



# **KEEP YOUR CHURCH OUT OF COURT**



## **SEMINAR**

### **Section 2**

## **Reasons Churches Go to Court**



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## **Reasons Churches Go to Court**

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Excerpt by Matthew Branaugh and Church Law & Tax	



## Section 2 Outline

### Reasons Churches Go to Court

#### **“The Top 5 Reasons Churches and Religious Organizations Go to Court” ..... 33**

Excerpt by Matthew Branaugh and Church Law & Tax\*

Current as of July 7, 2023

- This list is not speculative.
- It is based upon tens of thousands of state and federal court decisions read and categorized by attorney, CPA, and senior editor Richard Hammar, spanning nearly four decades.

#### **1. The Sexual Abuse of a Minor – See Section 3**

- Abuse Prevention Plans – Churches have an obligation to address the opportunities and potential for the abuse of children with a determined, intentional preparedness effort. Work to create an environment where it is virtually impossible for sexual abuse to occur on church property during church ministries and events.
- Hammar’s 14-Step Prevention Plan –
  - Personal Interview
  - Written Application
  - Institutional References
  - Six-Month Rule
  - Benchmarking with Charities and Public Schools
  - Two Adult Policy
  - Criminal Background Checks (including Offender Registries)
  - Prompt Reporting of Suspected Abuse
  - Addressing High-Risk Behaviors (Grooming)
  - Active Supervision
  - Ongoing Training
- States continue to expand or eliminate the statutes of limitations for minors injured by sexual abuse/molestation.
- This means decades-old claims can be brought with greater ease against churches and ministries.



## 2. Property Disputes

- Multiple Tracts – As churches grow, it's possible that additional tracts of real estate were purchased for facility and parking lot expansion. This is especially true when adjacent homes and real estate is purchased over a long period of time. Ensure good recordkeeping for church real estate transactions.
- Check Tax Records for Accuracy – Multiple tracts create an opportunity for inaccurate reporting and recording. Ensure that your church is accurately reflected as the owner for each tract in your portfolio.
- Governing Documents – Ensure that property transactions are executed by church officers specified by your organization's governing documents.

## 3. Personal Injury – See Section 4

- Lawsuits – Personal Injury Lawsuits occur regularly in personal, private business and church settings. Mitigate your risk wherever possible, protect your church with appropriate levels of liability insurance, and be prepared for Personal Injury Lawsuits.
- Risk Management and Mitigation – Most insurance companies provide risk assessments and recommendations for their policyholders. Regular inspections and walkarounds often yield a list of action items to mitigate risks and liability exposure.
- Action Item – Inspect regularly and correct known problems.

## 4. Zoning – Some local governments have made it more difficult for churches to operate and own property. Federal law explicitly protects churches and other religious institutions and individuals from unduly burdensome or discriminatory land use and zoning regulations. After learning that local land use and zoning regulations often placed burdens on religious congregations' ability to practice their faith in violation of the U.S. Constitution, Congress enacted the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).

See "What Churches Need to Know About Local Zoning and Land Use Laws" by Church Law Center.

## 5. Insurance Coverage Disputes – See Section 5

- Property Insurance – Review coverage exclusions, limits and deductibles.
- Liability Coverage – Liability Insurance covers slips, falls and other personal injuries.
- Auto/Vehicle Policies – Church-owned buses, vans, trucks and other vehicles are covered here.
- Umbrella Coverage – An Umbrella Policy provides coverage beyond policy limits.
- Workers' Compensation Insurance – Workers' Compensation provides financial support for employees who are injured due to work-related activities.

\* Document Attached

# The Top 5 Reasons Churches and Religious Organizations Go to Court

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## #1: The Sexual Abuse of a Minor

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Hammar's 14-step prevention plan includes:

- Personal interview
- Written application
- Institutional references
- Six-month rule
- Benchmarking with charities and public schools
- Two-adult policy
- Criminal background check (including offender registries)
- Prompt reporting of suspected abuse
- Addressing high-risk behaviors (grooming)
- Active supervision
- Ongoing training: *Reducing the Risk*

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### Related development:

- States continue to expand or eliminate the statutes of limitations for minors injured by sexual abuse/molestation.
- This means decades-old claims can be brought with greater ease against churches and ministries.
  - 50 states eliminated statutes of limitation for *criminal* claims.
  - 18 states eliminated them for *civil* claims.
  - 27 enacted “revival statutes” that “revive” claims that expired under prior law.

## #2: Property Disputes

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- Generally arise when a local church breaks up with a parent denomination or a local church experiences a split.
- Incredibly complex body of law dating back to the 1871 case *Watson v. Jones* decided by the US Supreme Court.
- Two key factors (among many): Church polity (congregational v. hierarchical) and dispute resolution procedures written into deeds, trusts, governing documents of local churches and denominational agencies, and more.

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## #3: Personal Injury

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- Invitees (highest duty), Licensees (minimal duty), and Trespassers (no duty): With churches, courts usually find church visitors to be licensees (MI Supreme Court). Some have found them to be invitees.
  - If “invitees”: Correcting known problems, inspecting regularly, and warning of known hazards (most common).
  - If “licensees”: Correcting known problems and warning of known hazards.
  - Some courts: Reasonable care is the standard (victim’s status is just one consideration).
- Common risks: Youth groups, wet floors, missions trips, retreats.
- Tools: Insurance, maintenance/groundskeeping.

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## #4: Zoning

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- Municipalities, authorized by their state governments, set zoning laws dictating building types and uses allowed in geographic areas.
- Residential: Traditional (majority) view has allowed churches. But increasing challenges (traffic, cell towers, NIMBYism).
- Commercial: Numerous challenges (property and sales tax exemptions).
- Protections:
  - Constitution (First Amendment/Free Exercise; Section 1983 (monetary damages)).
  - RLUIPA (differential treatment; substantial burden/compelling interest).

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## #5: Insurance Coverage Disputes

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- The two most common:
  - Coverage exclusions. **Read your policies and regularly review them.**
  - Duty to notify: **Read the fine print!**
- Types of insurance you'll likely need: Property, Liability (slips and falls), Vehicles, Counseling, Employment Practices, D&O, Theft, Foreign Travel, Umbrella (\$ coverage beyond policy limits), and Workers' Compensation.

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