

## CHURCH LEGAL MATTERS OVERVIEW

| No.                                                   | Legal Issue                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Feedback/Recommendation |
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| <b><u>CORPORATE (TRANSACTIONS AND GOVERNANCE)</u></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                         |
| 1                                                     | Is the church one legal entity or broken into subsidiaries or brother-sister entities (e.g., for different campuses and/or ministries of the church such as a medical clinic, food pantry, etc.)? Does a 501(c)(3) letter exist?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                         |
| 2                                                     | Is the church a part of a broader national or international organization or denomination? Explore weekly attendance and plans for the future.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |
| 3                                                     | Describe the church's corporate governance structure and governing documents (elder, deacons, officers, executive team, congregational approval required for certain things, etc.). Discuss attendance at church conference and board/elder meetings, as well as ensuring that the church is following proper corporate formalities and compliance with church constitution and/or bylaws (quorum, notice, voting thresholds and manner of voting, etc.). Discuss minutes and importance thereof. Discuss D&O insurance.                                                                                                                                                                                                                                                              |                         |
| 4                                                     | Discuss marriage/gender identity views, sanctity of life, other social stances that are codified in the church's governing documents, if any. Addressing these issues in governing documents can reduce the likelihood of disputes and mitigate the intensity of those disputes when they occur. Examples include employment disputes, facilities use (weddings, celebrations), youth group participation, and the like.                                                                                                                                                                                                                                                                                                                                                              |                         |
| 5                                                     | Discuss usage of waivers for participation for various events (volunteers, mission trips, youth activities, etc.). Are the waivers implemented ad-hoc (event based) or are waivers systematized as part of new member orientation or volunteer opportunities?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |
| 6                                                     | Discuss new member and new volunteer paperwork. Key concepts include: Statement of Faith acknowledgement, church discipline, giving, waiver of claims, data privacy, likeness release for pictures/video marketing, brand ambassador of the church, confidentiality, ministry specific items (for volunteers), concealed carry, intellectual property, privilege/confidentiality, reporting requirements, dispute resolution, etc.                                                                                                                                                                                                                                                                                                                                                    |                         |
| 7                                                     | How does the church generally engage with vendors (book-keeping, janitorial, landscaping, handy work, service providers, etc.)? Does the church have a template vendor contract form that it uses regularly that protects the church (vendor will have insurance, vendor will indemnify the church for negligent actions, confidentiality, robust representations and warranties from the vendor, intellectual property, dispute resolution provisions favorable to the church, etc.)?<br><br>Discuss potential conflicts of interest and best practices, as well as risks to elders/board/officers for fiduciary duty violations – duty of loyalty issue for board member with dual interests, and duty of care issue for others who allow it to happen. Discuss members as vendors. |                         |
| 8                                                     | Discuss debt and banking relationships (discuss PPP loan/program). Discuss balance sheet and annual operating budget.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                         |
| 9                                                     | Discuss unrelated business income. Discuss IRS controversy and tax representation work. Paying any UBIT currently? Are financials audited or reviewed?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |

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| 10                            | Discuss campus and church acquisitions (i.e., history, plans for future, confidentiality, corporate governance hurdles, potential liabilities/structure, real estate component, governmental and landlord consents, due diligence checklist, etc.).                                                                                                                                                                                                                                                               |                         |
| 11                            | Does the church use a template confidentiality or non-disclosure agreement for joint venture, growth opportunities, pre-vendor RFP, or any scenario where the church is divulging sensitive information to a third party? Unilateral and reciprocal. Discuss email disclaimers.                                                                                                                                                                                                                                   |                         |
| 12                            | Discuss document retention and contract management. Is there a policy and if so it is regularly communicated and adhered to? Discuss contractual signing authority (signature/authority matrix). With respect to execution, who currently has signature authority? Who actually signs? Who decides?                                                                                                                                                                                                               |                         |
| <b>COMMERCIAL REAL ESTATE</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                         |
| 13                            | Does the church have rented or owned facilities? Are there multiple locations? What are the plans? Are there separate real estate subsidiaries? Discuss real estate related transactions (buying or selling, leasing, financing, refinancing, etc.)?                                                                                                                                                                                                                                                              |                         |
| 14                            | Does the church allow groups to use the space? If so, on what terms? Discuss the importance of a Facility Use Agreement (i.e., indemnification, rules and regulations, insurance coverage/additional insured, confidentiality, values/mission alignment, etc.).                                                                                                                                                                                                                                                   |                         |
| 15                            | Discuss any tax issues related to any owned real property (exemptions for real estate are generally based upon active religious use on a date certain).                                                                                                                                                                                                                                                                                                                                                           |                         |
| 16                            | Discuss land use and zoning. Discuss eminent domain, restrictive covenants, adverse possession, and any relevant real property disputes.                                                                                                                                                                                                                                                                                                                                                                          |                         |
| 17                            | <p>Discuss cemeteries and playgrounds. Discuss premises liability categories – brief overview, duties to trespassers, attractive nuisance.</p> <ul style="list-style-type: none"> <li>- Discuss the “bouncy house” problem – balancing the tension between outreach events with low barriers to participation with the protective component of stewardship responsibility.</li> <li>- Discuss removing individuals from the premises (i.e., de-escalation verbally, physical removal, who, how, etc.).</li> </ul> |                         |
| <b>INTELLECTUAL PROPERTY</b>  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                         |
| 18                            | Does the church (or should the church) have any trademarks? Discuss common law and federal registrations (name of church, ministry, logos, slogans, and combinations and variations thereof).                                                                                                                                                                                                                                                                                                                     |                         |
| 19                            | Does the church have an Intellectual Property Policy (who owns sermons created or songs written?)? Are there licensing or royalty agreements? Is intellectual property adequately addressed in employee handbook or employment agreements? Use of church assets (supplies, equipment, personnel), outside of scope of employment on church time or no?                                                                                                                                                            |                         |
| 20                            | Discuss CCLI/CVLI License and streaming services via internet.                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                         |
| 21                            | Discuss social media content, guest speakers and copyrights. Who owns the website?                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |
| 22                            | Discuss Terms and Conditions of Use/Privacy Policy (addressing terms like waivers, dispute resolution, intellectual property/ownership of web content, copyright dispute resolution mechanism/notice, use of information submitted by users, prohibited activities, disclaimers, etc.). Discuss Wi-Fi terms/conditions (guest and employees).                                                                                                                                                                     |                         |

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|                       | <p><u>Key Concepts/Terms and Conditions of Use</u></p> <ul style="list-style-type: none"> <li>- Copyright protection</li> <li>- Limitation of liability</li> <li>- Disclaimers</li> <li>- Dispute resolution</li> <li>- Authorized and unauthorized use of the website</li> <li>- Prohibited activities</li> <li>- Representations/Covenants of users (viruses, etc.)</li> </ul> <p><u>Key Concepts/Privacy Policy</u></p> <ul style="list-style-type: none"> <li>- Generally required by law if collect or use any personal information from users</li> <li>- Inform users about your collection and use</li> <li>- Procure authorization</li> </ul>                                                                                                                                                                                                                                      |                         |
| 23                    | Discuss data privacy and use/storage/disposal of member and employee information. Discuss giving/donors and storage of information. Discuss the prevalence of data breach.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                         |
|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                         |
| <b>EMPLOYMENT LAW</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                         |
| 24                    | <p>Discuss employee policies. Is there a handbook? When was the last time it was updated and/or reviewed by legal counsel?</p> <ul style="list-style-type: none"> <li>• Reference Statement of Faith (require adherence/membership)</li> <li>• Dispute resolution (perhaps under religious principles)</li> <li>• Conflict of interests (disclosed)</li> <li>• Image Likeness (photos/videos, etc.)</li> <li>• Brand Ambassador/Core Values</li> <li>• Confidentiality</li> <li>• Intellectual Property Ownership</li> <li>• Authorization of Background Checks/Drug and Alcohol Screenings</li> <li>• Social Media Policy</li> <li>• Compensation and Benefits/TBD by Employer</li> <li>• Pay Policies</li> <li>• Leave and Time Off</li> <li>• Performance Reviews</li> <li>• Commitment to Growth/Flexibility/Teamwork Mentality</li> <li>• Whistleblower Section/Harassment</li> </ul> |                         |

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|     | <ul style="list-style-type: none"> <li>• Remote Work/Device Usage Policy (BYOD v. Company Owned)</li> <li>• Equal opportunity employer (how aligns with views on marriage?)</li> <li>• Sexual Abuse/Reporting</li> <li>• Concealed Carry/Security</li> <li>• Facility Usage</li> <li>• Politics/Tax Exempt Status</li> <li>• Document Retention</li> <li>• Catch-All Compliance with other employer guidelines, handbooks, policies, directives</li> <li>• At-will status</li> <li>• Exclusivity/No Moonlighting?</li> <li>• Benefits</li> </ul>                                                                                                       |                         |
| 25  | Discuss classification issues (W-2 versus 1099; discuss childcare workers and musicians; factors: control (when/where), equipment, indefinite time, other work and independent business judgment, key aspect of organization, training and instruction, does worker make investments, higher v. lower level skill, who sets the hours, etc.).                                                                                                                                                                                                                                                                                                          |                         |
| 26  | Discuss wage and hour practices (exempt/non-exempt, i.e., salary threshold + “Executive, Administrative, Learned Professional/Creative Professional, Computer Employee, or Outside Sales Employee”). The key difference between exempt and non-exempt employees is that non-exempt workers are entitled to certain protections under the Fair Labor Standards Act, a federal law that sets minimum wage and overtime requirements. And although the FLSA has evolved since its passage in 1938, one thing remains the same – employers must classify their employees correctly or risk costly compliance violations.                                   |                         |
| 27  | <p>Does the organization use background checks and drug and alcohol screenings (i.e., employees, volunteers (all or some), renewals, permission, reference checks, etc.)?</p> <ul style="list-style-type: none"> <li>- Consider categories w/r/t background check results - working with minors, drivers, working with money, general.</li> <li>- Consider tracking by volunteer coordinators as well (esp. for multi-site churches).</li> <li>- Also discuss (i) timing for how often background checks are re-run, and (ii) whether references are checked in addition to the background check.</li> <li>- Credit checks/reference checks</li> </ul> |                         |
| 28  | Discuss employee/minor policies (background checks, location, no adult alone with a child, texting with minors, bathroom policies/hallway, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                         |
| 29  | Discuss Title VII of the Civil Rights Act of 1964 (prohibits employment discrimination based on race, color, religion, sex and national origin), the ministerial exception under the Constitution, the statutory Title VII exception and recent cases, etc. Discuss the importance of regular performance reviews, objective feedback, more than one person making hiring/firing decisions, diversity training, etc.                                                                                                                                                                                                                                   |                         |
| 30  | Discuss housing allowances; discuss benefits/retirement plans (i.e., a 403(b)(9) plan is a defined contribution plan geared towards the distinctive needs of evangelical churches or church organizations. Unlike typical 403(b) plans, the 403(b)(9) plan is not subject to ERISA requirements. In addition, this plan offers special distribution methods for retired ministers).                                                                                                                                                                                                                                                                    |                         |

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| 31                                       | Discuss interns (paid versus non-paid, paperwork, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                         |
| 32                                       | Discuss offer letters and employment agreements. Discuss job descriptions (and the importance thereof).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                         |
| 33                                       | <p>Does the organization use severance agreements with terminated employees that include a release and are age appropriate? Discuss importance of a severance agreement (i.e., release of claims, non-disparagement and confidentiality provisions, standard fare in business world versus church context, usually no set rule on weeks of pay, etc.).</p> <ul style="list-style-type: none"> <li>- Does the Church participate in an unemployment insurance program, either voluntarily with a state program or through private insurance? Many churches do not have any unemployment insurance and only find out when they terminate someone – who has no “transition period”.</li> <li>- Absent a severance policy or severance agreement, an attempt at a merciful transition attempt can create more problems. Payments to a former insider after they leave employment begin to look like “private inurement” or “private benefit” transactions contrary to IRS rules.</li> </ul>                                                               |                         |
|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                         |
| <b><u>OTHER GENERAL LEGAL ISSUES</u></b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                         |
| 34                                       | <p>Discuss financial policies.</p> <ul style="list-style-type: none"> <li>- How money is handled, checks, cash, online, credit card expenditures (reconciliation/oversight); dual layer of personnel review, etc.</li> <li>- Discuss benevolence policies (diverse authority, criteria, no conflicts/inside deadline, no large amounts, payroll exposure, etc.).</li> <li>- Discuss designated gifts (honoring intent, choice, and possible tax/gift tax implications for personnel designations).</li> <li>- Discuss donor acceptance policies.</li> <li>- Does the church have an <b><u>investment policy</u></b>? General approach: (1) investment committee, (2) separate key functions, (3) adopt an investment policy. Discuss key elements of approach and policy: (a) standards for diversification/risk tolerance, (b) Board (and perhaps congregation) input, (c) fiduciary duties: care, loyalty, obedience, (d) donor confidence, (e) transparency &amp; accountability, (f) impact investing, (g) decision-making thresholds.</li> </ul> |                         |
| 35                                       | Discuss automobiles.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                         |
| 36                                       | Discuss clergy privilege (expectations of confidentiality).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                         |
| 37                                       | Discuss the church’s role in politics (may impact tax exempt status). May not participate or intervene in any political campaign on behalf of (or in opposition to) any candidate for public office.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                         |
| 38                                       | Discuss lawsuits on behalf of the church (rare but sometimes necessary). Defend the church against claims by plaintiffs (personal injury, employment issues, negligence, sexual abuse, construction, real estate, contracts, etc.). Discuss the importance of dispute resolution provisions (not public record, religious principals, locale, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                         |
| 39                                       | Does the church enter into release agreements with plaintiffs related to claims for small potential liabilities (slip and fall, injuries, accusations, etc.)?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                         |

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| 40  | Discuss responding to alleged abuse allegations and reporting requirements. Sexual abuse allegations are the number one topic where churches are sued (statistics show this, plus our anecdotal observation). Discuss importance of tight policies, training, operations, cameras, and insurance, etc. Claims are typically based on negligent clearance/selection, retention, supervision of the alleged perpetrator. Caring for the alleged accused, the alleged abused, reporting requirements, internal and external communications, etc.                                                                  |                         |
| 41  | Is there use of church discipline and where is that memorialized (Bylaws, member/volunteer terms, etc.)?                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                         |
| 42  | <p>Discuss counseling paperwork (legal structure, terms for participants, terms for work-force, licensure, etc.). Terms with participants include:</p> <ul style="list-style-type: none"> <li>- “Counseling” means “Biblical counseling” or “Gospel-based counseling”</li> <li>- Disclaiming official licensure/medical standards</li> <li>- Expectations of participant</li> <li>- Assumption of risk/Waiver of claims</li> <li>- General waiver</li> <li>- Confidentiality and appropriate carve outs (abuse, violence, suicide, etc.)</li> <li>- Dispute resolution (Biblically based mediation)</li> </ul> |                         |
| 43  | <p>Discuss security as a high-level concept.</p> <ul style="list-style-type: none"> <li>- Teams (internal or external)</li> <li>- Uniformed or not, police presence</li> <li>- Training and policies/accountability/sign off?; outside or inside?</li> <li>- Background checks</li> <li>- Cameras</li> <li>- Active shooter policies</li> <li>- Position on concealed weapons</li> <li>- Insurance</li> <li>- Vendor recommendations</li> </ul>                                                                                                                                                                |                         |
| 44  | <p>Member/Attendee Issues:</p> <ul style="list-style-type: none"> <li>- Discuss medical or response teams/clinics, etc. Discuss CPR and AED (cardiopulmonary resuscitation <i>and</i> automated external defibrillator).</li> <li>- Discuss service animals. Have any members/attendees brought in pets that are not “real” service animals?</li> </ul>                                                                                                                                                                                                                                                        |                         |
| 45  | <p>Discuss insurance policies. Have the policies been evaluated in the near term? Legal, insurance, and operations are a three-legged stool.. Do elders and pastors have outside activities’ coverage (D&amp;O for those organizations?). Common issues include: coverage and exclusions, prompt notification, misrepresentations on the application, etc.</p> <ul style="list-style-type: none"> <li>- Director &amp; Officers Coverage</li> <li>- Abuse &amp; Molestation</li> <li>- Umbrella</li> </ul>                                                                                                     |                         |

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|     | <ul style="list-style-type: none"> <li>- Property/Facility Use</li> <li>- Cyber-Insurance</li> <li>- Employee Dishonesty (Crime and Fidelity)</li> <li>- Employment Claims (Employment Practices Liability)</li> <li>- Missionary and International Travel</li> <li>- Auto Liability (Hired and Non-Owned)</li> <li>- General Liability</li> <li>- Pastor Care/Personal Counseling/Care</li> <li>- Terrorist/Active Shooter Insurance</li> <li>- Pollution</li> <li>- Key Man (Person)</li> <li>- Flood/Earthquake</li> <li>- Workers' Compensation</li> </ul> |                         |
| 46  | Discuss international and state by state exposure (strategy, compliance, etc.). Discuss missionaries and immigration issues.                                                                                                                                                                                                                                                                                                                                                                                                                                   |                         |
| 47  | Discuss key vendors (i.e., bankers, insurance, commercial real estate brokers, accountants, public relations, human resources, strategic planning, digital marketing, etc.).                                                                                                                                                                                                                                                                                                                                                                                   |                         |
| 48  | <p>Discuss succession planning (i.e., continuity/day to day decisions, emergency management, who/committee/leadership development, day to day decisions, insurance solutions (for pastor and church), proactive planning (role and compensation), etc.).</p> <p>Discuss estate planning for executive leadership team, employees and members.</p> <p>Discuss sabbatical policies (how long, tenure, payment of expenses (tax impact), required objectives, cut off access, payback if leave, etc.).</p>                                                        |                         |
| 49  | Discuss Michael Best Strategies and Consulting (lobbying, religious freedom, PR/communications, fractional XP resources, etc.).                                                                                                                                                                                                                                                                                                                                                                                                                                |                         |
| 50  | Discuss operating budget and statistics on legal spend/risk management. What is the church's fiscal year?                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                         |