or a surety bond. Unless the contract states otherwise, a contractor can sub-contract any portion of the work and actions or neglect of a sub-contractor can also create liability to the congregation. A sub-contractor can file a lien against the congregation for amounts owed him by the contractor. Therefore, the contract should specific that any sub-contractors will be self-insured and require the contractor to document that he has paid his subcontractors before the contractor receives final payment and releases are signed. The contract should also specify a lien release from the contractor and any sub-contractors upon full payment. Having someone monitor the progress and performance of both contractor and sub-contractors can be vital to a successful conclusion to the project.

**E. Premises Safety**

1. Duties of the congregation board and officers regarding premises safety.
  - a. Duty of reasonable and ordinary care to keep premises safe, including discovery and remedy of concealed hazards.
  - b. Duty to warn of known dangers and refrain from willful, wanton or reckless conduct that might injure people who enter congregation property. (Example: you need to put a sign up when there is water on the floor in a public place. There is a case in the list of samples in which a congregation failed to provide such notice and was held liable, as well as the custodian, for injuries when a woman slipped and fell.)
2. The congregation is not liable if it exercised reasonable care or warned of hazardous conditions, although you may not know until the jury decides. The congregation owes little or no duties to warn trespassers. The only duty to potential trespassers is to refrain from willful or wanton acts.
3. Specific courts have held that a congregation has no duty to:
  - a. illuminate the parking lot when no congregation activities are in progress.
  - b. remove oil and grease from its parking lot.
  - c. place markings on sliding glass doors.
  - d. remove snow from stairways before the end of a snow storm.
  - e. remove every square inch of snow and ice from the parking lot following the storm.
4. Responsible planning actions.
  - a. The board or committee which has oversight of the congregation property should assist the Pastor in insuring that the congregation building, facility equipment and grounds are maintained in a safe condition. The Pastor should have full authority to take immediate action to correct or arrange for correction of any hazardous condition that could result in injury or death.
  - b. Periodic inspections of the electrical system, the plumbing system, the heating and air conditioning system, and the structural condition of the congregation should be made with a report to the congregation board describing the nature of any deficiencies found and the plan for correction.
  - c. The congregation board should be informed of any deficiency identified by the Fire Department or other agency of the government and corrective action taken or proposed.

**F. Use of a Congregation-Owned Vehicle.**

1. Any use of a congregation vehicle should be approved by the congregation board. Subject to appropriate coordination, standing approval could be authorized for using the congregation vehicle for picking up persons to attend Sunday School and/or congregation services, and for congregation staff and employees to make trips for administrative or emergency purposes, or to transport persons to denominational events. Plans for using a congregation vehicle for any other single event or activity should be submitted at least 30 days in advance to the congregation board for approval.

2. Drivers of congregation vehicles should be at least 25 years of age with a valid state drivers license and be members of the congregation in good standing. (The congregation should also determine whether a chauffeur's license is required by state law.) Drivers should be required to comply with all state laws pertaining to the operation of motor vehicles, and insure that the vehicle is in a safe mechanical condition and that installed restraint systems are used by the passengers.
3. No person should be authorized to drive any vehicle owned by the congregation who has been convicted of a felony related to driving or behavior toward a minor.
4. The following routine steps should be taken in authorizing an individual to drive a congregation vehicle. A vehicle coordinator may be appointed by the Pastor to accomplish these tasks.
  - a. Confirm that the driver has a current drivers license for the type of vehicle that he or she will be driving.
  - b. Ask each prospective driver for a complete history of all traffic convictions and police arrests. (As in para. 6.a. the congregation should conduct a record check to verify the information provided.)
  - c. Obtain the drivers license number of each prospective driver to add to the congregation van insurance. (The insurance carrier may be able to assist in verifying the individual's driving record.)
  - d. Submit the driver's name to the congregation board for approval consideration.
5. The Pastor or his designated representative should fully investigate any reports of a driver operating a congregation vehicle in a negligent manner. The driver should be immediately suspended from driving pending the outcome of the inquiry. The accused driver should be prohibited from driving the congregation vehicle again unless the investigation clearly demonstrates the complaints were without merit.
6. If a prospective driver is a new member, then he or she should be required to provide names and addresses of other congregations in which he or she has worked as a driver. Those congregations should be contacted to ask if they are aware of facts that would indicate that the individual should not be used as a driver. A written record of such contacts should be maintained.
7. All authorized drivers should be required to immediately inform the congregation of any traffic tickets or convictions.
8. Drivers should be provided with detailed instructions on procedures to follow in the event of an accident. In particular, the driver, if able, should insure that a police report is taken and appropriate information is exchanged when another driver is involved. The driver should also insure the Pastor is notified as soon as possible. The vehicle should carry appropriate insurance claim forms and copies of medical release forms for any passengers.

### **G. High Risk Activities**

1. Any activity which is inherently hazardous should be brought to the congregation board for approval. Hazardous activities include, but are not limited to, water-related activities, mountain climbing or repelling, flying or skydiving, snow skiing or sledding, or activities involving explosive devices or firearms.

2. Those responsible for planning hazardous activities should investigate the safety precautions prescribed by law and explain to the congregation board the safety plan for the activity. The congregation board should not approve any hazardous activity without a safety plan.
3. Any water-related activity, such as swimming, boating, skiing, etc., should not be approved and conducted without an adequate number of adult supervisors trained in lifesaving skills. These supervisors need not be members of the congregation.

#### **H. Copyright Protection**

1. The federal copyright law grants authors exclusive rights of their works. A work of authorship includes literary, musical, dramatic, pantomimes, choreographic, pictorial, graphic, sculptural, motion picture and other audiovisual works, sound recordings and computer programs. Translations of the Bible other than the King James Version are also copyrighted and citations should be used in accordance with the stated rules of the publisher.
2. Photocopying published musical and dramatic works for public use or display in lieu of purchasing the quantity needed is expressly prohibited. All congregation members should be reminded of the law and discouraged from inadvertent violation. Printing song lyrics without the musical notes in the worship bulletin will not avoid the law's requirement. However, a congregation can duplicate a musical work or lyrics whose copyright term has expired or that never was subject to copyright protection, since such works are considered to be in the public domain.
3. Performance of a non-dramatic literary or musical work or of a dramatico-musical work of a religious nature in the course of a worship service or other religious assembly is not an infringement of copyright. However, providing cassette or video recordings to anyone of worship services in which copyrighted works are performed would be a violation of copyright law.
4. To insure full compliance with the law regarding musical works, the congregation should purchase a license for reproduction. (Contact Christian Copyright Licensing, Inc., 7600 NE Glisan St. Portland, OR 97213.)

#### **I. Insurance**

1. Insurance policies don't cover everything. Know what is excluded from coverage and the policy limits for what it does cover. Invite your insurance agent to visit and congregation board meeting to explain the policy and the kinds of claims that are not covered by the policy. Disseminating complete and accurate information will enable members and employees to have proper expectations.
2. Pay your premiums, in full and on time. Delinquency could cause your policy to be arbitrarily canceled and leave you without coverage when you need it.
3. Report to your insurance company every accident or other serious incident that could possibly be covered by your policy.
4. Cooperate in any investigation and defense of any claims or lawsuits against you. If you don't agree with how the insurance company is defending your case, tell the company about it and debate it.

5. Tell the truth to your insurance company. Misleading the company or hiding information can result in your policy being canceled.

**J. Tax-Exempt Status**

1. Congregation leadership needs to be aware of the restrictions imposed by the Internal Revenue Code for charitable entities that are tax-exempt. Violations of these restrictions can result in loss of tax-exempt status, as well as other civil penalties.
2. Restrictions include the following:
  - a. No part of the net earnings of the congregation can benefit or be distributable to its members, trustees, officers or other persons, except for the reasonable compensation provided to its ministry staff and employees.
  - b. No substantial part of the activities of the congregation can be involved in propaganda or otherwise attempting to influence legislation or the election of any candidate for public office, including the publishing or distribution of statements.