

MAUCK & BAKER, LLC

# Legal Self-Audit 2016

A 19-Section Resource  
For Churches To Review  
Monthly At Their Board Meetings



# MAUCK & BAKER, LLC

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ATTORNEYS AT LAW

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## LEGAL SELF-AUDIT 2016

This form is designed to help your church identify and assess some general risks that it may bear under current Illinois law. After completing the form, leaders should review the results to decide whether the church may bear any unacceptable risk. If any risk is deemed unacceptable, action should be taken to reduce the risk to an acceptable level.

Answer each question *yes* or *no*. If you cannot answer *yes*, the church bears some risk. Whether or not the risk is unacceptable requires careful judgment. In some cases, it may be obvious that the risk is unacceptable and it may be obvious what should be done to correct the problem. In other cases, church leaders may need professional evaluation and advice. A thorough audit of legal risks will require legal counsel.

Consulting an attorney who is an expert in church law will make the audit much more valuable and is a good investment. Working together in that way can reduce risks for the church, for its leaders, for its staff, for its members, and for nonmembers.

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## 1. Documents

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 6]

- |    |     |  |
|----|-----|--|
| No | Yes | <b>1.1. Do your church's files contain its affidavit or articles of incorporation?</b>   |
|    |     | <b>1.2. To find out whether your church is incorporated under the Illinois not-for-profit corporations law, answer the following:</b>  |
| No | Yes | <b>1.2.1. Have you checked whether there is a period of duration in your articles of incorporation and whether the period has ended?</b><br>Some churches are incorporated for a specified number of years. Often, church leaders are not aware of this specified duration, and their churches' corporate status has expired without their knowing it.   |
| No | Yes | <b>1.2.2 Has the church filed all the annual corporate reports required under the not-for-profit corporations law?</b><br>Illinois law requires a not-for-profit corporation to file annual corporate reports with the Secretary of State. Failure to file a required annual report may cause involuntary dissolution of the corporation. You may check the website of the Secretary of State to determine whether your church corporation is in good standing.<br><i>Note: If your church is incorporated under the Illinois Religious Corporation Act the Secretary of State keeps no records of it.</i> |
| No | Yes | <b>1.3. Do you have a dissolution clause in your church's affidavit or articles of incorporation?</b><br>Any organization that is exempt from federal income taxes, including a church, must have a dissolution clause in its affidavit or articles. This clause must identify another exempt organization that will receive the church's assets if the church is dissolved.   |
| No | Yes | <b>1.4. Is the organization identified in your dissolution clause still in existence?</b><br>Many church dissolution clauses were drafted years ago, and name beneficiary organizations that no longer exist or reflect the current desires of the church.   |
| No | Yes | <b>1.5. Is the organization identified in your dissolution clause the one you want to receive your property in the event of your dissolution?</b>  |

- No Yes **1.6. Does the statement of purposes in your church’s articles of incorporation list only purposes identified in section 501(c)(3) of the Internal Revenue Code?**  
A church is exempt from taxation under federal law only if it is organized exclusively for one or more of the purposes set forth in section 501(c)(3) of the Internal Revenue Code: religious, charitable, scientific, testing for public safety, literary, educational, fostering national or international amateur sports competition, and prevention of cruelty to children or animals.
- No Yes **1.7. Does your church use the name stated in your affidavit or articles of incorporation?**  
A church may change its name by changing its church signs and stationery but not its charter. If so, the church is using a name that is different from its legal name. This can cause legal problems. Legal documents such as wills or deeds may not bear the correct corporate name. Official correspondence, such as requests for annual corporate reports, that is sent to the church may not be properly handled because the name is not recognized.
- No Yes **1.8. Is the statement of purposes in your church’s articles of incorporation broad enough?**  
The church charter or articles may have "religious" as the sole purpose of the corporation. If the church has added activities (such as child care or school) that go beyond religion into education or charity, it may be better to amend the statement of purpose in the charter or articles of incorporation to include charitable and educational purposes.
- No Yes **1.9. Does your church’s articles of incorporation contain language required by the Internal Revenue Service (“IRS”)?**  
The IRS has provided sample paragraphs that may be copied into a church's articles of incorporation so the church is organized for exempt purposes as required by federal tax law. The regulations permit some modification of the sample paragraphs, such as designation of another exempt organization in the dissolution clause. See IRS publication 557.
- No Yes **1.10. Does your church have on file its current bylaws, with amendments?**  
Many churches fail to update their bylaws to reflect amendments. This failure can cause confusion and may even cause some corporate acts to be invalid. Members should be sent copies of the bylaws at least every five years.
- No Yes **1.11. If your church has real estate, do its files include the original recorded deed, the survey, and the title insurance policy?**

- No Yes **1.12. Is your church in full compliance with any restrictions imposed by the deed to its property?**  
 A deed to the church’s property may contain easements, covenants, or liens that restrict use or sale of property in a number of ways. Church leaders must be aware of any such restrictions. The church’s deed may specify that title to the property shall revert to the previous owner if the church tries to sell the property or the property is no longer used as a church. Unwitting actions by the church could result in the immediate and automatic transfer of legal ownership back to the prior owner. This sort of restriction in the deed may also cause problems for dedication of church assets to exempt purposes. Church leaders must be aware of and consider any such provision before selling or receiving church property.
- No Yes **1.13. Do your files contain minutes of all meetings of your church’s board and its congregation and contain the date of the meeting and members present?**
- No Yes **1.14. Do your minutes record the progression of every action from motion to final action, a statement that each adopted action was approved by the necessary number of votes, and a transcript of each approved action?**
- No Yes **1.15. Do your files contain copies of all your church’s contracts?**
- No Yes **1.16. Are your legal records maintained in a safe and secure place?**
- No Yes **1.17. Do you have secured backup copies of important legal records in the event the originals become unavailable?**  
 Valuable records should be kept in a place secure from fire and theft, such as a safe deposit box.
- No Yes **1.18. Do you have a records retention policy that specifies how long various kinds of church records are kept?**  
 Some records, such as the church’s charter or articles of incorporation, insurance policies, and deeds must be kept indefinitely. Other records must be kept as required by federal, state, and local law.
- No Yes **1.19. Are your legal documents regularly reviewed by an attorney who is familiar with laws affecting churches?**  
 Churches are increasingly affected by federal, state, and local laws. It is important that a church’s legal documents be reviewed from time to time by an attorney who can appreciate the impact of such laws and advise the church on compliance with them.

## 2. Leadership

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 6]

Members of a church's governing board, however they are identified (trustees, directors, elders, or deacons), have legal duties of special trust and oversight that are very important for the church's legal health. Church leaders must be aware of their important responsibilities and meet them adequately.

- |    |     |  |
|----|-----|--|
| No | Yes | <b>2.1. Does your church adequately orient new members of its governing board?</b><br>Officers and trustees have a legal duty to exercise due care in their official activities. This duty of care requires adequate knowledge of the church's affidavit or articles of incorporation, bylaws, and other organizational documents, plus knowledge of past acts of the board that established – by express resolutions or by custom – its policies, procedures, directives, and authorizations.   |
| No | Yes | <b>2.2. Does your church provide ongoing training of its leaders and staff?</b><br>Officers and trustees need continuing education to respond properly to changing federal, state, and municipal laws affecting the church and their official duties and liabilities.  |
| No | Yes | <b>2.3. Do officers and trustees attend scheduled meetings regularly?</b><br>Officers and trustees who do not regularly attend board meetings may not satisfy their legal duty of care in directing the church.  |
| No | Yes | <b>2.4. Has your church adopted a policy that governs potential conflicts of interest between a board member and the church?</b><br>Every officer or trustee has a fiduciary duty of loyalty to the church. There must be careful review of any proposed transaction between the church and a board member or an entity in which a board member has an interest in order to ensure that the transaction complies with state law. Each officer and trustee should sign annual acknowledgment that he has read, understood, and agreed to the church's policy for potential conflicts of interest.                                   |
| No | Yes | <b>2.5. Do your officers and trustees serve without compensation?</b><br>Illinois law protects the uncompensated officers and trustees of not-for-profit corporations from liability for their actions unless the actions were done with utter indifference to or conscious disregard for the interests of others. Most churches pay their pastors not only for ministerial services but also for services on the churches' governing boards. In the typical case, then, unlike any other officer or trustee, the minister serves on the board for compensation and does not qualify for protections of the limited liability law. |
| No | Yes | <b>2.6. Are contracts signed only after proper authorization?</b>  |

The required approval of contracts will vary from church to church. Even within the same church, the required approval may vary depending on the type of contract.

- No Yes **2.7. Do officers and trustees sign legal documents in a representative capacity?**  
A church board member who signs a legal document without being identified as a representative of the church may be personally liable on the transaction. To prevent this unintended assumption of liability, any board member who is authorized to sign for the church should be sure the document clearly indicates that the church is a party to the transaction and that the member signs in a representative capacity (as, e.g., agent, trustee, officer) for the church.
- No Yes **2.8. Does your church comply with legal requirements in making loans to pastors, officers or directors?**  
The not-for-profit corporation law of Illinois prohibits a governing board from making a loan of corporate funds to a board member or an officer not employed by the corporation. Board members who vote in favor of such loans can be liable for them unless the loan is authorized and otherwise permissible. A church may lend its pastor-employee money to finance the pastor's principal residence if the loan is secured by appropriate collateral.
- No Yes **2.9. Are officers and trustees aware of the legal risk to themselves and the church that would be caused by their unauthorized disclosure of confidential information?**
- No Yes **2.10. Does your church carry insurance that protects its trustees and officers from legal liabilities?**

### 3. Membership

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 6]

State and local law may make members of a church liable for that church's acts or debts. But membership has more than merely legal consequences. It is important for ministry to lost or straying sheep. Therefore, a church should carefully and thoroughly consider its rules and policies for membership and should follow them strictly. The church should define the authority of its members in management decisions, elections, budget approval, and other important matters.

- No Yes **3.1. Is the church incorporated?**  
If the church is not incorporated under state law, members may be liable for the acts of other members in the work of the church.

- No Yes **3.2. Do your church's bylaws clearly set forth the procedures for becoming a member and what membership rights and privileges are granted?**
- No Yes **3.3. Do your bylaws clearly set forth the grounds and procedures for terminating membership?**
- No Yes **3.4. Do you maintain a current list of active voting members?**
- No Yes **3.5. Do your bylaws set forth a procedure for disciplining a church member?**
- No Yes **3.6. If your bylaws set forth a procedure for disciplining a member, do they restrict a member's right to resign after the disciplinary procedure has begun?**  
Churches have constitutionally protected power to discipline their own members, but that power ends when a member resigns. A church's bylaws can restrict a member's right to resign once discipline has begun.
- No Yes **3.7. Do your bylaws incorporate specific reference to relevant scripture passages?**
- No Yes **3.8. Do your bylaws contain a procedure for binding arbitration of membership disputes?**  
Churches may and should apply biblical principles in resolving disputes. Arbitration within the faith community can promote accountability and reconciliation, and proclaims the church's obedience to Scripture. Start with Matt. 18:15-17. Arbitration also saves costs of going to court. The Attorneys at Mauck & Baker offer mediation and arbitration services to its clients.
- No Yes **3.9. Do your bylaws have a statement of faith which clearly set forth your position on marriage and sexuality?**
- No Yes **3.5. Do your bylaws have a conflict of interest section?**

#### **4. Meetings of Members**

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 6]

Church members may exercise the powers given to them only when they act at a meeting convened in accordance with procedural requirements.

- No Yes **4.1. Do you conduct meetings of members as required by your church's affidavit or articles of incorporation, or by its bylaws?**



- No Yes **4.2. Do you comply with the applicable notice requirements in calling meetings of members?**  
The not-for-profit corporation law has provisions for notice that may overrule any contrary provisions of your church's bylaws.
- No Yes **4.3. Do you comply with the quorum requirements in conducting meetings of members?**
- No Yes **4.4. Do you comply with the voting requirements in conducting meetings of members?**  
Church affidavits or articles of incorporation, or bylaws, specify the proportion of votes required for certain kinds of collective actions. Ordinary actions require only a simple majority vote in favor, but some extraordinary actions may require more.
- No Yes **4.5. Do your church's files contain minutes of meetings of members?**

## **5. Finances**

[Richard J. Vargo, *Effective Church Accounting*]

Proper financial management is a requirement of good stewardship. Without it, a church cannot maximize its financial resources for effective ministry. Furthermore, church leaders who exercise responsible stewardship and demonstrate financial accountability will thereby gain the trust of members and encourage them to be faithful in their financial responsibilities. The Evangelical Council for Financial Accountability has excellent resources for church leaders dealing with various aspects of stewardship. Visit its website at [www.ecfa.org](http://www.ecfa.org) or phone 1-800-323-9473.

- No Yes **5.1. Are all the authorizations of persons to sign for the church reviewed and updated at least annually?**
- No Yes **5.2. Are dual signatures required on all checks payable for large amounts?**
- No Yes **5.3. Are at least two persons present during the counting of church offerings, and is membership of the counting team changed reasonably often?**
- No Yes **5.4. Are offerings promptly deposited in the appropriate church bank account?**
- No Yes **5.5. Are quarterly financial reports provided to all board members?**
- No Yes **5.6. Are monthly bank statements reconciled with independent records of receipts and disbursements?**

- No Yes **5.7. Are all charges to church credit cards properly authorized and accounted for?**
- No Yes **5.8. If signature stamps are used, are they properly safeguarded?**
- No Yes **5.9. Does the church comply with all restrictions that donors have placed on designated contributions?**  
 Donors may restrict some of their contributions to specific projects or purposes. For example, a donor may specify that a contribution be added to the church building fund. The church must honor such a restriction, unless it is removed by the donor or by operation of law. Failure to comply with a restriction can make board members and the church liable for damages.
- No Yes **5.10. If your church issues securities (e.g., bonds or promissory notes), is it in full compliance with securities laws?**  
 The issuance and sale of securities is regulated by the states and the federal government. Churches that issue or sell securities to raise funds must consult a securities lawyer.
- No Yes **5.11. Are all church contributions given annual or more frequent accounts of their giving?**

## 6. Payroll

[Richard R. Hammar, *Church and Clergy Tax Guide*, 2006 ed., ch. 11.]

The Internal Revenue Service, the Illinois Department of Revenue, and local authorities require timely filing and reporting by employers. Failure to comply with these requirements may cause a church the substantial costs of corrections and filings. Moreover, some exemptions from payroll withholding for church employees may be applicable but not automatic, and may have strict time deadlines for claiming the exemptions. The only way to ensure that your church is taking full advantage of tax provisions applicable to churches is to follow IRS rules in this important area.

- No Yes **6.1. Has your church obtained an employer identification number (EIN) from the federal government?**  
 This number must be listed on some of the returns listed below, and is used to reconcile a church's deposits of withheld taxes with the W-2 forms it issues to employees. The EIN is a nine-digit number that looks like this: 12-3456789.
- No Yes **6.2. Has your church properly classified its workers as either employees or self-employed?**  
 IRS regulations contain many criteria for determining whether a worker is an employee or self-employed. Churches should be careful about

classifying any worker as self-employed, since the Internal Revenue Code penalizes an employer that fails to withhold income taxes or social security taxes from the compensation of a worker on the ground that he is self-employed, if the IRS later finds that the worker was an employee.

- |    |     |   |
|----|-----|---|
| No | Yes | <p><b>6.3. Does your church withhold state and federal income taxes for non-minister employees?</b><br/>Churches need not withhold federal income tax from the compensation of clergy who satisfy the IRS’s definition of “minister” for tax purposes, whether the clergy report their incomes as employees or as self-employed. Clergy pay their taxes using the quarterly estimated tax procedure unless they request voluntary withholding. Non-minister employees do not fall within this exemption, and their compensation is subject to ordinary withholding requirements. Church officers – e.g., board members, the treasurer – may be personally liable for a penalty equal to the amount of required payroll taxes that were not withheld or deposited.</p> |
| No | Yes | <p><b>6.4. Does your church deposit withheld taxes (including the church's share of FICA taxes) as required by law?</b></p>   |
| No | Yes | <p><b>6.5. Does your church file 941 forms (the employer's quarterly tax return) as required?</b><br/>This form is required if your church has at least one non-minister employee.</p>  |
| No | Yes | <p><b>6.6. Does your church issue W-2 forms to employees by February 1<sup>st</sup> of each year?</b></p>   |
| No | Yes | <p><b>6.7. If your church issues W-2 forms, do you also file a timely W-3 form with the Social Security Administration?</b></p>   |
| No | Yes | <p><b>6.8. Does your church issue a Form 1099-MISC by February 1st to each self-employed worker who is paid at least \$600 during the year?</b></p>   |
| No | Yes | <p><b>6.9. If your church issues 1099-MISC forms, does it also file a timely 1096 form with the IRS?</b><br/>Churches must withhold 31% of the compensation paid to a self-employed person who fails to provide his social security number to the church. This is referred to as "backup withholding" and is designed to promote the reporting of taxable income. Failure to make backup withholding may cause the church to be liable for the tax.</p>   |

## 7. Employees

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapters 8 and 10]

Employment law is a mine field where ignorance or lack of proper procedures can be deadly. A church should fulfill its duties as an employer by appropriate reporting and by implementing procedures for handling employees pre-hiring through post-termination. Churches may discriminate in hiring on the basis of religion, but not on other bases. Churches that are engaged in interstate commerce may be subject to federal nondiscrimination laws that are not addressed here; those churches should work with legal counsel to ensure compliance with applicable laws.

- No Yes **7.1. Does your church require all new employees, including clergy, to complete and submit an I-9 form?**  
Since 1987, every employer in the United States has been required to confirm the identity of all new employees and to verify that they are American citizens or aliens legally authorized to work in this country. Churches are subject to this requirement.
- No Yes **7.2. Does your church screen employees, including clergy, who will deal personally with minors, in order to reduce the risk of child abuse?**  
Trying, but can probably do better  
Child sexual abuse presents one of the greatest risks for churches. It is extremely important to screen workers adequately to reduce the risk of child sexual abuse. A church and its leaders may be legally liable for damages caused by negligent selection of church employees. Adequate screening includes a variety of measures, such as an application form, interviews, checking references and employment history, and especially criminal records.
- No Yes **7.3. Does your church adequately orient new employees to its policies and procedures and furnish them with an employee handbook?**
- No Yes **7.4. Does your church provide continuing education of its employees to help them perform their duties in compliance with changing federal, state, and local laws?**
- No Yes **7.5. If you have an employee handbook, is it reviewed regularly by a lawyer familiar with the application of employment law to churches?**  
An employee handbook can be a liability if it is not properly drafted and kept up to date.
- No Yes **7.6. Do church employees understand their legal duty to report known or reasonably suspected incidents of child abuse to state authorities?**  
Church employees must report child abuse under Illinois law. They can be criminally and civilly liable for failing to report. See also 8.4.

- No Yes **7.7. Does your church supervise employees, including clergy, to reduce the risk of negligence and misconduct?**  
A church and its leaders may be legally liable for damages caused by negligent supervision of church employees. The law requires reasonable oversight in view of the risks.
- No Yes **7.8. Does your church promptly and thoroughly investigate allegations of misconduct by employees?**  
Employees sometimes are accused of misconduct (such as child abuse, seduction, or harassment) on the job. The way a church responds to these accusations can greatly affect the likelihood that it will be sued.
- No Yes **7.9. Does your church have a procedure for terminating or otherwise disciplining employees that is based on Scripture, and has that procedure been approved by a lawyer?**
- No Yes **7.10. Do you obtain a signed release that shields your church and leaders from liability for comments before giving a reference letter about a former employee?**
- No Yes **7.11. Does your church carry workers' compensation insurance?**  
Churches are subject to the Illinois workers' compensation law. Failure to carry insurance that covers a work-related injury to an employee may result in an uninsured loss, because most general liability insurance policies exclude such injuries from coverage.
- No Yes **7.12. If your church provides employees with a "cafeteria plan" (including a flexible spending arrangement) under section 125 of the Internal Revenue Code, do you file IRS Form 5500 annually?**
- No Yes **7.13. If your church operates a school or preschool or child care, does it comply with federal requirements for minimum wage and overtime pay?**  
Employees of a church-operated schools and preschools and child care facilities are protected by federal minimum wage and overtime pay regulations. Failure to comply with these requirements can make a church liable for substantial penalties.
- No Yes **7.14. If your church pays more than \$100,000 annual compensation to any employee, has this level of compensation been approved by a qualified tax lawyer?**  
A church can lose its exemption from federal income taxation if it pays any worker "unreasonable" compensation. To avoid jeopardizing tax-exempt status, compensation in excess of \$100,000 should be carefully reviewed to determine its reasonableness.

- No Yes **7.15. Does your church have a Scripture-based binding arbitration procedure for settling employment disputes?**  
Again, start with something like Matt. 18.
- No Yes **7.16. Does your church have a policy involving sexuality and a policy with regard to employee's sexual conduct?**

### 8. Volunteers

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 10] Volunteers in lay ministry are usually the strength of the church. Nonetheless, recent legal developments may make a church liable for harm caused by its volunteer unless special steps are taken to minimize such risk. The church must give the same kind of care must to the selection and supervision of volunteers that it gives to church employees.

- No Yes **8.1. Does your church screen volunteers who will deal personally with minors, in order to reduce the risk of child abuse?**  
A church and its leaders may be legally liable for damages caused by negligent selection of volunteers. Adequate screening includes a variety of measures, such as an application form, interviews, checking references and employment history, and especially criminal records.
- No Yes **8.2. Does your church adequately orient new volunteers to its policies and procedures?**
- No Yes **8.3. Does your church provide continuing education of its volunteers to help them act in compliance with changing federal, state, and local laws?**
- No Yes **8.4. Do church volunteers understand their legal duty to report known or reasonably suspected incidents of child abuse to state authorities?**  
Church volunteers must report child abuse to state authorities under Illinois law. They can be criminally and civilly liable for failing to report.
- No Yes **8.5. Does your church supervise volunteers to reduce the risk of negligence and misconduct?**  
A church and its leaders may be legally liable for damages caused by negligent supervision of church volunteers.
- No Yes **8.6. Does your church promptly and thoroughly investigate allegations of misconduct by volunteers?**  
Volunteers sometimes are accused of misconduct in their activities. The way a church responds to these accusations can greatly affect the likelihood that it will be sued.

No Yes **8.7. Do you obtain a signed release that shields your church and leaders from liability for comments before giving a testimonial letter about a current or former volunteer?**

No Yes **8.8. Does your church carry workers' compensation insurance?**  
Churches are subject to the Illinois workers' compensation law. Failure to carry insurance that covers a work-related injury to an "employee" may result in an uninsured loss, because most general liability insurance policies exclude such injuries from coverage. Illinois defines the term "employee" very broadly.

### 9. Child Care

[R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapters 8 and 10] Ordinarily, a church provides some kind of child care, even if only in a nursery during the worship service. Since a church acts through its employees and volunteers who care for children in the church, it must implement policies and procedures to protect the children and avoid legal liability for the misconduct of its caregivers. In addition to the previous questions about church employees and volunteers, consider the following.

No Yes **9.1. Do you check criminal records of prospective childcare workers?**  
A federal law enacted in 1993 requires churches that provide childcare to obtain nationwide checks on criminal records of prospective workers.

No Yes **9.2. Do your church's childcare workers understand their legal duty to report known or reasonably suspected incidents of child abuse to state authorities?**  
Childcare workers, even those who work in church facilities, are mandatory reporters of child abuse in Illinois. They can be criminally and civilly liable for failing to report abuse to state authorities. Notice of their duties should be posted in a conspicuous place.

No Yes **9.3. Does your child care facility comply with applicable local and state laws?**

### 10. Counseling

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 10]  
Counseling is an essential ministry of almost all churches. Church leaders must be aware that counseling activities may cause various kinds of harms and must implement written policies and procedures to avoid potentially damaging legal liabilities. The same questions that apply to church employees and volunteers apply to paid and volunteer counselors. In addition, consider the following.

No Yes **10.1. Does your church have a policy for counseling activities?**

Church counselors, both clergy and laity, are vulnerable to charges of sexual misconduct and counseling malpractice. Churches have legal risk in such cases. A church's policies can reduce risk by establishing limits on counseling activities. The policies should dictate when, where, with whom, for how long, and under what conditions the church's counseling services maybe provided. Bear in mind that the risk of liability is greater if policies are not enforced.

- No Yes **10.2. Do church counselors understand their legal duty to report known or reasonably suspected incidents of child abuse to state authorities?**  
Church counselors are mandatory reporters of child abuse in Illinois. They can be criminally and civilly liable for failing to report abuse to state authorities.
- No Yes **10.3. Are counseling records kept confidential and secured, with access carefully restricted?**  
A church should have and implement a policy for the disposition of counseling records in the event of a counselor's death, incapacity, or departure. Giving inappropriate access to such confidential records or allowing their dissemination could cause great harm and lead to a lawsuit against the church.
- No Yes **10.4. Are counselors aware that unauthorized disclosure of confidential information poses a legal risk to themselves and to the church?**  
Counselors and any others on the church's staff who may have prayer requests given in confidence should never communicate them by e-mail.
- No Yes **10.5. Does your church carry professional liability insurance?**
- No Yes **10.6. Do individual counselors carry professional liability insurance?**
- No Yes **10.7. Does the church have a policy for responding to allegations of misconduct by a church counselor?**
- No Yes **10.8. Has the church identified appropriate individuals and agencies for counseling referrals?**  
Your church should maintain a list of social service agencies, doctors, attorneys, and other professionals for a referral if the need should occur.

## 11. Publications

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 9]

Church leaders and staff must comply with copyright law. Unauthorized use of overhead transparencies of songs or photocopies of a Sunday school lesson book may make a church to



civil penalties and fines. On the other hand, a church should become aware of the copyright protections available for works that it has created.

- No    Yes    **11.1. Does your church have a policy prohibiting the unlawful duplication of copyrighted works?**  
Probably the most frequent violation of copyright law by churches is the reproduction of sheet music. For an annual fee, Christian Copyright Licensing, Inc. (CCLI), of Portland, Oregon, provides a copyright license that authorizes a church to reproduce for internal use the sheet music of many publishing companies. This means that a church would be free to print bulletin inserts and make overhead transparencies of songs covered by the license. A church also would be authorized to make audio or video recordings of services that include performance of copyrighted music in the CCLI repertory. Some restrictions apply. CCLI licenses extend only to limited reproduction and performance of religious musical works. They do not authorize duplication of literary works (books and articles). Accordingly, the CCLI license is not the answer to all of a church's copyright concerns.
- No    Yes    **11.2. Does your church have a policy prohibiting the showing of rented or purchased videos without authorization from the copyright owner?**  
Many churches rent or purchase videos to show to youth groups or adult classes. Usually, showing these videos is copyright infringement, because most videos are rented or sold with a limited license for private, in-home viewing. Your church can obtain a blanket license from Motion Picture Licensing, Inc., of Stamford, Connecticut, for a nominal annual fee.
- No    Yes    **11.3. If your church intends to copyright any publications produced by its staff, does it affix a valid copyright notice to such works?**  
Works created after March 1, 1989, do not need a copyright notice to be protected by copyright law. But it is still good practice to put a valid notice on all works. A valid notice has three elements – the year of publication, the name of the copyright owner, and the word “copyright” or the abbreviation “copr.” or the letter “c” in a circle ©. Example: “Copyright 1994, First Church, Chicago, Illinois.”
- No    Yes    **11.4. Has your church clarified who holds the copyright for a work created by a church employee in the scope of his employment?**  
A work created by a church employee in the course of employment is a “work made for hire” and the copyright belongs to the church. A church can assign the copyright in such works to the employee by a signed instrument, but employees should understand, before the work is created, that the church will own the copyright.

- No Yes **11.5. Does the church post the Copyright Office warning at each photocopy machine?**  
 Sample copyright notice:  
 “Under the United States copyright law, copyright owners have the exclusive right to print, publish, copy and sell their protected works. The copyright owners of the books and music you purchase are indicated on those publications. That means that it may be illegal for you to copy a publication without the written permission of the copyright owner. Copyright owners have every right to prosecute offenders under the copyright law. Most of them would prefer to rely on you to recognize the rights of composers, arrangers, and authors, and their publishers, by not making or using unauthorized copies.”
- No Yes **11.6. Do you make materials available to music directors explaining the application of copyright law to churches?**  
 Education can reduce the risk of copyright infringement. We recommend the Copyright Kit produced by *Church Law & Tax Report*, which includes a 196-page book, a one-hour audio tape, and bulletin inserts.
- No Yes **11.7. Do you follow all licensing agreements applicable to computer software?**  
 Many churches have purchased several computer software packages to apply in word processing, accounting, and other tasks. This software must not be copied unless copying is specifically authorized by the license agreement that accompanies the software. A church that purchases a word processing application must not allow the program to be copied onto multiple office computers, or onto the pastor's home computer, without permission.

## 12. Programs and Activities

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapter 10]

Most churches sponsor a variety of programs for various age groups within the congregation. A caravan of private cars may be deemed a church activity for purposes of legal liability. The following questions highlight special risks associated with programs and activities that should be appreciated by your church leaders.

- No Yes **12.1. Does your church obtain signed parental consent forms that authorize provision of emergency medical services in the event the parents cannot be located?**  
 Have parents sign a form that contains the following: (1) consent to their child’s participation in the customary activities of the church's youth program, including swimming, boating, camping, hiking, and sporting events (giving parents the opportunity to list any activities that they want their child kept out of); (2) certification that their child knows how to swim; (3) a medical questionnaire for information about

any of the child’s physical conditions or allergies that may be significant in a medical emergency; and (4) consent to medical treatment in a medical emergency if the parents cannot be located. The form should be signed and dated by at least one parent or legal guardian, and the signature should be notarized.

- No Yes **12.2. Does your church obtain release forms for minors to participate in activities off of church premises?**
- No Yes **12.3. Does your church obtain release (or “assumption of risk”) forms for adults who participate in any activity that may be dangerous?**  
Adults have legal capacity to comprehend the risks associated with most activities. They should be given the opportunity to assume those risks in an appropriate form before engaging in activities that are unusually dangerous, such as water sports, mountain climbing, overnight camping, overseas trips, or construction work.
- No Yes **12.4. Does your church sponsor only activities that its insurance policy covers?**  
Activities that involve firearms, fireworks, hang gliding, go-karting, and rappelling, or other high risk events, pose serious threats to churches. Are these covered by your liability insurance policy? Do you insist on written parental consent before allowing a minor to participate in such events?
- No Yes **12.5. Does your church obtain a waiver of liability and “hold harmless” undertaking from all outside groups that use its facilities?**
- No Yes **12.6. Does your church forbid the release of minors before the adult services or activities have ended and parents can take them?**  
A church is legally responsible for a child from the time custody of the child is transferred to the church until custody is returned to the parent or guardian. A church may be liable for injuries suffered by children who are released before the arrival of their parents.
- No Yes **12.7. Does your church have means of ensuring that a child is not returned to the wrong person?**  
Churches may be legally liable for returning a child to the wrong person. For example, a church that returns a young child to a noncustodial parent may be liable for negligence if that parent absconds with the child. For a variety of reasons, a stranger may request custody of a child at a church nursery. Are your nursery workers prepared to deal with such requests?  
Consider adopting a “claim-check” policy in the 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. Tell parents

that only a person presenting the corresponding number will be given custody of the child. This procedure is designed to prevent the kidnapping of children by noncustodial parents and others. Numbers should be assigned at random for each service.

- No Yes **12.8. Do you always have an adequate number of trained adults present at youth activities and trips?**  
Swimming and boating and other water sports must include a sufficient number of adults who are certified by the Red Cross in resuscitation techniques. The number of adult supervisors will depend on the number of minors involved in the activity. Adult supervisors should be carefully screened to determine their suitability for working with minors; see the discussion above under the heading Employees.
- No Yes **12.9. Does your church follow a “two adults” rule, ensuring that no adult is allowed to have unsupervised access to one or more minors?**  
In order to reduce the risk of child abuse and of false claims of child abuse, your church should adopt a two-adults rule.
- No Yes **12.10. Does your church have a policy for communicable diseases?**  
Churches should consider adopting a policy for communicable diseases that will provide guidance in dealing with minors who have certain kinds of diseases, including, but not limited to, tuberculosis, hepatitis, and AIDS.

### 13. Insurance

[Richard R. Hammar, *Pastor, Church & Law*, 3<sup>rd</sup> ed., chapters 4, 6, and 10]  
Insurance plays a vital role in risk management of every church. Being underinsured or not carrying proper coverage can cause serious problems if a claim is made.

- No Yes **13.1. Does your church appoint a safety officer or committee to conduct an annual inspection of its buildings and grounds and identify risks that need correction?**
- No Yes **13.2. Do you annually review your church’s insurance coverages?**  
The amounts of your insurance coverages should be reviewed annually by an appointed committee to be sure they are adequate. For example, if your property insurance coverage limit falls below the replacement value of your church’s property, a loss may exceed insurance recovery. Also, your policies may not cover some kinds of losses unless you get special endorsements.
- No Yes **13.3. Do you have proper documentation of your church’s assets?**  
Once a year, or more often if there are significant acquisitions, you should make a video inventory of all the church’s tangible assets and

keep it in a secure place. Also make and keep backup files of all important computer data.

- No Yes **13.4. Do you have liability coverage for sexual misconduct?**  
Your church may be unaware that it has no coverage for this risk or that its coverage is too narrowly limited. In either case, your church has a significant uninsured risk that requires an effective prevention program.
- No Yes **13.5. Do you have liability coverage for counseling malpractice?**  
Not only your pastor but other church officers (e.g., deacons on home visits) may give counsel. Lawsuits that claim damages caused by bad counsel are not unusual.
- No Yes **13.6. Do you have liability coverage for public statements?**  
A prayer ministry may be understood to promise cures and thereby cause the afflicted to forgo necessary medical treatment. An intercessor may accidentally disclose confidential information about someone whose reputation is thereby damaged. Advertisements, representations, or other utterances to the public may cause risks.
- No Yes **13.7. Does your church notify its insurance agent as soon as it learns of a loss or of an allegation of negligence or misconduct?**
- No Yes **13.8. Does your church comply with all conditions specified in its insurance policies?**
- No Yes **13.9. Does your church's insurance agent or company have special expertise in the needs of churches?**  
In assessing your church's insurance needs and in dealing with a loss or claim, you may find it advantageous to deal with an agent or company that specializes in church insurance coverage.

#### 14. Fire

Fire presents one of the greatest risks facing any church, and tops the list of insurance claims. Simple procedures can greatly reduce risk from fire.

- No Yes **14.1. Does your church have a fire prevention plan?**
- No Yes **14.2. Is your local fire department well acquainted with your facilities?**  
Once a year, or more often if there are significant changes, have an officer of your local fire department make a walk-through inspection of your facilities.
- No Yes **14.3. Does your church have a fire alarm system and is it tested at least once a year?**

- |    |     |               |   |
|----|-----|---------------|---|
| No | Yes | <b>14.4.</b>  | <b>Are fire extinguishers accessible, and adequate in number and type?</b>  |
| No | Yes | <b>14.5.</b>  | <b>Are fire extinguishers recharged in accordance with manufacturer's recommendations?</b>                              |
| No | Yes | <b>14.6.</b>  | <b>Are the church's employees and volunteers instructed in fire protection procedures and the use of extinguishers?</b> |
| No | Yes | <b>14.7.</b>  | <b>Are flammable materials and liquids kept away from heat sources?</b>   |
| No | Yes | <b>14.8.</b>  | <b>Are flammable liquids stored in properly labeled unbreakable containers?</b>   |
| No | Yes | <b>14.9.</b>  | <b>Is the local fire department telephone number posted clearly on every church telephone?</b>                          |
| No | Yes | <b>14.10.</b> | <b>Does your church have an evacuation plan and do you conduct annual evacuation drills?</b>                            |

### **15. Personal Injury**

Many injuries that occur on church property or in church programs are caused by lack of reasonable care. Your church can reduce risk by regular inspections and by preparing to respond to such injuries as do occur.

- |    |     |              |  |
|----|-----|--------------|--|
| No | Yes | <b>15.1.</b> | <b>Does your church have way to identify and evaluate workplace hazards?</b>   |
| No | Yes | <b>15.2.</b> | <b>Are first aid kits easily accessible on church premises?</b>  |
| No | Yes | <b>15.3.</b> | <b>Are the supplies in your first aid kits adequate?</b>   |
| No | Yes | <b>15.4.</b> | <b>Are your church's aisles and passageways kept clear?</b>  |
| No | Yes | <b>15.5.</b> | <b>Are potentially slick surfaces covered with non-slip materials?</b>   |
| No | Yes | <b>15.6.</b> | <b>Are there handrails at all stairways having four or more risers?</b>  |
| No | Yes | <b>15.7.</b> | <b>Is safety glass used in windows and doors that are liable to human impact?</b>  |
| No | Yes | <b>15.8.</b> | <b>Are all your church's exits kept free of obstructions?</b>  |
| No | Yes | <b>15.9.</b> | <b>Are doors on your church's cold-storage rooms and freezers provided with inside release mechanisms that will open the doors even if they are locked from the outside?</b> |

- No Yes **15.10. Are your church's ladders regularly inspected for damage?**
- No Yes **15.11. Are non-slip safety feet on each metal ladder?**
- No Yes **15.12. Are employees and volunteers warned not to stand on the top of step-ladders?**
- No Yes **15.13. Are work areas and walkways properly illuminated?**
- No Yes **15.14. Are employees and volunteers instructed in first aid and other emergency procedures?**
- No Yes **15.15. Are all electrical appliances properly grounded?**
- No Yes **15.16. Have your church's premises been tested for environmental hazards?**  
 Although environmental hazards will not affect most church members, they can be significant for a church's employees, volunteers, and children in its school or child-care facility. Your church should attend to such hazards as radon, asbestos, lead, formaldehyde, and contamination of drinking water. For additional information, write the EPA Public Information Center, 401 M Street SW, Washington, DC 20460, or call 1-202-475-7751. Before purchasing property or accepting any donated property, your church should order an environmental assessment. A property that is contaminated can cause great costs to the owner, even though the owner was not aware of the contamination and did not contribute to it.
- No Yes **15.17. Are your church's confined spaces completely free of any hazardous substances?**
- No Yes **15.18. Are all poisons kept out of the reach of children?**
- No Yes **15.19. Are staff members trained to respond to poisoning?**  
 The telephone number of a poison control authority should be displayed on all telephones.
- No Yes **15.20. Is all the church's playground equipment properly maintained and regularly inspected for defects?**
- No Yes **15.21. Are dangerous areas posted with adequate warning signs?**
- No Yes **15.22. Is access to dangerous areas limited by adequate fences or other barriers?**

- No Yes **15.23.** **Does your church implement a reasonable plan for removal of snow and ice from walkways and parking areas?**
- No Yes **15.24.** **Are your church's parking areas adequately illuminated?**
- No Yes **15.25.** **Have steps been taken to make people safe in coming and going?**  
A church may be legally responsible for assaults on persons who walk unaccompanied to their vehicles in its parking area. Churches should take reasonable measures to reduce this risk. In some circumstances, reasonable measures would include escorts or a security service.
- No Yes **15.26.** **Have steps been taken to enhance security of an employee who works alone in the building?**
- No Yes **15.27.** **Does your church provide guidance to employees who deal with transients?**

## **16. Vehicles**

Without adequate policies and procedures, operation of a church vehicle may create unnecessary legal liability for a church. A church should ensure that it complies with all applicable state and local law in the operation and maintenance of its vehicles. One in five business vehicles is involved in an accident each year, at a cost of \$9,000. According to the National Safety Council, the average cost of a fatal motor vehicle accident is more than \$450,000.

- No Yes **16.1.** **Does any employee or volunteer who operates a church vehicle have a driver's license that is valid for the class of vehicle driven?**
- No Yes **16.2.** **Do you allow only employees and volunteers with safe driving records to transport church members?**  
Most insurance companies will check on the driving record of any potential driver if you provide the person's driver license number. Regularly check the license status and driving record of anyone who drives a church vehicle. Do not rely on out-of-date information.
- No Yes **16.3.** **Is a fully-charged fire extinguisher in each church bus or van?**
- No Yes **16.4.** **Is each church vehicle equipped with a first aid kit?**
- No Yes **16.5.** **Is each church vehicle equipped with proper safety equipment for an emergency?**
- No Yes **16.6.** **Do you regularly check tire wear and pressure on all church vehicles?**
- No Yes **16.7.** **Do you regularly check brakes on all church vehicles?**



- No Yes **16.8. Are all church vehicles properly serviced in accordance with a maintenance schedule?**
- No Yes **16.9. Are all church vehicles adequately insured?**
- No Yes **16.10. Does every driver of a church vehicle know what procedures to follow if involved in an accident?**
- No Yes **16.11. Do you require use of seat belts in all church vehicles?**  
According to the Network of Employers for Traffic Safety, the use of seat belts reduces the rider's risk of fatal or serious injury by 50 percent.

### 17. Taxation

Because a church has tax-exempt status, it normally does not pay taxes on its income and donors get tax-deductions for their contributions. This should not be taken for granted. Churches should be aware of activities that may endanger tax-exempt status and should adopt policies and procedures to protect that status.

- No Yes **17.1. Does your church avoid endorsing or opposing any candidate for public office, either through its publications or through comments made by a pastor?**  
Publicly taking sides in a contested election, even on a single occasion, can result in a church's losing its tax-exempt status.
- No Yes **17.2. Does your church limit its efforts to influence legislation to insubstantial activities?**  
A church can lose its tax-exempt status if it engages in substantial efforts to influence legislation.
- No Yes **17.3. If your church operates a preschool, child care facility, or school, does it submit an annual certificate of racial nondiscrimination (Form 5578) to the IRS whether or not it submits a 990?**  
You can get this form by calling the IRS toll-free forms hotline at 1-800-829-3676 or by downloading it from the IRS website at [www.irs.gov](http://www.irs.gov).
- No Yes **17.4. Does your church avoid participating in commercial activities designed to raise revenue?**  
Such activities may constitute an unrelated trade or business, and may require the church's filing a tax return for unrelated business income (Form 990-T). Such activities may also affect your church's tax-exempt status.

- No Yes **17.5. If you rent any part of your property to an outside group or organization, have you obtained a legal opinion about the effect of that rental on your property tax exemption?**  
*See Section 19.5. for further consideration of real estate tax exemption.*

### 18. Real Estate

- No Yes **18.1. Does your files contain copies of all deeds, tax exemptions for real estate, easement title and policy mortgages related to the property owned by the church?**
- No Yes **18.2. Does your church have adequate property insurance for the deed and insured property real estate?**  
*See Section 13 for further reference to insurance with regard to coverage and update.*
- No Yes **18.3. Does your church have adequate policies, personnel and plans in place for emergencies?**  
*See Section 14 and 15 for further reference to emergencies such as a fire and for accident prevention on the premises.*
- No Yes **18.4. Has your church applied for and/or filed any annual affidavit to obtain or maintain real estate tax exemption for its properties?**
- No Yes **18.5. Has your church reviewed the zoning for its real estate to insure that the property is zoning for religious assembly has adequate parking and/ or legally add or change the use of the property.**  
*See Section 17.5 for further consideration of real estate tax exemption.*

### 19. Legal Services

Retaining a law firm that specializes in service to religious assemblies and their members is an important part of good ministry and stewardship.

- No Yes **19.1. Does your church have legal counsel that is familiar with your church's operations and with non-for-profit and tax exempt law?**

Next best

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