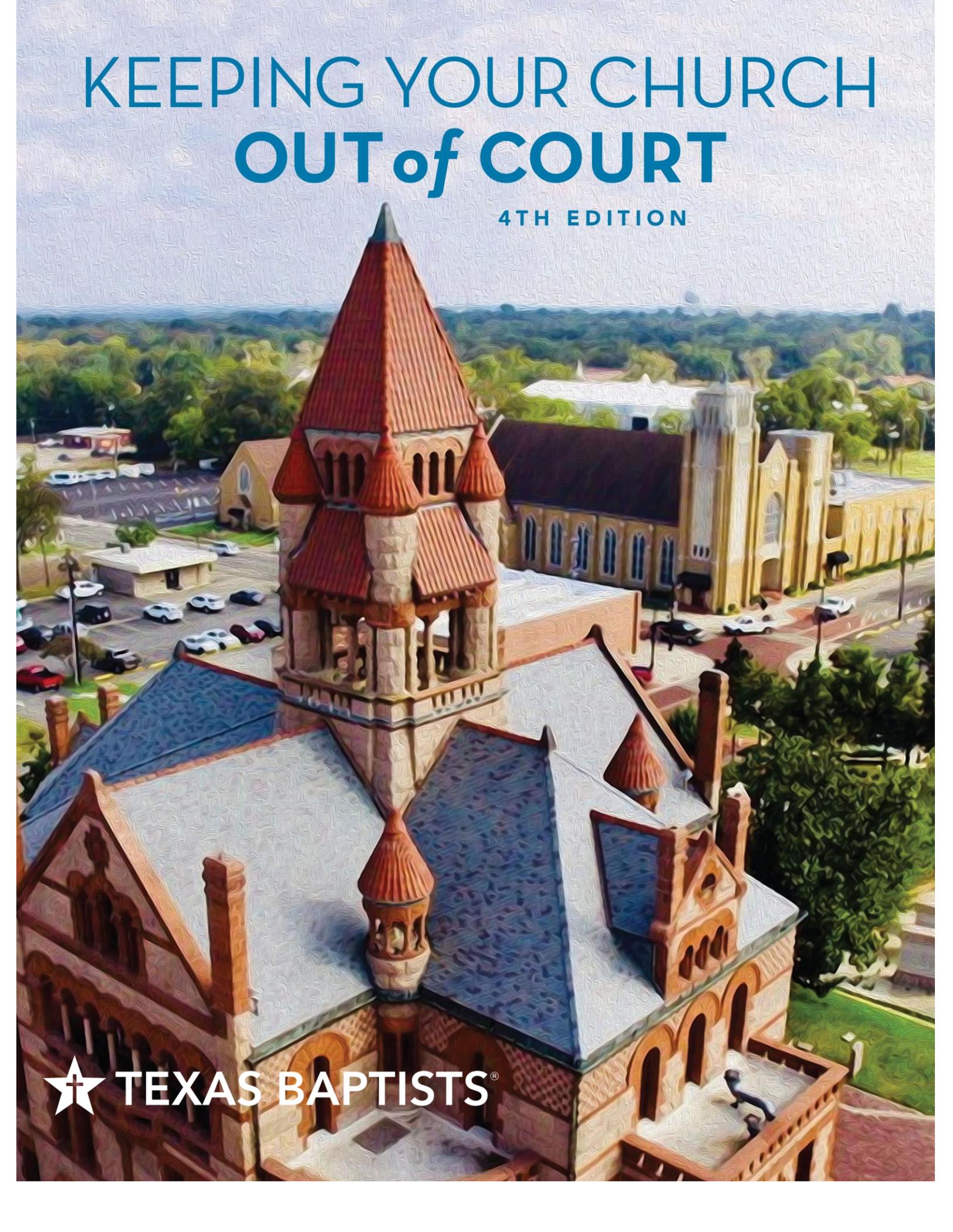


KEEPING YOUR CHURCH *OUT of* COURT

4TH EDITION



 TEXAS BAPTISTS®

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Introduction

Church Leader,

Keeping Your Church out of Court: Legal Issues Affecting Pastors, Staff and the Local Church was first published in 1994 as a very basic resource for churches of the Baptist General Convention of Texas (Texas Baptists). The second and third editions came along in 1997 and 2008, with a more complete treatment of the legal issues churches face.

Now Texas Baptists are excited to make available the Fourth Edition of *Keeping Your Church out of Court* to new generations of church leaders. Along with updated content addressing new laws and growing complexity of church leadership, this resource is now available only as a digital download. Our hope is that this format will allow us to more quickly update the content as law and culture change. We also hope more church leaders will use *Keeping Your Church out of Court* as it is more readily available.

I am thankful to Darren Moore of Bourland, Wall & Wenzel, P.C., for updating the content and partnering with Texas Baptists to make *Keeping Your Church out of Court* available to you. The time commitment for such a project is no small thing, and Darren has graciously given his time to equip each of us who benefit from this resource. John Litzler, legal consultant to Texas Baptists churches, has also contributed insight and expertise to this Fourth Edition, and I am thankful for his help. Please note that this guide is not intended to replace your own independent legal counsel, and that its content was written to assist churches governed by the laws of Texas.

Whatever your leadership role in your church, please remember that the issues addressed in *Keeping Your Church out of Court* are not simply administrative tasks to check off our lists before moving on to “real ministry.” Church administration *is* ministry. It provides rich discipleship opportunities as you lead your congregation to live faithfully for Jesus in a complex and broken world. May this resource help you and your church follow the laws of the land while demonstrating what it means to follow Christ in every part of life.

Blessings,



David Adams
Director of Church Administration & Special Projects
Texas Baptists
September 2018



Authors

Keeping Your Church Out of Court, 4th Ed

Legal Issues affecting pastors, staff, and the local church.

This reference guide is intended to provide churches, pastors, and staff with current and accurate information about the subjects covered. However, the information is not intended to be sufficient for dealing with a particular legal problem, and the authors and distributors do not warrant or represent its suitability for such purpose. This guide is being distributed with the understanding that the authors and distributors are not rendering legal, accounting, or other professional advice for any particular legal problem, and the readers should not rely upon this guide as a substitute for independent legal consultation. The forms contained in the Appendices are intended to be samples and are not intended to be used without independent legal consultation concerning the most current changes in the law and the appropriateness of the forms for a particular situation.

The authors gratefully acknowledge the participation of Tarrant Baptist Association, Inc. in the creation of the concept and format of the Legal Issues Workshop from which the first edition of this guide was created, and with financially underwriting a portion of the original development of the written materials for dissemination of this information.

All masculine gender references shall include the feminine gender.

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BOURLAND, WALL & WENZEL, P.C., was formed in 1983 in Downtown Fort Worth, Texas. The firm represents individuals, families, closely-held businesses, and nonprofit organizations within its area of practice. More information on the firm can be found at www.bwwlaw.com.

The authors gratefully acknowledge Sheila L. Korb for her work on earlier editions of these materials.

I. Church Organization and Operation

A. Incorporation

1. Texas Statutory Law Governing Church Organization and Operation

An incorporated church is simply a church that has taken the necessary legal steps to incorporate under the laws of its home state. Incorporation under the laws of the State of Texas will be discussed below. In the event a church chooses not to incorporate, for legal purposes under Texas Law, it is classified as an unincorporated nonprofit association. Texas nonprofit corporations historically looked to the Texas Non-Profit Corporation Act for statutory law applicable to their organization and operation while unincorporated associations looked to the Texas Unincorporated Non-Profit Association Act. While some churches may have governing documents referencing these Acts, in 2006 Texas adopted the Texas Business Organizations Code (BOC) thereby codifying the rules for both nonprofit corporations and unincorporated nonprofit associations and serving as the governing corporate law.

The change from the former statutory provisions to the BOC was not intended to and, in large part, did not cause substantive changes to the law governing nonprofit organizations. However, churches that have not had a professional review their governing documents since earlier than 2006 are well-advised to do so, as some provisions have changed. Notably, the organizing document for a nonprofit organization choosing to incorporate is referred to under the BOC as a “certificate of formation” rather than the previous term “articles of incorporation.” This edition of *Keeping Your Church Out of Court* will use “certificate of formation” when referring to this organizing document.

2. The Need to Incorporate

There is no obligation for a church operating in the State of Texas to incorporate; however, there are clear advantages if they incorporate as Texas nonprofit corporations. Texas nonprofit corporations operate under clearer rules of governance than do churches that have not incorporated, particularly as Chapter 252, the Chapter of the BOC covering unincorporated associations, provides that “principles of law and equity supplement this chapter unless displaced by a particular provision of this chapter.” Tex. Bus. Orgs. Code § 252.002. Because the law governing corporations is more developed and clear, the chances for disagreement over the proper rules of operation for an incorporated church are less likely.

Members of an incorporated church are not responsible for the debts and obligations of the church, unless the members have guaranteed indebtedness of the church or participated in conduct giving rise to a claim against the church. Texas law attempts to provide to members of unincorporated churches the same protections afforded to members of incorporated churches. However, the laws respecting unincorporated churches and other associations are less developed than those laws that apply to corporations.

Incorporated churches have an advantage to unincorporated churches in that incorporated churches have fewer requirements to prove in order to gain the protection of the Texas Charitable Immunity and Liability Act of 1987, codified as Chapter 84 of the Texas Civil Practice and Remedies Code. Unincorporated churches can also fall within the act but must first prove a number of additional elements under the act’s specific definition of “charitable organization” in order to gain the protection. Incorporation avoids these extra hurdles.

An additional reason to incorporate is that in more complicated business transactions involving a church and its property, many businesses prefer or even require that the church

be incorporated before they will do business with the church. For example, many lenders require a church to be incorporated before making significant loans to the church for acquisition or improvements of the physical plant of the church.

Incorporation creates a distinct legal entity, which is easily proven and exists separate and apart from its members. Through proper conduct of business affairs on the part of the incorporated church, a third-party creditor should have no doubt that it is dealing with a church entity as opposed to individuals. While the statutory provisions related to unincorporated associations provide that an unincorporated association is a distinct legal entity, there can be confusion as to whether the individual being sued is part of an unincorporated association. Avoiding this type of ambiguity so that claims will not be made against individuals is another advantage to incorporating.

3. Certificate of Formation, Bylaws, and Constitution

For a church to incorporate, a majority of the members of the church must consent to the incorporation (i.e. a majority of all members with voting rights, not just those at a meeting on which a vote to incorporate is taken). This is true even if the church is elder-led; members must choose to incorporate. The members must elect one or more organizers (formerly called incorporators) to sign a certificate of formation (formerly called articles of incorporation), which is then filed with the office of the Texas Secretary of State (see [Appendix 1](#)). A \$25.00 filing fee is required. The certificate of formation, also referred to as a charter, constitutes the basic governing document for the nonprofit corporation. The BOC requires certain types of minimum information be included in a nonprofit corporation's certificate of formation:

- (a) The name of the corporation.
- (b) A statement that the corporation is a nonprofit corporation.
- (c) The purpose or purposes for which the corporation is organized.
- (d) For a church which is operated under a congregational system, a statement to that effect.
- (e) Any provision, not inconsistent with the law, for the regulation of the internal affairs of the corporation.
- (f) The street address of the initial registered office and the name of its initial registered agent (the party responsible to receive official notices from the state along with citation should the church be named in a lawsuit). Note that a registered agent must consent in writing to serve in such role, which may include consent in electronic form.
- (g) The name and street address of each organizer (the party responsible for attesting to the accuracy of the filing of the certificate of formation).

A church operating under a congregational system, which is most common among Baptists, has no board of directors to manage the affairs of the church. Rather, management is vested in its members. If a board of directors does exist (often called a Board of Elders), the board would ordinarily make all decisions concerning the operation of the church.

Except for a church organized and operating under a congregational system that was incorporated before January 1, 1994, a nonprofit corporation is deemed to have vested the management of the affairs of the corporation in its board of directors in the absence of an express provision to the contrary in the articles of incorporation. Thus, a new church must

affirmatively elect in its certificate of formation to operate under the congregational system. Church governance will be discussed further at Section B.1.

A religious organization may qualify for an exemption from ad valorem (property) taxes. In order to qualify, in addition to a showing of ownership and use (discussed more fully at V. A.), the organization's organizing document (certificate of formation or articles of incorporation), bylaws, or other regulations must pledge the organization's assets for use in performing the organization's religious functions and direct that on discontinuance of the organization by dissolution or otherwise, the assets are to be transferred to a charitable, educational, religious, or other similar organization that qualifies as a charitable organization under § 501(c)(3) of the Internal Revenue Code of 1986, as amended. Such a provision is included in the form certificate of formation located at [Appendix 1](#).

After a church has incorporated, it should adopt bylaws at the next called meeting of the members. Note that even if the church has bylaws that were used prior to incorporation, new bylaws (which may be a restatement of the prior bylaws) should be adopted as, in the eyes of the law, the church is now a new legal entity. The church should provide at least three days' notice by mail or by oral announcement at a regularly scheduled worship service, stating that a purpose of the meeting is the adoption of bylaws. The bylaws may contain any provision for the regulation and management of the affairs of the corporation not inconsistent with law or the certificate of formation. In addition to the minimum information required for incorporation, listed above, bylaws typically cover such matters as the following:

- (a) Statement of Religious Beliefs.
- (b) Admission of members.
- (c) Termination of membership and discipline of members.
- (d) Church officers, including pastor, church staff, deacons, moderator, church clerk, treasurer, and trustees (duties, election, and termination).
- (e) Designation of committees, duties of each committee, and election of committees.
- (f) Church meetings, including method of notice of meetings, required quorum for meetings, whether advance notice is required for particular business at meetings, percentages of votes necessary to pass general and special items of business, and rules of procedure for the conduct of meetings.
- (g) Amendment of bylaws.
- (h) Handling of church finances.
- (i) Termination provision.
- (j) Relevant affiliations with local, state, and national denominational organizations.

Sample bylaws are included at [Appendix 2](#).

In addition to the church's certificate of formation and bylaws, the church may choose to adopt a church constitution, although it is not necessary to do so. The BOC has no reference to a constitution. It is generally an ecclesiastical document that explains the church's doctrinal beliefs and expands on the purposes for which the corporation is organized (as opposed to bylaws which govern the day-to-day activities of the church), as set forth in the certificate of formation. Sometimes by misnomer, a church refers to its bylaws as a

constitution, but the two are technically distinct. A sample constitution is included in [Appendix 3](#).

In matters of interpretation and construction, state or federal law takes precedent over a church's governing documents. The certificate of formation of a church controls over bylaws and other church regulations, and the bylaws govern the other church regulations, such as policies, procedures, and resolutions. The church's constitution has equal priority as the church's bylaws with respect to the constitution's limited purpose of explaining or expanding upon the ecclesiastical purposes of the corporation.

4. Transfer of Assets to a Corporation

In the event the church has been in operation and has assets, as part of the resolutions of the church authorizing the church to incorporate, the resolutions should also specify that the trustees or other designated representatives of the church will transfer all assets of the church to the corporation as soon as the church is incorporated. Again, this action is done in recognition that the church is now operating through a new legal entity. These transfers normally take effect by the signing of deeds to all real estate owned by the church and the signing of bills of sale to all personal property of the church. In addition, all bank accounts, contracts, and other agreements or documents that designate the name in which the assets of the church are owned should be changed into the name of the corporation (if there has been no change in the name, banks should nevertheless be advised of the incorporation). These transfers leave no doubt that the church is thereafter acting as a corporation.

5. Effect of Incorporation

As addressed above, incorporation of the church has the legal effect of making the church a separate legal entity from its members for all purposes. The corporation is entitled to hold title to property and to sue and be sued. The members of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the corporation, unless a member has individually guaranteed or incurred the contractual debt, or participated in tortious conduct (see Part II, below).

6. Liability of Members of Unincorporated Association

A church, a mission, an association, a camp, or any other group or ministry may choose to remain unincorporated. These entities are referred to as unincorporated associations. The BOC defines an unincorporated association as "three or more members joined by mutual consent for a common, nonprofit purpose." Tex. Bus. Orgs. Code § 252.001(2). Thus, any group or entity that permanently operates a nonprofit entity other than one created by a trust without formally incorporating under state law for a common nonprofit purpose falls within the definition of an unincorporated association.

The historical development of Texas law related to unincorporated associations is interesting and still of great significance because of the number of activities that Texas Baptists engage in today without using the form of a nonprofit corporation. Historically, an unincorporated association was not considered a separate legal entity and had no existence apart from its individual members. Thus, the obligations of an unincorporated association were considered to be the obligations of its members individually. By analogy, the unincorporated association was treated the same as an individual doing business as a sole proprietor using an assumed name. For example, if John Doe operated a sole proprietorship called "John's Air Conditioning Service," John Doe and John's Air Conditioning Service would not be considered legally separate entities. John Doe would be liable for all obligations and debts of John's Air Conditioning Service. In the same light, unincorporated associations, although involving a group of individuals rather than a single individual, were not historically regarded

as being legally separate from the group of members that formed the unincorporated association.

Under prior law, when an unincorporated association incurred contractual debts or obligations, the members of the association were individually liable for those debts and obligations. For contractual debts, the members who contracted for the debt, assented to the debt's creation, or ratified the debt after its creation were responsible for payment of the debt. Furthermore, an unincorporated association, because it was not a separate legal entity, could not hold property, and its property was required to be held in the names of individual trustees on behalf of the group of members. In addition, a judgment could not be rendered for or against an unincorporated association since it was not a separate entity. This led to greater personal liability exposure for those engaged in carrying on the operations of the church.

Prior to this holding, only non-members could bring claims against the church. Both of these holdings constituted significant changes in Texas law and thereafter became part of the Texas Uniform Unincorporated Nonprofit Association Act (TUUNA) which became effective in Texas in 1995.

Under TUUNA, an unincorporated association is considered a separate legal entity from its members, meaning:

- (a) Real and personal property may be held in the name of a nonprofit association (without holding title in the names of trustees).
- (b) Real property may be transferred by an authorized representative who is appointed in a written "statement of authority" of the nonprofit association.
- (c) Members are not liable for contractual debts of the association based upon their membership or participation in the affairs of the nonprofit association.
- (d) Members are not liable for tortious claims merely because of their membership or participation in the nonprofit association (unless they have committed the tortious act or omission).
- (e) A member of an association can sue and recover damages from the association.

TUUNA's provisions have now been carried forward into Chapter 252 of the BOC. Chapter 252 attempts to treat unincorporated associations in the same manner as nonprofit corporations with respect to member liability for association debts. However, despite being on the books for more than a decade, Texas courts have rarely been faced with applying the provisions and have not developed tests regarding the interpretation and enforceability of the unincorporated association provisions of Texas law. Additionally, while the majority of states have similar provisions for unincorporated associations, the church could still find itself engaging in activities in a state without these provisions. Thus, it remains a more conservative and prudent decision to incorporate and rely upon the better established nonprofit corporation law rather than to rely upon the uniform act.

B. Church Rule

1. Types of Church Governance

The business and other affairs of an incorporated church may be managed in one of three different forms. The church may be governed under the following options:

- (a) By its members, which is typically referred to as congregationally-led or member-led.
- (b) By its board of directors, whether the board members are called directors, elders, trustees, or deacons. This system is typically referred to as board-led.
- (c) By a hybrid system of governance whereby some decisions are presented to and made by the members and others are made by the directors or others to whom the directors or members have delegated authority, most often the staff of the church. This system is typically referred to as staff led.

The default governance system for churches incorporated on or after January 1, 1994 is board-led. A church incorporated prior to January 1, 1994 may be governed under any one of the three forms of governance mentioned above, as long as the church has operated under that form. If a church incorporated prior to January 1, 1994 changes its form of governance to the member-led form, the church's articles of incorporation will have to be amended. In any case, the church should specify in its governing documents the form of governance it has elected to use.

If a newly incorporated church desiring to operate as a congregationally-led church or staff-led church fails to provide for that form of governance in its certificate of formation, then the church will still be considered a board-led organization. Decisions made on its behalf by membership vote may be void and subject to challenge. Note that an incorporated church desiring to be member-led or staff-led may still have a board of directors, by whatever name, and limit the authority of the board to whatever extent desired by setting forth those limitations in its governing documents. An unincorporated church can (and should) also specify its form of governance in its governing documents, whether bylaws, a constitution, or articles of association.

a) Member-Led

If an incorporated church is congregationally-led, the members have the right to make all decisions on behalf of the church, though typically this is accomplished through a delegation of authority to various positions or committees. Church decisions should be presented to and voted on by the members prior to being adopted or implemented. If any individual or group makes or implements decisions without membership approval, delegation of authority, or ratification, then they can be individually liable for those decisions and their consequences. For example, individuals entering into contracts or loan transactions without appropriate authority will be subject to personal liability for the obligations arising from those transactions if the church fails to fulfill them.

A member-led church should establish in its governing documents those persons who have the right to vote on church matters. The church's bylaws should define the membership for purposes of voting, the method by which an individual may become a member, and the method by which a member may be removed or excluded from membership. Not all church members must be given the right to vote. In fact, the church may choose to divide its membership into classes by so providing in its governing documents, with one or more classes having voting rights and others having no voting rights. Dividing the membership into classes of voting and non-voting members could prove to be beneficial to the church if the church has non-active members who are not sufficiently involved in church activities to vote on significant church matters or if the church wishes to restrict voting rights to members who have reached a certain age.

The church's governing documents (certificate of formation and bylaws) should also clearly set forth the method by which the membership will make decisions, including provisions for meetings, notice of meetings, notice of agenda, the percentage or number of members necessary to constitute a quorum (which is the number of members required to be present in order to constitute a valid meeting for the purpose of transacting business), and the number of votes required to pass decisions. A more complete discussion of membership and the rights and obligations of members are set out below at Part 1.B.2.

b) Board of Director Led (No Voting Members)

The board of directors of a board-led church may be called by any name appropriate to the customs of the church, such as the board of deacons, board of trustees, or board of elders. It is not the name that is important but rather the role played by the board or group.

In a true board-led church (i.e., a church with no voting members), the board of directors makes all of the decisions on behalf of the church by majority vote unless a different voting threshold is set out in the church's governing documents. For example, decisions on the annual budget, creation of new ministries, and even the calling of pastors would be subject to board approval in a board-led church. While such decisions would be made by the directors, it is common and advisable that the members be informed about the issues and given the opportunity to offer input and opinion. It is also important to have governing documents that establish the method by which the board will meet and make decisions.

c) Hybrid: Board of Director Led with Voting Members

The third form of governance is a combination of the first two. In a hybrid form of governance, the church's governing documents create a board of directors, but provide that some specified decisions are to be made by the voting members and other decisions are to be made by the board of directors. When a hybrid form of church governance is used, the church's governing documents (typically the bylaws) must specifically identify which decisions will be made by the board of directors and which will be made by the members. For example, decisions concerning the creation of debt over a certain threshold or the calling of a senior pastor could be reserved to the members. In a staff-led church, decisions would be made by the staff unless reserved to the members. Effectively, the staff is acting as the board of directors. This form of governance prevents the members from having to consider all of the day-to-day decisions, thereby reducing the number and length of member meetings. However, Texas law requires that if a nonprofit corporation has members with voting rights, certain decisions called "fundamental actions" must be made by the full membership, even if a board of directors exists. These fundamental actions include: (i) amending the certificate of formation; (ii) winding up of the corporation; (iii) revocation of a decision to wind up; (iv) cancellation of an event of winding up; (v) reinstatement; (vi) development of a plan of distribution; (vii) merger; (viii) sale of substantially all of the assets of the corporation; (ix) development of a plan of conversion; or (x) development of a plan of exchange (i, ii, vi-viii being those most significant in the church context).

2. Membership

a) Admission

Because the status of membership grants certain rights and privileges to a member to participate in the management and activities of the organization, the rules of governance of a church (typically located in the church's bylaws) should clearly set

forth how membership is determined and what types of membership rights and privileges are granted. Because significant decisions are made by the members of a church, having a procedure to keep church membership roles current and accurate is very important. This procedure also should be set out in the church's governing documents

b) Dismissal

Unfortunately, times will arise when a church must implement a procedure for the discipline or dismissal of a church member. If this procedure is not in writing and set out in the bylaws of the church, disharmony and dispute can arise as to the correct procedure to follow. This can invite complaints that may result in litigation filed by the member who is subject to the discipline or dismissal action. Texas law allows a nonprofit entity, whether incorporated or not, to govern its own affairs, including decisions involving membership. However, the rules adopted by the church in this regard must be followed strictly when taking away rights or privileges of a member. If these rules are not clear, unambiguous, and in writing, the church could subject itself to a risk of liability. While it is unlikely a court would entertain such a dispute and ultimately rule in favor of a disgruntled member, the church may still be forced to incur significant costs in defending the suit. However, just as importantly, the harm caused by disunity over the dispute can fracture a congregation.

c) Decision Making

A church organized and operated under a congregational system generally vests the decision-making authority in its members. However, as a practical matter in today's modern churches, many decisions are made by individuals elected to particular positions in the church organization or by standing or special committees. This is comparable to the hybrid form described above though it results from delegation of member authority as opposed to specific separation of authority set out in the governing documents. The risk of not having a procedure set forth in the church's bylaws, or of not following the procedure, related to the decision-making process are at least two-fold. First, any member opposed to a church action will have standing to contest the action if the proper decision-making procedure set forth in the church's bylaws is not followed. Second, the church members who are directly involved in the decision, if not properly authorized by the church, can incur individual liability for a transaction if it is ultimately determined that the church did not approve the decision. For example, if certain members of a church enter into a transaction for the acquisition of an asset on behalf of the church which involves debt financing, and the proper procedures are not followed to have the purchase approved by the church according to the church's governing documents, then any member of the church opposed to the acquisition may contest the acquisition and may request a determination—either internally within the church or externally through court intervention—that the acquisition was not the act of the church. In that instance, the members of the church who entered into the transaction could be responsible either to the church or to the seller of the asset for damages. Thus, as a practical matter, even in churches operated under a congregational system, the church's bylaws should give some consideration to giving church officers and committee members the authority to make day-to-day decisions, with guidance as to which decisions to bring before the church for prior consent or ratification.

d) Notice of Meeting

In the case of a corporation that is a church, notice of meetings of members will be deemed sufficient if made by oral announcement at a regularly scheduled worship service prior to such meeting, or as otherwise provided in the church's governing

documents. The bylaws may provide that no notice of annual or regular meetings shall be required. Because the church is required to follow the procedure set forth in its bylaws for the conduct of its meetings, including notice, attention should be given to the bylaws in this regard. The procedures employed by the church should not be too onerous for the church, so that members have the opportunity to be aware of important business matters coming before the church and so that the church can ensure a quorum for business meetings.

e) Notice of Agenda

Notice to members of the agenda for a meeting can be accomplished in the notice to members of the meeting itself. Some business matters can be and should be conducted in regular meetings without prior notice of the agenda. These would be normal and recurring items of business that members should expect to be dealt with in a regular meeting. However, the church may deem it necessary to give prior notice to the members before taking up other items of business. Examples include dissolution of the church, merger with another church, the purchase or sale of real property, dismissal of the church's pastor or other ministerial staff, or other items of significance. Dissolution, consolidation, merger (a combining of two entities into one), and sale of all or substantially all of the assets of a corporation each requires prior notice to the members by law. The bylaws should set forth those other items of business that require prior specific notice of potential action.

f) Quorum

A quorum is defined as the number of members with voting rights required to be present at a meeting in order for the meeting to constitute a legal meeting of the church. The failure to have a quorum of members present renders any business conducted at that meeting null and void. If the certificate of formation and bylaws of the church do not provide otherwise, one tenth of the members of the church constitute a quorum pursuant to Texas law. For example, if a church has five hundred members on its membership roll and less than fifty members attend a business meeting, then any business conducted at such meeting would be void, unless the church's governing documents set forth a lower quorum requirement for the church. A church may set the quorum to whatever percentage the church believes would be a sufficient number of members to prudently conduct official church business.

Churches that were incorporated prior to 1959 are grandfathered to delete the ten percent required for a quorum. The rule for those churches is that there is no minimum quorum requirement, unless an express provision is made in that church's governing documents to the contrary.

g) Percentage of Vote Required

Under Texas law, unless the governing documents provide otherwise, voting of members in a nonprofit corporation may be in person or by proxy (a written and signed authorization for another person to vote as the member's attorney in fact). Note that while proxy voting is allowed under Texas law, if a church has adopted special rules of procedure for the conduct of its meetings such as Robert's Rule of Order, those rules should be consulted as to allowance of proxy voting (generally excluded on the basis that membership organizations should rely on the vote of persons who are present for the discussion and decision-making process). The vote of the majority of the members present (in person or by proxy, if proxy voting is allowed) at a meeting at which a quorum is present shall authorize any action by the church, unless the vote of a greater number is required by law, the certificate of

formation, the bylaws, or the other regulations of the church. Examples of instances where a greater number is required by law is in the case of merger or consolidation of two corporations, a conveyance or sale of all or substantially all of the property and assets of a corporation, and the dissolution of a corporation. These actions require a two-thirds majority vote of the members present at the meeting. By comparison, incorporation of an existing church requires a majority of members, as distinguished from a majority of members present. Other instances in which a higher percentage of votes are often specified (though not required) include the calling of a pastor, dismissal of the pastor, and removal of members from the church roll.

A nonprofit corporation may have more than one class of members. If it chooses to do so, its certificate of formation or bylaws must designate such classes, in addition to the qualifications and rights of the members of each class. Each member, regardless of class, is entitled to one vote on each matter submitted to a vote of the members, except to the extent that the voting rights of the members of any class are limited, enlarged, or denied by a provision in the governing documents. For example, if a church elects to sponsor a mission and admit the members of the mission into the church as members of the church, the church can designate the members of the mission as a separate class in the church's certificate of formation or bylaws, and either limit or deny votes to the members of the mission on particular church matters (e.g., dismissal of a church pastor or significant property matters). Likewise, a church may admit minors into membership yet provide only members who have reached eighteen (18) years of age may be part of the voting members (note that unless limited in such manner, minors who have been admitted to membership are entitled to the voting rights of members).

h) Rules of Procedure

A church will often adopt rules of parliamentary procedure for the conduct of its meetings. If the church chooses to adopt such rules, the bylaws of the church should specify the set of rules that should be used. For example, Robert's Rules of Order (Newly Revised) is commonly adopted as the rules of procedure. However, a number of different editions of Robert's Rules are available, and the church's bylaws should specify which edition should be used, such as the latest edition. If Robert's Rules of Order or another set of parliamentary rules are adopted, someone at the church, often designated as parliamentarian, should be responsible for learning and fully understanding such rules, so that the actions adopted at a church meeting will not be held invalid for failure to conduct the church meeting in accordance with the church's rules. A note of caution: formal rules of procedure can be significantly complex and thereby give rise to a claim by a member that the proper procedure was not followed and a vote should be set aside. A church should take great care in adopting its rules of procedure and consider tailoring the rules to the church. Alternatives to Robert's Rules of Order include the Standard Code of Parliamentary Practice by Alice Sturgis and The Modern Rules of Order by Donald A. Tortorice.

3. Board of Directors

a) Qualifications to Be a Director

The BOC provides that an incorporated church may prescribe qualifications in its governing documents that a person must meet in order to serve as one of its directors. A director is not required to be a Texas resident or a member of the church, unless the church's certificate of formation or bylaws provide otherwise. The church should establish and set forth in its governing documents the qualifications it desires a person to have in order to serve as a director, such as minimum age, length

of membership in the church, spiritual maturity, and other criteria deemed appropriate and important by the church.

The church may also designate in its certificate of formation or bylaws one or more individuals to serve as ex-officio members of the board of directors. An ex-officio member of the board of directors is a person who serves on the board by virtue of his or her office held in the church (i.e., whoever serves in the applicable office also serves on the board of directors). An ex-officio director is entitled to notice of all meetings and has the right to attend the meetings, but does not have the right to vote unless the position is specifically given that right in the governing documents or the bylaws. If the ex-officio director is not given the right to vote, then he or she will not have the duties or liabilities that are imposed by law on the other directors. In that event, the ex-officio director holds only an advisory position.

b) Number

The board of directors of a Texas nonprofit corporation must consist of at least three (3) directors. The number and identity of the directors constituting the initial board of directors must be included in the certificate of formation. The church may choose whatever number of directors is most suitable for its operation, so long as it has a minimum of three. If the governing documents do not set forth the number of directors who will serve on subsequent boards, then the number serving is the same as that constituting the initial board. The number of directors may be increased or decreased from time to time in accordance with the procedure set forth in or by amendment to the church's certificate of formation or bylaws; however, a decrease in the number of directors may not result in shortening the term of any incumbent director. If the church chooses to have a larger board, it should give consideration to constituting an executive committee that can meet and act on shorter notice.

c) Election, Term of Office, and Removal

The initial board of directors should be elected by the unincorporated church at the meeting in which the church votes to incorporate. At that time, the church must specify the term or length of time the initial board of directors will serve. Those directors will hold office for the term specified. If the certificate of formation does not establish the term of office that the initial board of directors is to serve, then Texas law provides that the initial directors serve until the first election of directors, not sooner than one year after incorporation.

The incorporated church should establish in its bylaws the method by which subsequent directors will be elected, appointed, or designated (a choice of the church) to serve on the board, as well as the term of office each director is to serve. If the bylaws do not provide otherwise, Texas law requires that each director be elected annually by the existing board of directors (not the members) and hold office until the next annual election, and until that director's successor has been elected and has qualified to serve. Accordingly, if the church's bylaws fail to provide otherwise, the church membership will not have the right to elect directors.

In addition to setting forth provisions for electing directors, the church's bylaws should also establish a means by which a director may be removed from office. The bylaws should include both the grounds for removal as well as the procedure to be followed in the event that removal of a director becomes necessary. If no such provision is made in the bylaws, Texas law permits the church to remove a director either for or without cause, by the same persons who were entitled to elect, appoint, or designate the director. Again, absent the bylaws providing otherwise, this would not be a member vote. If the particular director was elected to the board, he or she can only

be removed by an affirmative vote equal to the minimum vote necessary to elect a director.

d) Vacancies

Vacancies on the board of directors that occur due to an increase in the number of directors by amendment to the church's governing documents are to be filled through election of new directors by the church's membership. When a vacancy occurs on the board of directors for any other reason, the remaining directors serving on the board acting by majority (even if those remaining would not constitute a quorum) may elect someone to fill the vacancy, unless the church's bylaws provide otherwise.

e) Duties

Texas law imposes duties and obligations on corporate directors with respect to all matters over which they have authority. These duties and obligations arise because directors serve in a representative capacity, making decisions for and on behalf of the church and its members. Directors have the duty to carry out the purposes of the church, as well as to serve the interests of church members. Therefore, it is imperative that each director have an understanding of what the church's stated purposes are and whose interests they are serving. Each director should obtain and become familiar with his or her own copy of the church's governing documents. Directors have three primary duties under Texas law: the duty of care, the duty of loyalty, and the duty of obedience. While action can only be taken by the board acting in its corporate capacity, each individual board member personally owes these fiduciary duties.

(1) Duty of Care

The duty of care is a fiduciary duty that imposes a standard of care by which a director or other decision maker must make decisions on behalf of the church and its members. Decisions must be made with care, which requires the director to (A) act in good faith, (B) use the level of care that a person exercising ordinary prudence would use in the same or similar circumstance, and (C) make decisions that the director reasonably believes to be in the best interest of the church and its members. This three part test is the same standard that a court of law will likely use to determine whether a director has breached his or her duties when an allegation of breach of duty has been made. In applying this standard, courts assume a minimum level of competence on the part of the director. A director may avoid liability even if an action taken proves in retrospect to be unwise if the director can show that he or she met this standard and thus fulfilled the duty of care.

Texas law does not define "good faith" in the context of fiduciaries. Broadly, the term describes "that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation." Black's Law Dictionary 693(6th ed. 1990). "Ordinary care" requires the director to exercise the degree of care that a person of ordinary prudence would exercise in the same or similar circumstances. Where a director has special expertise (e.g. accounting expertise, legal expertise, etc.) ordinary care means that degree of care that a person with such expertise would exercise in the same or similar circumstances.

A director may delegate decisions and avoid liability provided the director exercises reasonable care, skill, and caution in selecting the agent, establishing the agent's scope, and periodically reviewing the agent's actions to confirm the

agent continues to act in accordance with the terms of the delegation. Thus, while a director may delegate certain decisions or activities, the director may not delegate his or her oversight (i.e. governance) responsibility.

To satisfy the duty to use ordinary care, a director should be reasonably informed with respect to the decisions that he or she is required to make. Specifically, the director must understand the purposes of the church set forth in the church's governing documents and make decisions comporting with those purposes and direction. Furthermore, the director should be familiar with management of the church, policies of the church, and any financial data relevant to the decisions he or she is making. Such familiarity and knowledge requires that the director attend meetings and actively seek the information necessary to make an informed and independent decision regarding which course of action is in the church's best interest. A director should carefully weigh the benefits and detriments of the course of action to the church rather than simply voting with the majority.

In discharging the duty of care, a director may rely in good faith on information, opinions, reports, or statements, including financial statements or other financial data, concerning the church or another person that was prepared or presented by officers, employees, or a committee of the board of which the director is not a member. Furthermore, in the case of religious corporations, Texas law provides the director may rely in good faith on information prepared or presented by a religious authority or a minister, priest, rabbi, or other person whose position or duties in the corporation the director believes justify reliance and confidence and whom the director believes to be reliable and competent in the matters presented. While the director may rely on the counsel of advisors, the director must nevertheless exercise his or her own independent judgment in making decisions as to what is in the church's best interest. Said differently, the director remains actively involved in the decision-making process.

In order to assist the director in fulfilling his or her duties, directors should review, and if necessary, propose to update and/or amend the church's governing documents from time to time, as the church's need for governance may change over time. The directors should make certain that the church's governing documents still accomplish their objective, are consistent with how the church actually operates, and have not become ineffective.

(2) *Duty of Loyalty*

The duty of loyalty requires a director to be loyal to those he or she represents. The director of a church must exercise his or her power, make decisions, and conduct business with the church's interests and the interests of those he or she serves in mind. He or she must act in such a way as to advance or complement the church's purposes, instead of his or her own or those of another private party. A director may never put personal biases or interests above the church's interests, nor use the position for personal gain or advantage.

If a director has a personal interest that is in conflict with that of the church, the director must be conscious of the conflict and act in such a way as to show loyalty to the church. The existence of a conflict does not necessarily mean that the director failed to fulfill the duty of loyalty. How the director deals with the conflict generally determines whether the duty has been breached. The director may never capitalize on an opportunity for personal gain when he or she knows that the church intended to pursue that opportunity. For example, if the church is interested in pursuing the purchase of a valuable parcel of land, the duty of

loyalty requires the director to give the church the opportunity to make the purchase first, prior to the director pursuing such an opportunity individually. This is referred to as the corporate opportunity doctrine.

In the event that a director is faced with voting on an issue in which he or she has a financial or other personal interest, the director should disclose this interest to the other directors and then abstain from voting on that particular issue, so as to be certain that the personal interest does not interfere with the best interests of the church. The director is “interested” if he or she (i) makes a personal profit from the transaction with the church; (ii) buys or sells assets of the church; (iii) transacts business in the director’s capacity with a second corporation of which the director has a significant financial interest; or (iv) transacts church business in the director’s capacity with a member of his or her family. Texas law provides a safe harbor of sorts for interested transactions. Where the material facts are disclosed and a majority of the disinterested directors in good faith and the exercise of ordinary care authorize the transaction, the transaction is not void or voidable solely because of the director’s interest or the director’s participation in the meeting at which the transaction is subject to a vote. The church should consider adopting a conflict of interest policy to help guide this process. Further, such a transaction will not be void or voidable if it is fair to the church when it is authorized, approved, or ratified by the decision-making body of the church. While breach of the duty of loyalty gives rise to a tort claim under state law, it may also implicate federal tax law as such breach can constitute private inurement which can result in the Internal Revenue Service imposing an excise tax as discussed in Part III.B.9.

The duty of loyalty further requires a director to maintain confidentiality and therefore prohibits a director from disclosing information about the church’s activities and business to any third party, unless the information is already public knowledge or the church itself determines to disclose it.

(3) Duty of Obedience

Along with the duties of care and loyalty, directors of nonprofit organizations owe the additional duty of obedience, the duty to remain faithful to and pursue the goals of the organization. In practice, the duty of obedience requires the director to follow the governing documents of the church, laws applicable to the church, and restrictions imposed by donors and ensure that the church seeks to satisfy all reporting and regulatory requirements. The duty of obedience thus requires that directors see that the church’s purposes are adhered to and that charitable assets are not diverted to non-charitable uses.

f) Rights and Authority

Directors are granted certain rights and authority to facilitate the carrying out of their duties. These include the right to notice of all meetings, the right to have access to church leadership and other individuals who may have, or have access to, information that a director needs in order to make an informed decision, and the right to have complete access to all of the books and records of the church. Directors derive their express authority from state law, including the BOC, as well as the church’s governing documents and resolutions. Directors also have the implied authority to perform the functions necessary to carry out their express authority.

g) Exercising Authority - Meetings

No individual director has the authority to act alone, but can only exercise decision-making authority when acting together as a board of directors. Further, when

decision-making authority rests with the board of directors on a particular issue, the board of directors may only conduct business and make binding decisions through a legally constituted meeting (unless all of the directors execute a written consent with respect to a specific decision). Such a meeting must be duly called and held in accordance with the church's adopted procedures. Decisions made at any meeting not held in accordance with the church's adopted procedures are not binding and are void.

The church should establish in its bylaws specific provisions governing the decision-making process. Those provisions should include the following: (i) the requisite notice requirements for meetings (e.g., the persons who must be notified of a meeting, the method or manner in which notice must be given, the number of times notice must be given, the amount of advance notice which must be given, and the content of the notice); (ii) the quorum necessary for a proper meeting (i.e., how many directors must be present in order to conduct business); and (iii) the vote necessary in order to pass a resolution that will bind the church.

Meetings of the board of directors may be regular or special. Under Texas law, unless the church provides otherwise in its bylaws, notice of regular meetings is not required to be given. Notice of special meetings is required by law and must be made in accordance with the procedure set forth in the church's bylaws. The notice does not have to identify the business to be transacted at the meeting, nor the purpose of the meeting, unless the bylaws require this information. Texas law further provides that a majority of the number of directors fixed by the bylaws or stated in the certificate of formation constitutes a quorum. The vote of a majority of the directors present in person or by proxy (if allowed) at a legally constituted meeting is sufficient to pass resolutions that are binding on the church, unless a greater number of votes is required by the church's governing documents.

4. Officers

A church incorporated under Texas law is not required by law to have officers. If a church chooses not to have officers, the duties and responsibilities that would normally be vested in a corporation's officers may be delegated by the church's decision-making body to persons or committees within the church. However, if the church chooses to have officers, it may have any officers and assistant officers as the church deems necessary. Such officers may be referred to by whatever titles the church selects. Officers may either be elected or appointed to office. The church should establish in its bylaws the procedures by which the officers will be elected or appointed, as well as the term of office for each officer. An officer's term of office may not exceed three years, although an officer may serve for more than one term.

If the church's bylaws are silent, Texas law requires that officers be elected or appointed annually by the board of directors (or the members if the church is a member-led church). Any person may hold more than one office, except that the offices of president and secretary may not be held by the same person. Any officer elected or appointed may be removed from office by the person authorized to elect or appoint such officers whenever in those persons' judgment it is in the best interest of the church to do so.

C. Property Acquisition and Financing

1. Due Diligence in Choosing Property

A church should use great care in choosing property that it acquires for its facilities. Property that has existing improvements can have associated dangers related to the condition of the property, as discussed further in Part II.B. In addition, real property can have environmental liability associated with it, for which a church can become legally responsible simply by

acquiring the property. Such environmental liability can include asbestos contained in existing structures, or underground environmental contamination. A church should use environmental and other consultants to perform due diligence with respect to the condition of any real property prior to its acquisition by the church (see checklist in [Appendix 17](#)).

Note: In construction or remodeling activity, it is recommended that the church consult with the Church Architecture office of the Baptist General Convention of Texas for issues related to codes and ordinances compliance. Such items would include Life Safety and Handicap Accessibility compliance.

2. Capacity in Signing Documents

Historically, churches conducted property transactions through the election of trustees. As addressed above, this was the result of an unincorporated church not being recognized as a legal entity and thus lacking the capacity to hold property in its name. Under the provisions of the BOC, both unincorporated and incorporated nonprofits may hold property in the name of the entity. In that instance, under corporate law, officers of the church can be authorized to carry out the functions of the corporation concerning its property matters. Many churches have carried on the practice of utilizing trustees even after incorporation. This procedure is acceptable as long as the bylaws or church resolutions specify the authority of these members who act as trustees. In a church operated under a congregational system, the members have the authority to determine when and under what circumstances the church purchases or sells its property. In these decisions, the members should identify the individuals who will carry out such actions and specify the scope of their authority and the capacity in which they are acting (e.g., as a trustee or other similar capacity).

Although unincorporated associations are recognized as separate legal entities from their members, individual members of an unincorporated church should take care in signing documents on behalf of the church. In today's economic world, where significant debts are being incurred and members are signing promissory notes or contracts to support such transactions, the individual members may assume more personal liability than they care to risk, particularly as the law related to unincorporated associations is less developed. Even if a church is incorporated, the church members who carry out the actions of the church should only perform those functions that they are specifically authorized to do within the scope of their capacity. These members should clearly indicate that they are acting in the capacity for which they were appointed (e.g., trustee or other similar capacity) on the relevant documents. Members who act as agents for an incorporated church, and who clearly identify themselves only as agents and not as principals involved in the transaction, should not be subject to individual liability for the contractual obligations of the church. A sample signature block for a church representative that can be used for an incorporated church or adapted for use in an unincorporated church is included in [Appendix 4](#).

3. Liability of Sponsoring Churches

Traditionally, Baptist churches have participated in the start of missions and church plants by sponsoring the missions and church plants. Typically, when a church sponsors a mission, the mission is treated as part of the church, and unless express provision is made otherwise, the members of the mission are treated as members of the church. Thus, until the mission constitutes as a separate church, the mission is not legally in a different position than a Sunday school class or any other group of the church. The church may be legally responsible for the obligations of the mission that could arise out of contract or tortious action. A church in this situation should ensure that it has appropriate levels of insurance for this exposure and that it appropriately trains the leadership of the mission/church plant with respect to operating procedures and policies.

4. Continued Liability upon Assumption of Debt by Another Church

An assumption of indebtedness may occur in transactions between a church and the mission or church plant it has sponsored. A sponsoring church may create or guarantee debts for its mission before the mission constitutes a separate church. In transactions where a sponsoring church purchases real property in its own name for the operation of its mission, it normally does so by incurring acquisition debt related to the purchase. At the time the mission constitutes a separate church, the sponsoring church normally transfers title to the property to the new church, and the new church assumes the indebtedness related to the acquisition of the property.

An assumption of indebtedness may also occur when a church sells its physical facility to another entity, most often another church, in order to move to a new location that may be larger or more attractive to the selling church. In this instance, the purchasing church may ask to assume the indebtedness related to the real property of the selling church rather than obtaining new financing for the property.

In most circumstances, if the lender of the indebtedness allows the purchasing church to assume the obligation, the lender will not release the selling church from the indebtedness. Therefore, the lender now has two different parties that it can look to for the payment of the debt. The lender may look to either entity and can demand full payment of the debt from the selling church notwithstanding the assumption of the debt by the purchasing church. This continuing obligation of the selling church on the indebtedness lasts until the indebtedness is paid, which can be a significant amount of time. In the event the property changes hands multiple times (i.e., the property is sold by the purchasing church to another church entity), if the indebtedness is assumed by the new entity and is not paid off at the time of the second sale, the original selling church remains liable to the lender. Thus, situations may arise where the present property owner has no previous connection to the selling church that remains liable on the debt. As real estate transactions and construction activities become larger and involve significant sums of money, this continuing contingent liability of the selling church should be recognized.

In order to terminate the obligation of the selling church on the indebtedness, with respect to any sale contemplated by the selling church, whether it is to a mission it has sponsored or to another church entity, the purchasing church could be required to obtain new financing and to pay off the existing debt of the selling church. The selling church should specifically request the note to be marked "canceled" or to otherwise receive a release of the selling church from the indebtedness at the time of the sale. This prevents the selling church from being legally obligated on the new financing of the purchasing church.

5. Restrictions Placed on Gifts of Property

A church sometimes receives property by gift from a donor that is restricted either by purpose or by time. The gift may be given outright during the donor's life, given in a will or testamentary trust after the donor's death, or conveyed to the church by some other means. When a church receives a gift of property, whether real or personal, the church should ascertain whether the donor has placed such a restriction on the gift. Acceptance of the gift by the church makes the restriction enforceable. Further, the donor may additionally provide that if the church violates the stated restriction, the gift to the church is automatically revoked and the property passes to another entity or individual. Therefore, it is imperative that the church ascertain whether a restriction has been placed on any gift received and document the restriction.

Gift restrictions can arise when the donor expressly places them on a gift, as in the example above. Gift restrictions can also arise when the church solicits gifts or donations for a

particular cause or purpose. For example, funds raised during a building campaign that are solicited specifically for the construction of a new sanctuary are restricted gifts and must be used for that purpose if the donors designate that the gifts are only to be used for that purpose. In this example, the church would be obligated to use the funds to construct a new sanctuary. This highlights the care a church should take in its solicitations to allow the church flexibility. In this instance, the church should make clear how it will handle excess donations to the fund.

The church should not accept restricted gifts that do not further the church's purposes and ministries. For example, a donor may attempt to restrict a gift in such a way that the donor or another person identified by the donor is directly benefited by the gift. In this situation, the church is being used as a conduit to benefit private individuals. If the church's purposes and ministries are not being furthered, then the church should not participate by accepting such a gift. Likewise, a church should be careful not to allow restricted gifts to thwart the budgeting process of the church. To accomplish this, the church should consider a policy identifying the circumstances under which the church will accept restricted gifts.

The church may not violate a restriction placed on a gift by using the gift for a purpose inconsistent with the restriction unless the restriction is properly released. A director voting to do so would be in breach of his or her fiduciary duty of obedience. The manner in which a restriction is properly released depends on the gift and its particular restriction. The church may be required to obtain the written consent of the donor who created the restriction and/or the beneficiaries, if any, who will benefit from the gift if the restriction is violated. If the donor is deceased and there are no beneficiaries, then the church may be required to obtain court approval in order to avoid the restriction, upon proper proof that the purposes of the gift would be frustrated if the restriction is enforced due to facts that were not anticipated at the time the restriction was placed on the gift and, therefore, the intentions of the donor would be best served by modifying or avoiding the restriction. In any event, the church should avoid using restricted funds in a manner inconsistent with the restrictions without first seeking legal counsel.

D. Insurance

Churches should review their ministries and determine the types and amounts of insurance coverage needed. This not only provides protection under the terms of the policies but is also required for purposes of coming within the provisions of the Texas Charitable Liability and Immunity Act discussed at Section II.G. While the appropriate coverages are beyond the scope of this handbook and an insurance professional should be consulted, set out below are common coverages for churches.

1. Property

Property insurance provides insurance protection for losses related to the real property and contents owned by the church. For example, property coverage on the church building and contents would protect against fire, hail storm, tornado, and other loss. It could even insure against vandalism and theft. It is very important for a church to review its policies to determine the types of risks for which the church is insured.

a) Amount of Coverage

The normal property insurance policy provides coverage, limited to the total amount of coverage purchased, to pay the fair market value of the property at the time of the loss, or in the case of partial destruction, the reasonable cost to repair, less depreciation. It is important to review the amount of coverage from time to time to ensure that the coverage will be sufficient to replace the insured property, due to increasing construction costs.

b) Replacement Coverage

It is recommended that the church pay for an endorsement to its property coverage to provide for “replacement value” coverage. This endorsement provides that the insurance carrier will pay for the replacement value of the property, up to the total amount of coverage purchased, which is damaged or lost (i.e., the cost to repair the property, excluding depreciation).

2. Liability

Liability coverage is available to protect the church against claims made by third parties, including members or employees, for personal injury or property damage. Because claims generally relate to different activities and different conduct, a church should review the different types of liability coverage it has to ensure that there are no gaps that leave the church unprotected for particular activities. The amount of insurance coverage (or policy limits) for liability policies should be determined for each church based upon its needs, but should be at least in the amounts prescribed by Chapter 84 of the Texas Civil Practice and Remedies Code (see Part II.G.2.c).

a) General Liability

General liability coverage insures the church against the majority of claims that can be made against the church resulting from personal injuries or property damage. General liability policies specifically exclude liability for certain activities, such as those that would be covered by the insurance discussed below. General liability coverage also excludes coverage for personal injury or property damage that is expected or intended by the acts of the insured (see Part II.A.1.e).

b) Automobile

Automobile liability coverage provides liability protection to the church for vehicles owned by the church. Texas law requires minimum levels of coverage, but it is recommended that the church maintain higher levels of coverage than the minimum required by Texas law.

c) Hired and Non-Owned Automobile Coverage

This insurance provides liability coverage for vehicles that are not owned by the church but are being used in a church activity. Members of churches commonly use their own vehicles on church business, which makes this coverage important.

d) Directors, Officers, and Trustees

This liability coverage provides protection to the church and the individuals involved if the persons who serve in leadership roles make decisions that cause harm to a third party.

e) Counseling

Liability coverage for counseling helps to protect the church in the event that a third party makes a claim for “negligent counseling” by a member of the church staff.

f) Sexual Misconduct

This coverage provides protection to the church in the event that a claim is brought by a third party for the sexual misconduct of an employee or agent of the church.

g) Special Events

Special insurance can be purchased for those activities that involve higher than normal risk. This additional insurance covers only the duration of the event and is less expensive than a per annum rate.

3. Workers' Compensation Insurance

A church's general liability insurance policy will not cover personal injury claims of employees of the church suffered during the scope of their employment. In other words, if a paid employee of the church is injured while engaged in a church activity, the church is not protected under its general liability policy and is therefore not covered on the claim.

Protection for this type of claim is provided by a workers' compensation policy with respect to the paid employees of a church. It should be noted that Texas does not require an employer to carry workers' compensation insurance, but the church should give serious consideration as to whether such coverage would be prudent.

4. Employee Dishonesty Insurance

This policy provides coverage for the dishonest acts of persons defined in the policy, such as the treasurer or other money handlers.

5. Employment Practices Liability Insurance

This policy provides coverage for claims against the church that arise out of the employment relationship including claims such as discrimination, harassment, and wrongful discharge.

E. Church Policies and Records

The church should adopt and implement policies and procedures that provide consistency in its operation. By following reasonable policies, the church will greatly reduce the chances of church liability for claims based upon theories of liability described in Part II below. Church policies are also important in the area of governance as transparency of all tax-exempt organizations is increasingly a focus of state and federal oversight. Checklists for some of the policies that a church may choose to adopt are provided in Appendices 18 through 22.

An effective recordkeeping system adopted and maintained by the church will help to protect it in the event of a lawsuit, audit, or property loss and will assist in the daily running of church business. A checklist of records that the church should maintain on file is included in [Appendix 16](#).

F. Affiliated Ministries

Churches sponsor a variety of ministries. In some instances the ministries grow to a significant enough size that the ministry has the ability to be self-sustaining. An example might be a school sponsored by the church. Other times the ministry may be of such complexity or pose such significant liability that the church determines the ministry should be legally separate from the church. An example might be a counseling ministry of the church.

In making a determination to separately incorporate a ministry of the church, the decision makers of the church should consider three broad categories: (1) liability concerns; (2) tax law; and (3) management. Each of these three categories should be given due consideration with the positives and negatives of each being balanced. In addition, the cost to separately incorporate (and where necessary, apply for exemption from the federal income tax) must be taken into consideration. In the event the church chooses not to incorporate the ministry, the church should recognize it continues to have governance and operational responsibility for the ministry and act accordingly, including ensuring appropriate insurance coverage for operations of the ministry.

II. Church Liability for Personal Injury and Property Damage Claims

A. Negligence Claims

1. Defined

A tort, or the commission of tortious conduct, involves the violation of a duty imposed under the law on the actor, which causes injury to another. The most basic of the duties imposed under the law are those that require each person to act as a reasonably prudent person with regard to the safety and rights of others surrounding the actor. Torts involve both intentional conduct on the part of the actor as well as conduct that is described as negligent. Negligent conduct does not require the actor to have an intent to injure, but rather consists of action that is done with less care than a reasonably prudent person would use in the same activity. In other words, an activity done without the proper degree of care is considered negligent.

Churches engage in many activities that require those involved on behalf of the church to exercise a certain degree of care towards those who participate in the activities. For example, the church must provide a reasonably safe facility to its invitees, it must maintain its vehicles in a reasonably safe manner so as not to cause injury, and it must supervise its activities in a reasonable manner so as not to allow harm or injury to fall upon the participants. Failure of the church's agents to meet this degree of care would be considered negligent. Thus, the legal definition of negligence is the failure to use the required degree of care (that is, failing to act as a reasonably prudent person would act under the same or similar circumstances for the protection of those around him or her), which proximately causes an injury or property damage to another.

a) Direct

Direct liability involves the liability that the actor personally has for his conduct to the plaintiff.

b) Vicarious

Vicarious liability involves the liability that another person or entity has for the actions of the actor under the law (i.e., indirect legal liability). A church cannot engage in any activity without the participation of its agents or employees. Therefore, the church acts through them. A volunteer may become directly liable to a third party if the volunteer acts within the scope of his or her authority with regard to a particular activity, and through the volunteer's negligence, causes injury or property damage to another. The church may also be responsible to the third party *vicariously* because the law considers the church to be legally responsible for the activity of its agents or employees when they act within the scope of their authority granted by the church. Because the church's vicarious liability is limited to instances in which the negligent actor is acting within the scope of his authority, it is important that the church be clear in communicating (and where applicable, limiting) the scope of its agents' authority.

c) Examples

Example one: If the church youth group is performing a dramatic presentation and during a rehearsal the youth minister for the church drops a piece of mechanical equipment onto a youth while moving the equipment, causing the youth injury, the youth minister would be liable if a court determined that he was negligent (i.e. that he failed to exercise the degree of care a reasonably prudent person would have

exercised in moving the equipment). If the youth minister is negligent, the church could be vicariously liable if the youth minister was acting within the scope of his duties.

Example two: The building committee of the church assumes responsibility for cleaning the walkways of the church in the event of icy weather. The committee attempts to clean ice away from one of the entry doors but fails to make it safe and fails to post warnings at that door or take other action to mitigate the risk. A member of the church slips on the ice and injures herself. Church members who served on the building committee may be personally liable under this example. If liable, their liability would be due to their own negligence. The church could be vicariously liable based upon the liability of the committee members. Note that charitable immunity will be discussed at Section G.

In these examples, if the actor is found to be directly liable because of his or her own negligence, and if the church is indirectly or vicariously liable because its agent was acting within the scope of his duties when the negligent act was committed, then both the actor and the church are jointly and severally liable to the plaintiff for damages proximately caused by the actor's negligence. This means that the church could be forced to pay all of the damages to the plaintiff if the actor was financially unable to do so.

d) Good Faith

Good faith is not a defense to negligence. Negligence is the failure to act as a reasonably prudent person would act in the same or similar circumstances that proximately caused damages to a third party. Thus, negligence involves a degree of carelessness; it is irrelevant that the actor did not intend the result. The actor can have good intent (i.e., lack of intent to bring about the result) and still be negligent if he or she fails to act as a reasonably prudent person would act in the same or similar circumstances. For example, consider a youth leader on a church ski trip taking new skiers on a run intended for expert skiers. The fact that the youth leader had good intentions of showing them a beautiful site or of challenging their fears is not a relevant consideration when determining whether an injury resulted from the youth leader's failure to exercise reasonable care.

e) Distinction from Intentional Acts

Unlike negligence, liability for intentional torts requires that the actor intended the conduct which is the basis of the tort (e.g., intentional offensive contact or intentional infliction of emotional distress). Lack of intent can therefore be a defense to claims of intentionally tortious conduct. An example of an intentional tort is a physical assault by one person on another.

2. Negligent Counseling (Clergy Malpractice)

Negligent counseling refers to claims brought by individuals who have received counseling or ministering, often in private sessions, with the ministerial staff of the church. Claims usually involve assertions that the ministerial staff improperly advised or counseled such individuals. Claims could also involve the assertion of lack of training or expertise of the staff member in handling a particular problem of someone being counseled.

a) State Regulation - Licensing

Texas requires professional counselors to be licensed, unless the counseling activity involves a religious practitioner performing counseling consistent with the law of the

state, their training, and any code of ethics of their profession, so long as they do not hold themselves out as being “licensed.”

b) Counseling v. Ministering

Churches should use care in recognizing the limitations of their unlicensed staff with regard to expertise in particular areas of counseling, and not attempt to deal with personal or family problems that are beyond the scope of the training or expertise of their staff. Texas courts have refused to recognize a cause of action for clergy malpractice.

c) Confidentiality of Communications and Records

Communications made to the church’s ministerial staff as well as to licensed counselors who perform counseling on behalf of the church are confidential if they were not intended for further disclosure except to other persons present in furtherance of the purpose of the communication. The person making the communication has the privilege to refuse to disclose, and to prevent the ministerial staff member or licensed counselor from disclosing, the confidential information (see Part II.C.4 for further discussion of the clergy privilege). In addition, the records of the identity, diagnosis, evaluation, or treatment of a person who receives counseling are also confidential. The disclosure to third parties of information or records related to counseling without the consent of the person who received the counseling can result in liability for the church and the ministerial staff member or counselor, unless disclosure was otherwise permitted by law (see Part II.F regarding public disclosure of private facts).

3. Negligent Hiring/Appointment

Because the church’s vicarious liability results when an agent or employee, including any volunteer, engages in tortious conduct while acting within the scope of his or her authority, it usually can be stated that when the agent or employee acts outside of the scope of his or her authority, the vicarious liability of the church does not extend to that activity. For example, a church may be vicariously liable when a church volunteer acting within his or her authority carries out his or her duties in a negligent fashion, even if the volunteer acted in good faith. However, if the church can demonstrate that the agent was not acting within the scope of his authority, the church would not have vicarious liability.

However, a second source of liability to the church exists in this case. This involves the church’s potential direct liability in the negligent hiring of an individual that the church knew or reasonably should have known was prone to commit such acts. The church must show it acted as a reasonably prudent person would have acted in the same or similar circumstances (e.g. hiring an employee). Thus, where the church’s vicarious or indirect liability ends, its own negligence can give rise to liability if it has not performed due diligence in its hiring and supervising practices of its agents and employees. Negligent hiring can apply not only to employees, but also to any agent of the church, even a volunteer. The church is charged with the duty under law of using volunteers, agents, and employees that will act in a reasonably prudent manner. If the church is aware or if it should be aware of facts that point to the propensity of its volunteer, agent, or employee to commit such torts, especially involving intentional torts, then the church has been negligent in appointing these actors to carry out the activities of the church.

Because the church cannot predict with certainty which persons in fact will commit acts that cause injury or damage to others, an objective of preventing such occurrences in every case would be unrealistic. Thus, the objective of the church in this area must be to undertake such steps to demonstrate that it has exercised due diligence with respect to the hiring and/or appointment of its employees and volunteers. Ultimately, if the church is sued for an

action by an employee or volunteer, which was outside the scope of that individual's scope of authority, then the church must show that it acted in a reasonably prudent manner with respect to the decision-making process of hiring or appointing the individual as an agent. Samples of documents that a church may use in order to ensure that it performs due diligence in this process are included in Appendices 5, 6, 7, 9, 10, 11, and 12.

4. Negligent Retention

Even if a church has acted prudently in the decision-making process of hiring or appointing an individual as its employee or agent, the church has a continuing responsibility with respect to its agent. If the church gains information that would show that it would not be reasonably prudent for the church to continue to have that individual act as the church's employee or agent, then the church has the responsibility to dismiss that individual or remove him or her from the position for which the individual is unfit. If the church retains an employee or agent after the church learns that the individual is not someone the church should have acting on its behalf, then the church would be negligent for allowing the individual to continue in that position. If the individual commits a tortious act consistent with the negative information the church has learned, then the church could be liable for having retained or left that individual in a position in which the individual could commit the act.

For example, if the church performs a diligent investigation of an individual who has asked to be a volunteer in the nursery of the church, and the church has found no indication that the person would be unfit for that position, then the church has acted properly in appointing that person as its agent for that purpose. However, if the church later learns that the person had a history of child molestation incidents, which were not uncovered during the initial background check, then the church would be negligent for allowing the individual to continue to work in the nursery, and the church would likely be legally responsible to the victims of any child molestation committed by that individual while working in the nursery.

5. Hazardous Activities

Church groups often engage in fellowship activities that involve some type of recreation. Because some forms of recreation are extremely dangerous, care should be taken to limit those activities (e.g., a church rodeo, a church tackle football game, etc.). Other activities that are not considered unreasonably hazardous under ordinary circumstances could become hazardous if there is inadequate supervision or uncommon circumstances (e.g., a church snow skiing trip that involves traveling on icy or extra hazardous roadways due to a storm). Therefore, the church should take steps to ensure proper supervision and otherwise limit the risk when such circumstances are anticipated.

6. Inadequate or Negligent Supervision

Any activity can become riskier without the proper supervision. This can happen in the church nursery, the church baptistery, or on the church volleyball court or softball field. The church can be liable for injuries occurring during activities when it is shown that the injuries could have been avoided with adequate supervision. Adequate supervision includes both the ratio of adults to children as well as the training of those supervising the activity.

7. Waivers of Liability

Churches, schools, youth associations, and other entities often use written forms containing waivers of liability to discourage claims resulting from injuries. While there may be some benefit to these forms in discouraging claims and in making the participants aware of certain risks involved in the activity, waivers of liability are often not effective to release the sponsor of the activity from being responsible and potentially liable for negligent or other tortious conduct that causes injury.

The age of the participant of the activity is significant in determining the effectiveness of such forms. Forms signed voluntarily by competent adults expressly acknowledging risk in the activity can be useful to limit the organization's liability. For such a form to be effective, the individual's intent that the organization be released for its own future negligence must be expressed in unambiguous terms within the four corners of the release and the releasing language must be conspicuous (e.g. contrasting type or all caps). Such forms do not, however, operate in the same manner with respect to minors for the reason that minors are not legally competent to contract, and parents of minors cannot contract away causes of action their children may have based on the negligence of another. Churches may choose to have a child's parents or legal guardians sign forms consenting to the child's participation in the activity, certifying that the child is able to participate, and listing emergency contact information as well as health conditions of the child. Ultimately, it should be remembered that adequate supervision is the most important and most effective way to avoid liability arising from potentially hazardous activities.

B. Premises Liability

While the general rule is that one must exercise reasonable care with respect to his or her activities to prevent unreasonable risk to others, different rules apply with respect to the ownership or lease of property. The fact that one owns or leases a piece of property does not fall within the category of an "activity." Therefore, the risk of injury to third parties related to those parties' use of the premises is dealt with under a separate analysis.

1. Concealed Dangerous Conditions

An owner or lessee of property has a duty to warn his invited guests of conditions of property that are concealed or not obvious to the invitees, and that cause the invitees to be exposed to the dangerous condition. An example would be knowledge of the presence of friable asbestos in a building.

2. Attractive Nuisances

When a landowner/lessee is aware that children will be on the premises who are of such an age that they will not appreciate a danger, even if the danger is open and obvious, the owner/lessee has the duty to protect against that risk. For example, if the church builds a swimming pool, the church should know that the pool attracts children of a young age who may not be able to swim, and therefore should properly safeguard against that risk by building a childproof fence around the pool.

3. Reasonable Care

With regard to activities on the premises, the landowner/lessee must always use reasonable care. Failure to use reasonable care could subject the church to liability for a negligence claim by someone who participates in an activity on or otherwise uses the church's property.

4. Inspections

a) Duty to Inspect

The landowner/lessee has a duty to conduct reasonable inspections to discover dangerous conditions on the property and to render them safe, or, if they cannot be rendered safe, to post appropriate notices.

b) Time Period to Inspect

There is no absolute or arbitrary time frame for a landowner/lessee to inspect its property. The test is one of reasonableness; that is, when would it have been reasonable for the

landowner/lessee to have inspected the property and discovered the dangerous condition if the landowner/lessee had acted as a reasonably prudent person under the same or similar circumstances.

For example, if during a storm a tree causes damage to an electrical outlet, thereby rendering electric wires exposed, the landowner/lessee would not normally be liable to someone who is injured prior to the time that the landowner/lessee should have discovered the dangerous condition and rendered the condition safe.

c) Liability for What a Reasonable Inspection Would Discover

A landowner/lessee must anticipate the invitees who will enter the property and perform reasonable inspections to render the property safe for those invitees. If a reasonable inspection would not uncover a dangerous condition, then the landowner/lessee would not be liable under the doctrine of premises liability. On the other hand, if a reasonable inspection would have uncovered a condition, the landowner/lessee has the responsibility to discover and render that condition safe as soon as reasonably possible after the time that a reasonable inspection should have been performed. For example, if a church is aware that children play on its playground equipment each Sunday morning, then the playground should be inspected each week before children are allowed on the equipment. If a reasonable inspection would have detected any unsafe playground equipment, then the equipment should be rendered safe before children are allowed to play on it further.

C. Child Abuse/Neglect

1. Defined - Chapter 261 of the Texas Family Code

Section 261.001 of the Texas Family Code provides a list of acts or omissions by a parent or other person towards a child including child abuse and neglect. Generally, child abuse is described as including acts or omissions which cause or permit: (a) mental or emotional injury to a child; (b) causing or permitting a child to be in a situation in which the child sustains a mental or emotional injury; (c) physical injury or a threat of physical injury to a child; (d) the failure to make reasonable efforts to prevent action by another person that results in physical injury to a child; (e) sexual conduct harmful to a child's mental, emotional, or physical welfare or the failure to make reasonable efforts to prevent sexual conduct with or in the presence of a child; or (f) causing, expressly permitting, engaging in, or allowing the photographing or filming of a child if the person knew or should have known the result would be obscene or pornographic; (g) causing, expressly permitting, or encouraging a child to use a controlled substance; (h) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked; or (i) forcing or coercing a child to enter into marriage.

Neglect is described as including: (a) leaving a child in a situation where the child would be exposed to a substantial risk of harm; (b) requiring a child to use judgment to take actions beyond the child's level of maturity, physical condition, or mental abilities; (c) the failure to obtain medical care for a child; (d) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or the health of a child; (e) placing a child in or failing to remove a child from a situation in which the child would be exposed to abuse; (f) failure by a person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for necessary care for the child after the child has been absent from the home for any reason, including having been in a residential placement or having run away; or (g) a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including the failure to comply with an individual treatment plan, plan of care, or individual service plan, that causes or may cause substantial emotional harm or physical injury to, or the death of, a child served by the facility or program.

The lists above are not a complete recitation of Chapter 261 which includes further detail on conduct that constitutes abuse and neglect. The legislature updates Chapter 261 from time to time, and it is important that churches review the chapter to ensure they are aware of the general definitions. The chapter can be found online at <https://statutes.capitol.texas.gov/Docs/FA/htm/FA.261.htm>.

2. Duty to Report

Section 261.101 of the Texas Family Code requires that any person who learns of or has cause to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect by any person is required to report that belief to a local or state law enforcement agency or the Texas Department of Family and Protective Services (state hotline available 24 hours per day 365 days per year: 1-800-252-5400 or, absent certain exceptions including emergency situations, serious injury, and injury to a child under age five (5), online at <https://www.txabusehotline.org/Login/Default.aspx>). An oral report must be made immediately upon learning of the abuse or neglect or the likelihood of abuse or neglect. Neither Chapter 261 of the Family Code nor Texas case law defines "immediately" in this context. Based on Texas case law, it appears courts allow some leeway (days—not weeks or months). The reports must be non-accusatory, meaning that the identity of the victim of the abuse or neglect must be identified, but that the reporter is not required to speculate as to the person who committed the abuse or neglect. It should be emphasized that the duty to report is very broad. Any time that a person has knowledge of or cause to believe that abuse or neglect has been or is likely to be committed, that person has a duty to report. The duty to report terminates once the child reaches age eighteen (18).

Under the Texas Family Code, a professional who has cause to believe that a child has been abused or neglected must make a report within 48 hours that the professional first suspects such abuse or neglect. Tex. Fam. Code. Ann. § 261.001. A professional is defined broadly and specifically includes day-care employees. Importantly, § 261.110 of the Texas Family Code prohibits retaliation by an employer against a professional who in good faith makes a report.

3. Immunity

Any person who reports or assists in the investigation of a report of child abuse or neglect is immune from liability, civil or criminal, that might otherwise be incurred or imposed. Tex. Fam. Code. Ann. § 261.106. Immunity extends to participation in any judicial proceeding resulting from the report. This means that a person who reports child abuse and is later sued by any of the parties, including the parents of the child or the accused perpetrator of the crime, can defend himself or herself on the basis that his or her actions are absolutely protected by this immunity statute and that the reporter should not be liable for damages related to the reporting. This does not mean, however, that the reporter cannot be sued and be required to defend himself against the suit even though the defense is ultimately successful.

4. Clergy Privilege: Rule 505 of the Texas Rules of Evidence

Rule 505 of the Texas Rules of Evidence provides that communications between clergy and any individual consulting with him or her for the purpose of seeking spiritual advice in the clergy's professional capacity is considered privileged, and the person making the communication has a privilege to refuse to disclose and prevent the clergy member from disclosing the confidential communication. Because the privilege belongs to the communicant, the minister violates the communicant's rights if he discloses an otherwise privileged communication.

However, under an express exception to this rule, the clergy member's privilege disappears in the event that he or she learns of child abuse or neglect. The clergy is required to report

the information to authorities under the child abuse reporting statute. Tex. Fam. Code Ann. § 261.101(c). Because of this exception to the clergy privilege, it is recommended that when any clergy member is engaged in communications with an individual seeking spiritual advice, the clergy member should advise the individual (preferably in writing) that suspicion of child abuse and/or neglect are non-privileged matters that must be reported to the authorities by law. Any time an individual during a counseling session discloses an instance of abuse, the clergy's warning should be renewed verbally, so that the communicant has no expectation of privacy with respect to the matter, and will be less likely to sue the church or the clergy member for allowing the communicant to make statements to the clergy member that the clergy member is then required by law to report to authorities.

5. Criminal/Civil Liability for Failure to Report

A person failing to report child abuse or neglect commits a Class A misdemeanor, except that the offense is a state jail felony if it is shown on trial of the offense that the child was a person with an intellectual disability living in a state supported living center, the IFC_IID component of the Rio Grande State Center, or a facility licensed under Chapter 252 of the Health and Safety Code, and the actor knew that the child had suffered serious bodily injury as a result of the abuse or neglect. In the event a professional fails to report, the penalty is a Class A misdemeanor unless the trial shows the failure was due to an intent by the professional to conceal the abuse or neglect in which event the penalty is a state jail felony. Tex. Fam. Code Ann. § 261.109. To date, Texas courts have declined to impose a standard of negligence per se (i.e., negligence simply by failing to satisfy the criminal standard), though failure to report could nevertheless be evidence of negligence in a civil claim against the church and its agent if the agent of the church learns about an instance of child abuse or neglect and fails to take steps that a person of ordinary prudence would take in such situation. The potential civil liability in this instance is so great that it could easily bankrupt a church if a matter that should have been reported by law goes unreported.

6. Child Abuse Prevention Policy

Churches should take seriously their responsibility to prevent child sexual abuse, the leading reason churches were taken to court in several recent years (www.ChurchLawandTax.com, July 2017). A Child Abuse Prevention Policy checklist is included in [Appendix 8](#) for a church's use in adopting a policy to deal with this issue.

D. Sexual Misconduct

Sexual misconduct claims include all crimes involving sexual conduct under the Texas Penal Code, such as indecent exposure, indecency with a child, and sexual assault, including rape. Such claims also include conduct that may not violate a penal statute but is still sexually oriented, such as sexual harassment and sexual suggestion. If this conduct is committed by agents of the church, then claims are often made against both the actor and the church.

Churches are generally not vicariously liable for the intentional torts (including intentional sexual misconduct) of their employees and agents, even if those torts are committed within the scope of the authority given to those employees and agents. It could easily be argued that it would never be in the scope of authority of an agent of the church to commit sexual misconduct. However, if the claim can be characterized as negligent conduct instead of intentional conduct on the part of the church's agent, then a victim could argue that the church's agent acted within the scope of the agent's authority, and vicarious liability could attach to the church. Second, the theory involving negligent hiring or appointment could apply to cause liability to the church (see Part II.A.3 above). Third, the theory involving negligent retention of an employee or agent could apply to cause liability to the church (Part II.A.4 above). Fourth, the church may be liable pursuant to a state statute (Chapter 81 of the Texas Civil Practice and Remedies Code, entitled "Sexual Exploitation By Mental Health Services Provider"), as described below.

1. Sexual Exploitation Cause of Action

Chapter 81 of the Texas Civil Practice and Remedies Code establishes a statutory cause of action that can apply to members of the clergy, their employers, and possibly even religious denominations. The statute creates a statutory cause of action against mental health services providers. The term “mental health services providers” is defined broadly and includes members of the clergy. “Mental health services” is defined clinically and includes the following: counseling in a professional relationship to assist an individual or group in alleviating mental or emotional symptoms or conditions or disorders, including alcohol or drug addiction; understanding conscious or subconscious motivations; resolving emotional, attitudinal, or relationship conflicts; or modifying feelings, attitudes, or behaviors that interfere with effective emotional, social, or intellectual functioning. Religious, moral, and spiritual counseling, teaching, and instruction provided by a member of the clergy do not come within the definition of “mental health services.” However, whether this exclusion applies will be a fact question to be determined by the trier-of-fact based on the evidence.

A member of the clergy who provides “mental health services” is liable to a patient (an individual who seeks or obtains mental health services from a clergy member) or former patient for damages for sexual exploitation if the patient or former patient suffers, directly or indirectly, a physical, mental, or emotional injury. The cause of action requires the injury result from sexual contact between the patient or former patient and the mental health services provider; sexual exploitation (a pattern, practice, or scheme of conduct which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person) of the patient or former patient by the mental health services provider; or therapeutic deception of the patient or former patient by the mental health services provider.

“Therapeutic deception” means a representation by the clergy member that sexual contact with, or sexual exploitation by, the clergy member is consistent with, or part of, a patient’s or former patient’s treatment. It is not a defense to this cause of action that the consent of the patient or former patient was given, that the conduct was outside the therapy or treatment sessions of the patient or former patient, or that the conduct occurred off the premises regularly used by the clergy member for the therapy or treatment sessions of the patient or former patient (i.e., the church premises).

Further, the statute requires that mental health service providers (including clergy members) must report to the prosecuting attorney in the county in which the alleged sexual exploitation occurred, and any state licensing board having responsibility for another mental health services provider’s licensing, any conduct that the reporting mental health service provider has reasonable cause to suspect has occurred involving the sexual exploitation of a patient by another mental health services provider. This duty to report includes making a report when a patient alleges sexual exploitation by a mental health service provider during the course of treatment. The report is due no later than thirty days after the date in which the clergy member became aware of the conduct. Before making the report, the reporter must inform the alleged victim of the duty to report and determine whether the alleged victim wishes to remain anonymous. The alleged victim’s identity may not be disclosed unless the alleged victim has consented in writing to the disclosure. A person who makes a report under the statute receives limited immunity against liability resulting from the reporting of another’s conduct under the statute. Failure to make a report is a Class C misdemeanor.

2. Employers Liability for Sexual Exploitation

An employer of a mental health service provider (i.e., the church where the mental health service provider is a clergy member) is liable to a patient or former patient if the patient or former patient has a cause of action as described above against the mental health service provider, if the employer:

- (a) Failed to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the mental health service provider as a mental health service provider within the last five years of that date, concerning the possible occurrence of sexual exploitation; or
- (b) Knows or has reason to know that the employee engaged in sexual exploitation, and the employer failed to report the suspected sexual exploitation as required by law or take necessary action to prevent or stop the sexual exploitation; or
- (c) If the employer knows of the occurrence of sexual exploitation by an employee or former employee and receives a specific request by a future employer or prospective employer concerning the possible existence or nature of sexual exploitation committed by the employee, and the employer fails to disclose the occurrence of the sexual exploitation, provided that this failure is a proximate and actual cause of damages to a patient.

The employer also has the duty to report an occurrence of sexual exploitation any time that the employer has reasonable cause to suspect an instance of sexual exploitation. The report must be made no later than thirty days after the date the employer became aware of the occurrence.

3. Denomination Liability for Sexual Exploitation

The statute makes reference to an extension of liability beyond the local church if the patient proves that officers and employees of the religious denomination in question at the regional, state, or national level: (a) knew or should have known of the occurrences of sexual exploitation; (b) received reports of such occurrences and failed to take necessary action to prevent or stop such sexual exploitation, if such failure was a proximate and actual cause of damages; or (c) knew or should have known of the clergy member's propensity to engage in sexual exploitation. Currently, there is no denominational database of sexual offenders and no denominational oversight over ministerial housing in the Southern Baptist Convention or the Baptist General Convention of Texas.

4. Defenses

Pursuant to the terms of the statute, it is not a defense that the sexual exploitation (a) occurred with the consent of the patient or former patient; (b) occurred outside the therapy or treatment sessions of the patient or former patient; or (c) occurred away from the counseling premises.

It is a defense to a sexual exploitation cause of action brought by a former patient that the mental health services provider terminated mental health services with the former patient more than two years before the alleged sexual exploitation began and the person bringing the claim was not emotionally dependent on the mental health service provider when the alleged sexual exploitation began. A person is considered "not emotionally dependent" under the statute if the nature of the person's emotional condition and the nature of the treatment provided are not such that the mental health services provider knows or has reason to believe that the patient or former patient is unable to withhold consent to the sexual exploitation. This of course requires a factual inquiry.

E. Libel and Slander

The church can be held liable for statements made by agents of the church within the scope of their authority.

1. Defined

Libel and slander are forms of tortious conduct called defamation. Defamation consists of a false statement about the plaintiff, “published” to a third party, that damages the reputation of the plaintiff, under circumstances that the defendant is at fault in making the defamatory statement. If the act of “publishing” the false statement involves a recorded statement, such as in written or video form, then the defamation constitutes libel, whereas if it is spoken without a record being made, then it is slander. To be at fault with respect to the defamatory statement, the defendant must act with malice (i.e., knowledge that a statement was false or made with reckless disregard as to its truth or falsity) if the subject of the statement is a public official or public figure, and the defendant must be negligent in ascertaining the truth or falsity if the subject of the statement is any other person.

2. Truth is a Defense - Burden of Proof

Truth is an absolute defense to a defamation claim. In other words, the statement must be false in order for one to be liable for a defamatory statement. However, the defendant has the burden to prove that the statement is true. This burden is sometimes difficult for a defendant to meet.

F. Invasion of Privacy - Public Disclosure of Private Facts

Invasion of privacy by the publication or public disclosure of private information about a person that a reasonable person of ordinary sensibilities would object to having made public is actionable.

1. Truth is No Defense

That the statements are true is not a defense to a claim for invasion of privacy caused by disclosing private facts. For example, if during ministerial counseling the pastor learned information about a member of the church that would constitute child abuse, even though the pastor has a duty to disclose the child abuse to the appropriate government authority and would have absolute immunity for having done so, the pastor would not have the right to publish this information to others, due to the clergy privilege that attached to the communication. Thus, the fact that such private facts are true would not be a defense to invasion of privacy if those facts are disclosed to the public.

2. Consent is a Defense

That the plaintiff (i.e. the person whose privacy was invaded) consented to the publication of the information is a defense to a claim of invasion of privacy. Thus, if a pastor was told something by a church member during ministerial counseling, and the member consented to the pastor announcing the fact to the congregation as a whole or to some other church group, then the member’s consent would prevent the publication from being an invasion of privacy.

3. Qualified Immunity

Chapter 103 of the Texas Labor Code provides immunity for an employer who discloses information about a current or former employee’s job performance to a prospective employer of the current or former employee on the request of the prospective employer or the employee. Other than certain instances related to licensed nurses, an employer who discloses information about a current or former employee is immune from civil liability for that disclosure or any damages proximately caused by that disclosure unless the complaining party is able to prove by clear and convincing evidence that at the time the disclosure was made the employer knew the information disclosed was false or made the disclosure with malice or reckless disregard for the truth or falsity of the information

disclosed. It should be noted that nothing in Chapter 103 of the Texas Labor Code requires an employer to provide an employment reference about a current or former employee.

G. Immunities in Personal Injury and Property Damage Claims

1. No Common Law Charitable Immunity

Historically, a doctrine in Texas law held that charities were immune from liability for the negligent acts of their servants, for which those charities would incur vicarious liability without the immunity. For example, if a church's agent acted negligently within the scope of the agent's responsibilities, under the doctrine of charitable immunity the church would not have been vicariously liable for the acts of the agent.

However, in 1971, the Texas Supreme Court abrogated the doctrine of charitable immunity with respect to causes of action alleging vicarious liability. Therefore, since that date, charitable organizations have been subject to vicarious liability for negligent acts of their agents taken within the agent's scope of authority.

2. Chapter 84 of the Texas Civil Practice and Remedies Code

a) Definition of a Charitable Organization

In response to the growing increase in liability against entities carrying out charitable purposes, the Texas legislature passed the Charitable Immunity and Liability Act of 1987 (the "Act"), codified in Chapter 84 of the Texas Civil Practice and Remedies Code. One of the stated purposes of the statute is to remedy the unwillingness of volunteers to serve in organizations due to their perception of the risk of personal liability related to those services.

The threshold issue to qualify for the protection afforded by the Act is whether the organization is a "charitable organization" as that term is defined therein. Section 84.003 defines charitable organization as follows:

1. "Charitable organization" means:

- (a) any organization exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by being listed as an exempt organization in Section 501(c)(3) [...] of the code, if it is a corporation, foundation, community chest, church, or fund organized and operated exclusively for charitable, religious, [...] or educational purposes [...];
- (b) any bona fide charitable, religious, [...] or educational organization [...] or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, and that:
 - (i) is organized and operated exclusively for one or more of the above purposes;
 - (ii) does not engage in activities which in themselves are not in furtherance of the purpose or purposes;

- (iii) does not directly or indirectly participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office;
- (iv) dedicates its assets to achieving the stated purpose or purposes of the organization;
- (v) does not allow any part of its net assets on dissolution of the organization to inure to the benefit of any group, shareholder, or individual; and
- (vi) normally receives more than one-third of its support in any year from private or public gifts, grants, contributions, or membership fees.

To be described in Section 501(c)(3) of the Code, an organization must be organized and operated exclusively (which the Treasury Regulations define as “primarily”) for certain exempt purposes (including charitable and religious), must not allow its net assets to inure to the benefit of shareholders or other insiders (though reasonable compensation is allowed), must not be an action organization (by means of substantial lobbying or political campaign intervention), and must not be organized for a purpose that violates public policy. To be organized for exempt purposes, the purpose of the organization in its governing documents must be appropriately exempt (such as charitable, religious, or educational) and the organization must pledge that on its discontinuance its assets will pass to another Section 501(c)(3) organization or a local, state or federal government. To be operated for exempt purposes, the organization’s activities must be primarily in pursuit of its exempt purposes as identified in its governing documents.

While an organization meeting the elements set out above is described under Section 501(c)(3) of the Code, to be entitled to exemption from federal income tax and to be able to accept deductible donations, it is generally required that an organization apply to the Internal Revenue Service on Form 1023, Application for Recognition of Exemption, and receive a determination letter from the Service in response. Thereafter the organization will be listed by the Service in its Exempt Organizations Business Master File (“BMF”). Exceptions to the filing requirement are made for churches, associations of churches, integrated auxiliaries of churches, and organizations that normally receive less than \$5000 per year in gross revenues. These organizations, though exempt from federal income tax and able to accept deductible donations are not included in the BMF unless they take the extra step of applying on Form 1023. However, the Service has a process for what it terms a “group exemption” whereby an organization may apply on behalf of itself and its subordinates. Once the group exemption is recognized, the group exemption holder and its subordinates are recognized as exempt under Section 501(c)(3) of the Code. The group exemption holder is responsible for maintaining the list of subordinates and updating it with the IRS annually. In the event a member of the group needs to establish its status, it may obtain certification of this status from the group exemption holder along with a copy of the group exemption letter.

Section 84.003(B) was included to address organizations that do not file Form 1023 to be listed in the BMF or would not be eligible to file Form 1023 on the basis that they are not charitable but rather are organizations such as homeowners associations or chambers of commerce. Rather than being listed in the BMF, the organization must be a “bona fide” charitable, religious, or other defined type of organization “organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community” and satisfying certain other standards as quoted above.

Once it has been determined that an entity falls within the definition of a charitable organization under the Act, the volunteers and employees of the organization, as well as the organization itself, enjoy the immunities described below. However, charitable organizations and their employees and volunteers are still well-advised to confirm that adequate liability insurance coverage exists with respect to their activities.

b) Volunteer Immunity

A volunteer is a person who renders services for or on behalf of a charitable organization but who does not receive compensation in excess of reimbursement for expenses incurred. "Volunteer" includes a person serving in the capacity of a director, officer, trustee, or direct service volunteer.

A volunteer of a charitable organization is immune from civil liability for any act or omission resulting in death, damage, or injury if the volunteer was acting in the course and scope of the volunteer's duties or functions, including as an officer, director, or trustee within the organization.

All volunteers, without regard to the type of service they provide to the charitable organization, are liable for death, damage or injury to a person or a person's property that is proximately caused by an act or omission arising from the operation or use of any motor driven equipment, including an airplane or boat, to the extent of insurance coverage required by Texas law, or, if greater, any existing insurance coverage applicable to the act or omission. Thus, a volunteer who acts within the scope and course of his or her duties is not liable other than to the extent of liability insurance that he or she is required to have under Texas law or that he or she actually has in place. This is intended to make available any liability insurance coverage for the injured individual, without subjecting the volunteer to additional out-of-pocket exposure.

c) Employee and Organizational Immunity

An employee is defined as any person, including an officer or director, who is in the paid service of a charitable organization (regardless of the level of compensation), but this definition does not include an independent contractor. A non-hospital charitable organization and employees of such an organization enjoy limited immunity only if the charitable organization has certain amounts of liability insurance coverage in place for the act or omission of the organization, its employees, and its volunteers. The minimum amounts are as follows: (1) \$500,000 for each person; (ii) \$1,000,000 for each single occurrence for death or bodily injury; and (iii) \$100,000 for each single occurrence for injury to or destruction of property. These amounts must be provided under a contract of insurance or other plan of insurance authorized by statute and may be satisfied by the purchase of a \$1,000,000 bodily injury and property damage combined single limit policy. The employee and the non-hospital charitable organization enjoy immunity for any liability in excess of those amounts. For the limited immunity to apply, the employee of a non-hospital charitable organization must act in the course and scope of the person's employment at the time of the act or omission resulting in death, damage, or injury.

The purpose of this limited immunity is to allow liability to remain to the extent of the amount of liability insurance coverage the legislature has decided would be prudent for the charitable organization to have in place to cover itself and its employees and volunteers, without causing the charitable organization or the employee to pay any out-of-pocket amounts with respect to such liability. The Act provides that the insurance coverage must apply to any act or omission to which the Act applies. Accordingly, it is reasonable to assume that for the limitations provided under the Act

to apply, the charitable organization must have the requisite amounts of insurance to cover the subject liability. In other words, a church should review its activities and, working with its insurer, seek to have appropriate coverage in terms of both amount and scope.

d) Exceptions

The Act does not apply to any act or omission that is intentional, willfully negligent, or done with conscious indifference or reckless disregard for the safety of others (more extreme than ordinary negligence). With respect to this standard, Texas courts have analogized to the standard of gross negligence. Texas Civil Practice & Remedies Code Section 41.001(11) defines gross negligence as follows:

“Gross negligence” means an act or omission: (A) which when viewed objectively from the standpoint of the actor at the time of the occurrence involves an extreme degree of risk, considering the probability and the magnitude of the potential harm to others; and (B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.”

The Act also does not limit or modify the duties or liabilities of the leaders of an organization to the organization itself or to its members and shareholders. Other exceptions exist that are generally not applicable to churches.

3. Federal Volunteer Protection Act

Federal law also provides limited immunity for volunteers of charitable organizations. The Volunteer Protection Act of 1997 provides civil liability protection for nonprofit or government volunteers if: (i) the volunteer was acting within the scope of his/her responsibility at the time of the alleged act or omission; (ii) the volunteer was properly licensed, certified or authorized to engage in the activity or practice (if required by the state in which the damage occurred) and those activities were within the scope of the volunteer’s responsibility; (iii) the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct or a “conscious, flagrant indifference” to the rights or safety of the individual harmed by the volunteer; (iv) the harm was not caused by the operation of a motor vehicle, vessel, or aircraft for which an operator’s license or insurance is required by the state; and (v) the volunteer either receives no compensation other than reimbursement or expenses, or does not receive anything of value in lieu of compensation in excess of \$500 per year. As can be seen, the federal law does not greatly expand the broad protection already afforded to volunteers in Texas.

III. Decision Makers: Liability and Protection

A. Complaints Against Decision Makers

Two categories of persons make decisions in a church. There are those who make decisions on their own behalf and those who make decisions on behalf of others. The first category of persons, those who make decisions on their own behalf and not as a representative of someone else, do not serve in a fiduciary relationship. Therefore, they do not have the legal obligations imposed on fiduciaries and generally are not legally liable for their decisions, unless they participate in a decision or action that is negligent or intentionally tortious (see Part II. A.). A member who has voting rights in an incorporated member-led church is an example of a decision maker who is not serving in a fiduciary capacity. The second category of persons includes those who serve as representatives for the church and for the members as a whole acting with the power delegated to them by the church to act in such capacity. These individuals have a fiduciary duty with respect to their decisions made as representatives because they are making decisions on behalf of others. A reference below to decision makers pertains to this second category of persons.

Decision makers have a duty to the church and its members to exercise sound, independent judgment when making decisions and to make decisions that are in the best interest of those represented. Decision makers are charged with fiduciary duties of care, loyalty, and obedience discussed in Part I. They are accountable to the church and those persons represented for the decisions made and the consequences resulting from those decisions.

The groups that may bring a cause of action against a decision maker include: (i) the church, (ii) the church members, (iii) the Attorney General for the State of Texas, and (iv) tort claimants. These groups are said to have “standing,” that is a legal relationship with the decision maker deemed sufficient under the law to allow a suit to be brought.

The church and/or its members may bring an action against a decision maker based on an alleged breach of the decision maker’s duties. The Attorney General is the representative of the public interest in charity and is charged with ensuring charitable assets are used for charitable purposes. The Attorney General has broad authority to carry out that duty emanating from the Texas Constitution, common law, and various Texas statutes. If an individual suffers personal injury or property damage that was caused by or resulted from a negligent decision made by a decision maker for the church, that individual (a tort claimant) may bring a cause of action against the decision maker as well as against the church.

A decision maker is not responsible for actions taken prior to his taking office, unless the decision maker subsequently ratifies the previous action after he/she begins to serve. A decision maker is responsible for actions taken while he/she is serving.

B. Theories of Liability

An individual asserting a claim for liability against a decision maker may do so under the following theories: 1) breach of duty of care and/or breach of duty of loyalty, 2) tort, 3) contract, 4) exceeding authority, 5) violation of trust terms, 6) violation of securities law, 7) willful failure to withhold taxes, or 8) loans to directors.

1. Duties of Care, Loyalty, and Obedience

Part I.B.3.e discussed the fiduciary duties of care, loyalty, obedience owed by directors. Whether an individual serves as a director, elder, pastor, or in some other office (including as a member of a committee acting with board- or church-delegated authority), if the person is considered to be a decision maker, the person is going to owe the three primary fiduciary duties. If a decision maker breaches the duty of care, the duty of loyalty, or the duty of obedience, the church or its members as a class (in addition to the Texas Attorney General)

may file a lawsuit against the decision maker. In the lawsuit, the church or the members may seek injunctive relief to reverse or prevent a decision maker's decision and/or action if feasible, and may also seek damages resulting from any breach of duty.

2. Tort Claims

Tort claims include those involving negligence, premises liability, intentional torts, defamation and invasion of privacy. These claims are discussed in Part II. The victims asserting these claims are entitled to seek recovery from the persons who participated in the conduct giving rise to the tort claim. Persons who participated in such conduct may include paid employees or volunteers of the church who were involved in the activity, and may also include the decision makers who were responsible for making the decisions related to planning for the safety and protection of those involved in the activity. For example, if a church has had previous notice that instances of child abuse were foreseeable in the church's children's program, the church has a duty to take reasonable steps to prevent child abuse from occurring. If the decision makers who were in charge of making the decisions related to the children's program failed to adopt and implement a reasonable child abuse protection policy, then the family of the victim of a subsequent child abuse occurrence could file suit against the church, the persons participating in the abusive conduct, and the decision makers. The lawsuit may assert that the decision makers were negligent by failing to adopt a reasonable policy that would provide for the safety and welfare of the children, and the victim could seek recovery from the decision makers for damages incurred by the victim as a result of the child abuse.

3. Contract Claims

A decision maker who enters into a contract on behalf of the church can be personally liable on that contract in three ways. First, the decision maker can assume personal liability for the church's contract by executing a personal guaranty, whereby the decision maker voluntarily agrees to guarantee the obligations of the church in the event that the church is unable to meet its obligations under the contract. For example, a bank may require certain individuals from the church to sign a personal guaranty on a church bank loan. In such a case, those individuals may be liable for the loan if the church is unable to pay. Second, the decision maker may execute a contract, intending to do so on behalf of the church, but may later realize that the decision maker failed to reflect his representative capacity (on behalf of the church) when he or she executed the contract and therefore made the contract in his or her individual name. In this case, if the third-party creditor to the contract believed that he or she was doing business with the decision maker individually and not with the church, then the decision maker could be personally liable for the debt. The creditor could therefore insist on the decision maker personally fulfilling the obligations of the contract. Third, the decision maker could exceed his or her authority by entering into a contract without the approval of the church.

4. Exceeding Authority

A decision maker can be legally liable for making decisions that exceed the authority granted by the church. The decision maker could be personally responsible for any obligation arising from such decision if the church fails to ratify the decision, or could be liable for the cost to reverse or remedy the effects of such decision. For example, if a decision maker does not have actual authority under the church's governing documents to enter into a contract to purchase a tract of land, but does so anyway, he or she will be personally responsible for the contractual obligations arising from that transaction if the church elects not to ratify the decision and fulfill the obligations.

5. Violation of Trust Terms

Churches may, and often do, hold assets in trust. Decision makers with authority over such property can be individually liable for violating the terms of the trust with respect to such property. For example, if the church has a retirement plan and the decision maker who is named as trustee of the plan allows plan funds to be used for purposes other than those specified in the plan documents, the decision maker has violated trust terms and is personally liable for the funds used and any other consequences that may arise. Further, a decision maker may incur personal liability for approving church action to use property in a manner that violates a gift restriction placed on the property by the donor (see discussion of gift restrictions in Part I.C.5.).

6. Violation of Securities Law

Federal and state law provide both civil and criminal penalties for individuals who violate certain restrictions related to the issuance, sale, or solicitation to sell “securities” to the public. A security could include bonds or notes issued by a church during a building campaign. These state and federal restrictions generally deal with misrepresentations or failure to provide full disclosure concerning the risk to a member of the public who purchases the security. A decision maker who is faced with voting on whether the church should issue notes or bonds to be offered for sale to the public to raise capital should consult with the church’s legal counsel to ensure the church complies with all securities laws related to the transaction.

7. Willful Failure to Withhold Taxes

The Internal Revenue Code requires an employer who withholds payroll taxes from employee’s paychecks, for both income taxes and social security taxes, to remit such taxes to the Internal Revenue Service, usually through a depository bank. Because these funds were withheld from employee’s paychecks for the federal government, the funds do not belong to the employer, but are held “in trust” by the employer until such time as the employer remits the funds to the federal government. The employer may not use the funds for any other purpose. The Internal Revenue Code imposes liability on decision makers who participate in making a decision to use any part of these funds to pay other obligations of the employer, or for any other purpose, rather than remitting the funds to the federal government. The decision maker’s liability is for the amount of the withheld taxes that the employer failed to remit to the federal government. Such liability is referred to as the 100% penalty assessment.

8. Loans to Directors

Texas law prohibits a nonprofit corporation from loaning money to its directors. Accordingly, if a decision maker votes or assents to the making of a loan to a director, that decision maker will be personally—jointly and severally with all other decision makers who voted or assented to the making of the loan—liable for the amount of the loan, until it is fully repaid.

9. Private Inurement

Included in the definition of an organization exempt under § 501(c)(3) is the requirement that the assets of the organization not inure to the benefit of any person controlling the organization. In other words, assets of the organization must be used for charitable purposes rather than private purposes. This rule is the basis for the prohibition on paying excessive or unreasonable salaries. Private inurement can result in revocation of tax-exempt status. However, private inurement can also result in intermediate sanctions (i.e. an excise tax) being assessed against the person receiving the “excess benefit” along with all decision makers knowingly approving the excess benefit transaction.

10. Religious Decisions

Texas courts generally will not interfere with or judge “religious decisions” made by or on behalf of a church. Decisions that are determined to have been based on the Word of God or grounded in biblical principles are considered to be “religious decisions.” If a church can establish that a particular decision was “religious” or “ecclesiastical” in nature, then courts are reluctant to second guess that decision and prefer not to interfere. This general rule, known as the ecclesiastical abstention doctrine, operates to help eliminate some of the potential claims against decision makers in the church setting. Examples of religious decisions could include the church’s determination to admit or exclude a member or to dismiss a pastor or other ministerial staff member. However, decisions that specifically affect civil, contract, or property rights may be subject to court review in Texas. With respect to contract claims, churches can seek to avoid the courtroom through the use of alternative dispute resolution provisions mandating mediation and/or arbitration.

C. Protection for Decision Makers

1. Charitable Immunity

The Charitable Immunity and Liability Act of 1987 (discussed in Part II.G) provides some protection for decision makers. If a tort claimant has sued a decision maker and asserted the necessary elements of a tort claim to establish liability, the Act should be examined to determine the extent of protection provided to the decision maker with respect to the claim. Generally, if the decision maker is a paid employee of the church, then he or she will receive protection only if the church has liability insurance in the amounts set out in the Act as discussed at Part II.G. Volunteers have protection without regard to the existence or level of liability insurance coverage if they meet the requirements of the statute. However, it is important to recall that the Charitable Immunity and Liability Act excludes liability arising out of duties owed to the organization (e.g. duties of care, loyalty, and obedience) as well as liability arising from acts committed intentionally, willfully, or with conscious indifference or reckless disregard for the safety of others.

2. Indemnification

Texas law allows a church to indemnify a decision maker for costs and liabilities incurred in connection with a lawsuit filed against him or her due to his or her position as a decision maker. The statutory scheme includes both permissive as well as mandatory indemnification while also outlining when indemnification is prohibited. The decision maker must show his qualification for indemnification by meeting the requirements of the applicable provision. Generally, a church may indemnify a decision maker when he or she is sued for mismanagement if the decision maker acted in good faith and reasonably believed his or her actions were in the church’s best interests. When the suit is for criminal conduct, indemnification is permitted if the decision maker had no reasonable cause to believe his or her conduct was unlawful. The mandatory provision requires that the decision maker wholly succeed in the defense of the claim. These indemnification rights can be expanded or restricted by the church. A church cannot indemnify a decision maker for willful or intentional misconduct.

3. Insurance

A church may provide liability insurance coverage that protects its decision makers in many instances. In addition to the various types of liability insurance discussed in Part I.D.2, churches with boards should consider obtaining directors and officers insurance. Providing insurance coverage is important for the church to enlist volunteer decision makers who would not otherwise risk personal liability to serve in such positions. Further, as previously addressed, insurance is also important to obtaining the benefits of the Charitable Immunity and Liability Act.

IV. Employment Law

A. Hiring Practices

The church should develop consistent hiring practices, including a prudent screening process for hiring employees. The church's screening process should include job descriptions, job applications, procedures for checking references and background information, and proper interview procedures. The development of a prudent system assists the church in hiring qualified employees, reducing the risk of negligent hiring, and providing a consistent procedure that can be used even though the persons responsible for the hiring decisions at the church may change.

When developing a screening process for hiring employees, the church should have two primary goals: (1) to create a process by which the church can remove from consideration any applicants against whom there is some evidence of a propensity to commit acts of misconduct, and (2) to create a personnel file for each employee and volunteer to document the due diligence the church undertook into that individual's background prior to the individual beginning to work at the church. Accordingly, every reasonable effort should be made by the church to find out about the applicant's background, education, employment history, community involvement, and criminal history. This information should be documented and retained in that person's personnel file.

1. Job Descriptions

The church should develop an accurate job description for each position of employment that establishes the duties and responsibilities of that position. In addition, the church should develop minimum qualifications for each position. Developing minimum qualifications will help the church to screen applicants so as to avoid interviewing and hiring people who are not qualified. The church is not obligated to interview everyone who inquires about a particular job opening, but should interview those people who meet the minimum job qualifications. It is advisable that the church continue to develop the job description for a position even after it is filled as part of the employee's performance review process.

2. Written Applications

The church should require every applicant to complete a written job application (see Appendices 5, 6, and 9). Requiring each applicant to complete a job application is an important part of the church being able to show that it exercised due diligence in screening its employees prior to hiring them, to determine that the individual is qualified for the job and to ensure that no evidence is present suggesting that the individual has a propensity to commit acts of misconduct. The church should develop a standard job application for use with all applicants. The application should include only those questions that are related to employment and that ascertain information relevant to assisting the church with its hiring decision. The church should not discriminate on the basis of race, color, sex, age, or national origin when making a hiring decision and therefore should not ask questions that obtain such information. An exception to this well-known general rule involves the hiring of clergy, a decision with which courts will not interfere. The church may on the other hand discriminate on the basis of religion, requiring that any employee be of a particular faith or belief though churches are advised to be consistent in their hiring practices in this regard.

The church should only accept applications for positions that the church is in the process of trying to fill. Once a position is filled, the church should not offer to hold anyone's application for future consideration, in the event another position becomes available. Instead, the church should instruct each applicant that if he or she is not chosen for the position, a new application must be submitted for any future position. The church's promise to hold an application and consider it for future employment could result in a claim by the applicant if the church fails to do so. The church should not accept an applicant's resume as a substitute for the church's application. Although an applicant's resume may be reviewed and

held in the personnel file, the church should still require the applicant to complete the church's standard application.

The employee screening process should begin with the job application. It is suggested that the screening process include a criminal background check, particularly on potential employees and volunteers being considered for work related to or involving children or youth (see [Appendix 12](#)). The church should also check personal references and prior work history (see [Appendix 10](#)). Obtaining independent information from sources other than the applicant concerning the applicant's background is significant to show that the church performed due diligence in the hiring process to ascertain whether there was any evidence of a propensity of the applicant to commit acts of misconduct.

3. Criminal Background Checks

A criminal background check may be performed in a number of different ways. Two primary methods are described below. The first method is for the church to use a third-party agency to perform the criminal background check through the district and county clerks' offices of one or more counties specified by the church. This may involve hiring a private investigation agency or using an online service such as Protect My Ministry. The second method is for the church to perform the criminal background check through the Department of Public Safety in Austin, Texas. Each method has its own advantages and disadvantages.

Using a third-party agency offers convenience and thoroughness, though the cost is typically greater. These agencies perform criminal background checks utilizing online databases as well as providing the ability to conduct more thorough searches of specific county records. One advantage of this alternative is that the church may request a search of states in which the person being screened has previously lived. This can be very helpful when the person being screened has moved from a distant location or has moved numerous times over a short time period. When hiring an investigation agency to conduct a criminal background check, the church should (i) specify the geographic area in which it needs the search conducted, (ii) ascertain what the cost will be to search that area, (iii) specify that it wants both misdemeanor and felony records searched, and (iv) ascertain how far back in years the search will cover. Many investigation agencies only search approximately seven years back. As an alternative to using a private investigation agency, churches may wish to consult with their insurance provider to determine whether the insurer will conduct criminal background checks on behalf of the church for a fee. While it is not unlawful to conduct a criminal background check without the permission of the person who is being screened, written or otherwise, it is recommended that a written consent similar to the one included in [Appendix 12](#) be used for any screening process.

The second method is to perform a criminal background check through the Department of Public Safety's records in Austin, Texas. The Department of Public Safety maintains a computerized database of information for every county and state law enforcement agency in the State of Texas called the Computerized Criminal History System (CCH). The CCH is meant to be the statewide repository of criminal history data reported to the Department of Public Safety by local criminal justice agencies in Texas. The CCH is intended to include information on arrests, prosecutions and disposition of cases for persons arrested for Class B misdemeanors or greater. Accordingly, the Department's database should include information respecting all arrests of persons in the State of Texas, whether or not any prosecution related to the arrest was commenced. However, an analysis by the Criminal Justice Policy Council in 2002 estimated that only an approximate 60% of the dispositions in local courts are included in the CCH due to arrests not being reported initially (thereby preventing the disposition from being matched to an arrest) or the court not reporting the disposition. The information received will include the date the offense was committed, the type of offense, and the disposition. Because the data base is statewide, the search is

significantly more comprehensive than a search of the district and county clerks' records for a particular county.

A search of the CCH can be accomplished through the use of fingerprints or other identifying information. The cost for a fingerprint search through the Department of Public Safety is \$15.00 per person. In order to perform a fingerprint search, the church must obtain the written consent of the person being screened on a form similar to [Appendix 12](#). However, Texas has contracted with the Fingerprint Applicant Service of Texas (FAST) to cut out preprinted cards and provide increased efficiency (note there is a \$10 additional charge when utilizing FAST). Generally speaking, the applicant will schedule a fingerprint appointment online or call toll free at (888) 467-2080 to schedule an appointment. The applicant will be scheduled to arrive at a facility near the applicant at an appointed time. The applicant will bring a completed form, driver's license or other valid form of identification, and payment. A technician will scan the applicant's fingerprints, take the applicant's photograph, and submit the applicant's data to the Texas Department of Public Safety. More detailed information regarding the FAST program can be located at the Texas Department of Public Safety website:

https://www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintservices.htm.

As an alternative to the fingerprint search, a search can also be performed online with a cost of just \$3.07 per search credit purchased. The online search can be accessed at <https://records.txdps.state.tx.us/DPSWEBSITE/CriminalHistory/>. This online search is limited to searching by non-fingerprint identification (e.g. name, address, aliases, driver's license number, social security number) and includes criminal history and the sex offender registry. The fingerprint search should thus be more comprehensive.

4. Checking Credit Reports

Some churches choose to check credit histories of potential employees who will be responsible for handling money. Credit reports contain various types of financial information including debts, late payments, bankruptcies, and garnishments. Churches that choose to use a credit report must be aware of the federal Fair Credit Reporting Act (FCRA). If an employer uses a consumer reporting agency or utilizes the database of a third party, the employer must comply with the provisions of the FCRA.

5. Checking References

In addition to conducting a criminal background check, the church should also check a potential volunteer's or employee's personal references and work history. Checking a potential employee's personal references and work history may not always provide the church with helpful information. However, failure to check references may be used against the church as proof that the church negligently hired the employee. Negligent hiring involves hiring someone who the church either knew or should have known would pose a danger to the safety of others. If the church knows information about a particular applicant that would indicate the applicant's propensity to commit acts of misconduct, then the church must not hire that individual. Additionally, the church can be guilty of negligent hiring if the church "should have known" information about a particular applicant that would indicate such propensity. The church is charged with knowledge of information that it would have discovered through reasonable efforts to obtain information about its prospective workers. If the church hires an individual without using a reasonable screening process and the individual later commits an act of misconduct, then the church's liability can be based upon information it knew about the person, as well as information the church should have known, if it was reasonable for the church to have obtained the information (see Part II.A.3).

Prior to checking any reference, the church should obtain the applicant's written consent. Every reference check should be documented in a personnel file, indicating the date of the

conversation, the person with whom the church representative spoke, and the substance of the response.

In checking references for prior employment, the church should attempt to find out from an applicant's prior employer the reason the applicant left the former employment, whether the prior employer would hire the applicant again, and the type of job performance that can be expected from the applicant. Questions asked of prior employers should solicit specific responses that will help the church ascertain whether the applicant will be able to perform the job. Standard reference questions should be developed (see [Appendix 10](#)). For clergy who counsel and would be classified as a mental health service provider (as discussed in Part II.D.1.), the church must make inquiry of employers who employed the applicant in the role of mental health service provider for the previous five years regarding occurrences of sexual exploitation.

Some employers will provide neutral references only (note that this is not permissible with respect to mental health service providers). In this instance, the prior employer will simply state that the applicant had been employed, the dates of employment and separation, and nothing further. If the church receives a neutral reference for an applicant, the church should not assume that any further response about the applicant would have been negative. The church should inquire of the prior employer whether its policy is to provide neutral references only and document the response.

6. Interviews

After an application has been completed and reviewed to confirm that the applicant possesses the minimum qualifications for the particular position, and the background of the potential employee has been checked, the church should then interview the applicant (see [Appendix 11](#)). The interviewers should develop standard interview questions to be supplemented with questions specifically related to the particular applicant. The interviewers should make notes of the interview, the applicant's responses, and specific facts or behaviors indicated by the applicant, all of which should be retained in a personnel file. The church must avoid any questions that are not related to the hiring decision or that could be construed as being discriminatory. However, the interview is an appropriate time to discuss the individual's background, faith, and beliefs, as well as discuss church policies and expectations for the position.

Once the church makes a hiring decision, it should send a letter to each applicant interviewed, either accepting or rejecting the applicant for employment. Letters of rejection need not, and should not, explain why the person's application was rejected. Instead, the church should simply thank the person for applying and state that the position for which the individual applied has been filled.

B. Employment at Will Doctrine

The employment at will doctrine is well-established under Texas law. Under this doctrine, absent any existing contractual limitations agreed to by the parties, an employment agreement, whether written or oral, providing for an indefinite term of service may be terminated at the will of either party with or without cause. For the employment at will doctrine not to apply, the employee must prove that the employer unequivocally indicated a definite intent to be bound not to terminate the employee except under clearly specified circumstances. The employee has the burden to prove that the employment at will doctrine does not apply.

Most church employees are employees at will because they do not have an employment agreement with their employer that limits the rights of either party to terminate the employment relationship. In situations where the employment at will relationship has been supplanted by a contractual agreement between the parties, the parties must abide by their contractual agreement

in terminating the relationship. In other words, both parties must live up to the terms of the contract, including the length of employment and the procedure for terminating the relationship.

The form application for employment which is included as [Appendix 5](#) contemplates employment at will status. If the church wishes to provide for employment at will with its employees, the church should make certain its other documents do not conflict with the employment at will doctrine. Often, employee handbooks, termination procedures and other communications with employees contain provisions that conflict or are inconsistent with the employment at will doctrine. For example, a church desiring to retain its employees on an employment at will basis should not state that its termination procedure will only be for cause, or that its employees will not be terminated as long as they are performing their job adequately. These types of provisions may constitute contractual terms of employment that an employee may seek to enforce. At a minimum, these types of statements provide some argument for the employee in a breach of contract case. In addition, statements that an employee will be paid based upon a salary stated in terms of annual amount may imply to the employee that there is a term of employment of at least one year. Thus, salaries should be stated in terms of pay periods, such as monthly, bi-monthly, weekly, or hourly amounts where employment at will is desired.

In situations where the employment relationship is an employment at will relationship, either party has a right to terminate the relationship at any time, with or without cause. However, Texas courts have limited this doctrine to prohibit employers from discharging an employee based on the employee's refusal to perform an illegal act which could subject the employee to criminal penalties. Certain federal and state statutes may also limit the employment at will doctrine, such as those that protect against discrimination based upon race, color, religion (noting the exceptions discussed herein), disability, sex, age, national origin, or retaliation for filing a discrimination charge, for filing a workers' compensation claim, for serving on a jury, or complying with a valid subpoena. Employees are also protected from discharge while attending political conventions, or while engaged in active military service.

C. Maintaining the Relationship

1. Job Expectations

During the hiring process, the church should have communicated to the potential employee the church's expectations for job performance by providing the employee with a written job description. The church should review those job descriptions at least annually with the employee to ensure expectations are being met.

2. Written Performance Reviews

During employment, the church should regularly review the employee's performance and provide the employee with written job performance reviews so that both the employee and the employer can measure the performance and progress of the employee in his position. Job performance reviews enable both the employer and employee to determine whether the employee's performance meets the employer's expectations. These reviews also assist the employer in identifying the type of training and education that its employees may need in order to make them capable of performing their jobs.

3. Training and Education

After an employee has been hired, and throughout the employee's tenure, the church should continue to provide training and educational opportunities for the employee to be sure the employee understands job expectations, understands the policies and procedures of the church, understands any applicable laws or regulations the employee may face in performing his or her job responsibilities, and is effectively equipped to carry out his or her job responsibilities. Memorialization of ongoing training and education should be maintained in the employee's personnel file.

D. Disciplinary Policy and Employee Termination

1. Termination, Employee at Will

When an employer determines that an employee has the skills necessary to perform the job, but is still not meeting the employer's expectations, or the employee has been unable to develop the necessary skills, the employment at will doctrine allows the employer to terminate the employee with or without cause. However, most employers desire initially to try to rehabilitate the employee or correct job deficiencies prior to termination. Employers usually institute progressive disciplinary procedures as a method to accomplish this.

2. Progressive Disciplinary Policy (Performance Issues)

If the church desires to develop a progressive disciplinary policy, it should implement a policy consisting of the following steps of employee discipline. First, the employer should give the employee an oral warning. The oral warning should state the task or level of performance expected of the employee, a review of the employee's performance including the manner in which the performance failed to meet the employer's expectations, the steps the employer expects the employee to take to correct his performance, a deadline for correcting performance, and the consequences that the employee should expect if performance is not corrected. Second, if the employee continues to perform at a less than satisfactory level, then the employer should then give the employee a written warning. The written warning should set forth the same information included in the oral warning and warn the employee that his job is in jeopardy if the deficient performance continues. Third, if the minimum specified level of improvement is not attained, the employer should then terminate the employee.

When the church gives the employee an oral warning, the church should document in the employee's personnel file the date, time, and place of the warning; those who were present; and the content of the warning and response. A copy of the written warning should also be kept in the employee's personnel file, as well as the letter to the employee communicating his or her termination of employment.

3. Suspension and Immediate Termination (Misconduct Issues)

The progressive disciplinary policy discussed above for performance issues is not appropriate for issues of serious misconduct. Where a worker has been accused of serious misconduct, the church should suspend the worker immediately pending the investigation. If the worker is a paid employee, the church should, depending upon the circumstances, consider the initial suspension to be with pay. The church should investigate the allegation of misconduct thoroughly and, if confirmed, immediately terminate the worker for cause. If probable cause for the allegations of misconduct exists and the investigation is lengthy, the church may choose to suspend the worker without pay. If the worker is shown to be innocent, the church may reinstate the worker. However, if evidence is inconclusive, the church should consider changing the worker's position, the job duties of the worker, or in some other way remove the worker from the situation giving rise to the allegations. The church may wish to consult with its legal counsel to make this determination.

4. Termination/Exit Interview

A terminated employee should be given an exit interview. If the termination is for cause pursuant to the church's progressive disciplinary policy, the church should note that. Further, the church should explain the effect the termination will have on the employee's insurance and other benefits. The date, time, place, name of employee, name of person conducting the exit interview, and content of the discussions should be documented and placed in the employee's personnel file.

5. Severance Packages

Churches, like other employers, may make the decision to offer a severance package upon the termination of an employee's employment. There is no legal impediment to such arrangement as long as the compensation is reasonable for past services rendered. A nonprofit corporation which is exempt from federal income tax as an organization described under § 501(c)(3) of the Internal Revenue Code is prohibited from paying unreasonable or excessive compensation to employees whether present or former. Therefore, such a severance arrangement would not be allowed if it was designed to pay unreasonably high amounts to such persons. However, when the arrangement is based upon prior service and is reasonable based upon historical salaries, length of service, prior performance and loyalties of the persons involved, the arrangement is permissible under both federal and state law. The church should seek professional counsel in the event of questions. Further, there is no legal precedent created by the payment of such packages which would require the church to pay those packages in the future. The exception to this rule would be if certain employees were excluded from receiving such packages because those employees were members of some protected class.

In making an offer of a post-employment compensation package, churches must be mindful of a federal law known as the Older Workers Benefit Protection Act (OWBPA), an amendment to the Age Discrimination in Employment Act. The OWBPA provides that an employer offering a post-employment compensation package to an employee 40 or over must follow certain timelines in making the offer.

E. Providing References

Once an employee has left employment, the church may be asked to give a reference. The church may elect to adopt a no reference policy, a neutral reference policy, or a policy to provide references. A no reference policy is a policy whereby the church refuses to provide any information concerning a previous employee, not even an acknowledgment that the individual had been an employee of the church. A neutral reference policy is a policy whereby the church only provides an acknowledgement that an individual had been an employee of the church and the dates of employment and separation, but the church does not provide any further information.

If the church determines to adopt a policy of providing references, the references should be made by a designated representative of the church and should be strictly factual in nature. Opinions about a former employee should never be communicated. Unsubstantiated information concerning a former employee's employment performance or related matters should never be communicated. For example, if a prior employee was terminated because the church suspected he was stealing although he was never caught, the church should not communicate that information. A prior employee could sue the church and its representatives for defamation if opinion or unsubstantiated information is communicated (see Part II. E.). Because truth is a defense to a defamation suit, however, the church may not avoid being sued but almost certainly can avoid liability if only provable facts are communicated about a prior employee.

The church, as an employer of a clergy member, has a legal obligation to disclose to a prospective employer the occurrence of sexual exploitation by the formerly employed clergy member if the church receives a specific request by a prospective employer for such information (see Part II.D.1 and 2). This obligation exists despite the church having adopted a no reference or neutral reference policy.

F. Federal Law Related to Employment

Most federal laws regulating employment practices apply only to employers engaged in a type of activity, industry or business that affects interstate commerce. This is because Congress has enacted such laws under its constitutional authority to regulate interstate commerce. Commerce includes trade, traffic, communication or transportation of persons or property between or among

states. An activity, industry or business that affects commerce is one that is “in commerce,” or that “burdens or obstructs commerce or the free flow of commerce, or that leads to or tends to lead to a labor dispute that burdens or obstructs commerce or the free flow of commerce.” Whether a church is engaged in an activity, industry or business that affects commerce will depend upon the facts of each case. Because commerce is so broadly defined, churches should generally assume they are covered by these laws absent an opposite conclusion reached after careful analysis.

1. Civil Rights Act of 1964

a) Generally

The Civil Rights Act of 1964 (commonly referred to as Title VII) prohibits employers from discriminating with respect to compensation, terms, conditions, or privileges of employment on the basis of race, color, religion, sex, or national origin, 42 U.S.C. §§ 2000a et seq. Covered employers are those involved in activities that affect interstate commerce and who have 15 or more employees for each work day in each of 20 or more calendar weeks in the current or preceding calendar year. Thus, a church must determine whether it is involved in an activity that affects interstate commerce and whether or not it employs 15 or more persons as provided above, if it faces a discrimination claim by an employee or former employee. Title VII provides an exception for churches and other religious employers with respect to discrimination on the basis of religion. Churches may take into account the religious beliefs of applicants when making employment decisions. For example, a Baptist church may choose to hire only those who are Baptist. It is useful to have a policy statement to this effect to demonstrate consistency and avoid a claim that religion is being used as a pretext for a discriminatory action.

b) Sexual Harassment

Sexual harassment is a specific type of discrimination prohibited by Title VII. The Equal Employment Opportunity Commission defines sexual harassment as follows:

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitute sexual harassment when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

This definition recognizes the two types of conduct that courts have determined to be actionable: 1) quid pro quo harassment and 2) hostile work environment harassment.

Quid pro quo harassment occurs when an employee's supervisor conditions the employee's employment opportunities on submission to the supervisor's unwelcome sexual advances. For example, quid pro quo harassment would include a supervisor refusing to give an employee a raise because of the employee's refusal to submit to the supervisor's sexual propositions. When this type of conduct occurs, the employer is strictly liable, i.e. the church will be liable whether or not the church knew of the misconduct.

Creation of a hostile work environment occurs when an employee's supervisors and/or co-workers create an intimidating, hostile or offensive environment through unwelcome words, actions, innuendos, etc. of a sexual nature. Isolated comments and acts do not ordinarily

create a hostile work environment as the conduct must be severe and pervasive. In addition, the conduct must be severe and pervasive both from a subjective (i.e. through the eyes of the victim) as well as an objective (i.e. through the eyes of the “reasonable person”) standard. For example, an employee might be offended by a crude joke of a sexual nature circulated through the office by email, but if that email is isolated, the church would most likely not be held liable for sexual harassment. However, where the employer’s supervisor has a practice of sending such emails and telling sexual jokes around the office, the employer may well be held liable.

With respect to hostile work environment harassment, employers have an affirmative defense. Assuming the conduct took place, the church may not be liable if it can prove the following two-pronged defense: 1) the church exercised reasonable care to prevent and promptly correct the sexual harassment, and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the church. Generally, an employer proves this defense by showing that it has adopted a policy against sexual harassment along with a complaint procedure, that it communicated this policy to its employees, and that the victim did not follow the complaint procedure policy.

Churches should have a well-drafted and well-communicated policy dealing with sexual harassment. This policy should define the two types of sexual harassment, clearly state that such conduct will not be tolerated, and set forth a complaint procedure that informs employees to whom they should report the harassing conduct (it is often helpful to have two persons to whom the conduct can be reported to avoid a situation where the supervisor to whom the report must be made is the harasser). In addition, church employees must be vigilant in refusing to allow sexual harassment in the workplace by reporting harassment when it occurs as well as by ensuring that investigations of harassment are prompt, thorough, and when warranted, followed by corrective action.

2. Age Discrimination in Employment Act

The Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 et seq., is a federal statute that applies only to employers who engage in activities that affect interstate commerce and who have 20 or more employees. The ADEA prohibits employers from discriminating against applicants and employees 40 years of age or over on the basis of age with respect to hiring, firing, compensation, benefits or terms, conditions, or privileges of employment. For example, employers covered by the statute may not have less favorable compensation packages for its older employees or exclude certain employees from insurance coverage or other benefits because of their age. However, if age is a legitimate occupational qualification that is reasonably necessary to the operation of the employer’s business, then the employer may refuse to consider certain persons for employment on the basis of age without violating the statute. This exception to the ADEA is very narrow and the employer will have the burden of proving that it qualifies for the exception. Accordingly, the employer should only rely on this exception when certain that it applies.

3. Americans with Disabilities Act

The Americans With Disabilities Act, 42 U.S.C. §§ 12101 et seq., applies to employers who engage in activities that affect interstate commerce and have 15 or more employees. The ADA prohibits discrimination against qualified persons who have disabilities in employment decisions. Disabilities include physical or mental impairments that substantially limit a major life activity, such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, learning, breathing, and working. While an employer has the right to employ the best qualified person, the employer cannot discriminate merely on the basis of the disability. If a disabled person applies and is not hired for a job and asserts a claim of discrimination, the employer will have the burden to prove that the non-disabled person who was hired was better qualified to do the job than the disabled applicant, and that the decision was not based upon the disability. The Act includes as discrimination a failure to make reasonable

accommodation for a disabled individual unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

Although the Americans with Disabilities Act also requires certain buildings to be accessible to disabled individuals, churches are expressly exempted from these access requirements. However, local building codes may still apply to the church.

4. Fair Labor Standards Act

The Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 201 et seq., restricts employment of children, establishes a minimum wage for employees, requires overtime pay for certain employees who work in excess of a forty-hour work week, and requires equal pay for equal work regardless of gender. The FLSA requires an employer to pay an employee an amount equal to one and one-half times the employee’s regular pay rate, for every hour, or portion thereof, worked over forty hours per week. The statute does not require employers to pay their employees for vacation, sick time, or severance pay, although an employer may do so by choice.

The FLSA only covers employees, not volunteers or independent contractors, and does not cover exempt employees as defined in the Act. Specifically, the FLSA covers employees who are either (1) engaged directly in commerce or in producing goods for commerce, or (2) employed by an enterprise engaged in commerce or in producing goods for commerce. In order to determine whether an employee of a church is subject to the FLSA, the church must first determine whether the employee is engaged directly in commerce. If the employee is, then the FLSA applies. If the employee is not engaged directly in commerce, then the church must determine whether the church is an “enterprise” engaged in commerce. An enterprise is a commercial or business activity: (1) having annual gross volume of sales not less than \$500,000.00, or (2) engaging in the operation of a preschool, elementary or secondary school, or an institution of higher education (regardless of whether or not such school is public or private or operated for profit or not for profit). If the church is an enterprise engaged in commerce, then the FLSA applies to its employees. Accordingly, an employee of a church that is an enterprise engaged in commerce, whether or not the employee is directly involved in the commercial activity, is covered by the FLSA.

A paid worker cannot be classified as a volunteer and an employee for the same position. For example, if the church hires a janitor and pays him for working 40 hours per week, but does not pay him for working any overtime because he chooses to consider his overtime work as volunteer work and does not expect any overtime compensation, under the FLSA the janitor is still entitled to receive overtime pay. An employee may not “volunteer” his time to perform the same type of services which the individual is employed to perform for the church. If a church employee, without being asked or coerced by the church, desires to volunteer his time in an unrelated area, he may do so. For example, a church administrative assistant for finances may serve as a volunteer in the children’s ministry without such work being subject to overtime compensation, while a children’s ministry assistant could not do the same.

Additionally, the FLSA does not cover independent contractors. The term employee is defined very broadly in the Act and a church cannot avoid paying the minimum wage or overtime due an employee merely by calling the worker an independent contractor.

The FLSA further exempts employees who serve in a bona fide executive, administrative, or professional capacity along with certain computer professionals from the overtime and minimum wage provisions of the Act if certain income and job function tests are met. The income test requires that a worker must earn at least \$455.00 per week (approximately \$24,000.00 per year) to be classified as exempt.

In addition to the exempt classifications based on position and income, a ministerial exemption exempts employees who are ordained, licensed, or commissioned as ministers and employed in a role in which the individual's duties are primarily religious in nature. The income test is irrelevant for those exempt under the ministerial exception.

The FLSA provides a special exemption for employees of certain religious camps and conference centers. The minimum wage and overtime pay requirements of the FLSA do not apply to employees employed by an establishment which is an organized camp or religious or nonprofit education conference center, that (i) does not operate for more than seven months in any calendar year, or (ii) during the preceding calendar year, had average receipts for any six months of such year which were not more than 1/3 of its average receipts for the other six months of the year.

The FLSA requires employers to keep records on each employee, including records that indicate the total hours worked each work day and in each work week, the regular hour pay rate for any week in which overtime is worked, the total overtime pay for each work week, and the total wages paid each pay period.

Churches covered by the FLSA should stay informed as to what the current minimum wage is and keep in mind that the State of Texas may enact minimum wage laws that are different from the federal law.

The FLSA prohibits an employer from paying its employees different rates based upon gender. The Equal Pay Act, which amended the FLSA, requires equal pay for equal work. However, it does not prohibit an employer from paying its employees differing amounts if the difference is based on some factor other than sex.

5. Family and Medical Leave Act of 1993

The Family and Medical Leave Act of 1993 (codified in scattered sections of the *United States Code*) applies to any employer engaged in commerce or any industry or activity affecting commerce that employs 50 or more employees for each work day, within a 75 mile-radius of the "work site," during 20 or more calendar weeks in the current or preceding calendar year. Covered employers must provide up to twelve weeks of unpaid leave per year to eligible employees due to the birth or adoption of a child, placement of a foster child in the employee's home, or a serious health condition of the employee or the employee's child, parent or spouse. To become an eligible employee, the employee must have been employed by the covered employer at least 12 months and have worked at least 1250 hours over the last 12-month period. The employee must provide the employer at least 30 days' notice of the date the leave will begin if the leave is foreseeable, or with notice as soon as practicable if the leave is not foreseeable. Employees are generally entitled to return from leave to the same position or a position equivalent to the one the employee held at the time he or she left. Employees continue to be covered by the group medical insurance of the employer while on leave.

6. Employee Polygraph Protection Act

The Employee Polygraph Protection Act, 29 U.S.C. §§ 2001 et seq., restricts the ability of employers to conduct polygraph tests on potential and current employees. The Act applies to all employers engaged in interstate commerce regardless of the number of employees. Exceptions are very narrow.

7. Occupational Safety and Health Act

The Occupational Safety and Health Act (“OSHA”) (codified in scattered sections of the *United States Code*) was passed to protect workers from unsafe conditions in the workplace. OSHA applies to any employer engaged in a business affecting commerce. OSHA specifically provides that employees who perform or participate in religious services are not covered by the Act. Accordingly, a number of a church’s employees may not be covered. On the other hand, a person employed by the church to perform a secular service or activity is covered. For example, maintenance and administrative personnel would be covered by OSHA, and the church would be required under the Act to maintain a safe workplace for these employees.

8. Immigration Reform and Control Act

The Immigration Reform and Control Act of 1986, 8 U.S.C. §§ 1101 et seq., makes it unlawful for an employer to hire any employee without complying with the employment verification rules set out in the Act. The Act prohibits employers from knowingly having, recruiting or referring for a fee a person not authorized to work in the United States, to continue to employ a person who has become unauthorized to work, or using a contract to obtain the labor of an undocumented worker. The prohibition applies only to employees hired after November 6, 1986. The Act requires employers to verify the identity and employment eligibility of potential employees by physically examining documents produced by those seeking employment. The intent of the Act is to prevent the hiring of undocumented workers. The employer must verify that the employee’s documents were properly inspected by completing Form I-9, which is to be partially filled out by the employee and partially by the employer. Employers are required to retain Form I-9 in their records for three years after the date of hire or one year following the employee’s termination, which is longer. Penalties may be imposed on an employer for violating the Act.

G. State Employment Laws

1. Texas Commission on Human Rights Act

The Texas Commission on Human Rights Act created a state agency (the Texas Commission on Human Rights) empowered to remedy employment discrimination. The Commission may bring a civil action against an employer if the commission believes that the respondent engaged in an unlawful employment practice.

2. Texas Payday Law

Other than public employers, all Texas business entities, including churches, are covered by the Texas Payday Law. The Texas Payday Law provides that each employee exempt from the overtime provisions of the federal Fair Labor Standards Act must be paid at least once a month and non-exempt employees must be paid at least twice a month. Pensions and bonuses must also be paid on time as agreed. While semi-monthly pay periods must be as equal in length as possible, an employer is free to designate any payday the employer chooses. However, notices indicating the paydays must be posted in conspicuous places at the church. If an employer fails to designate paydays, paydays will be the first and fifteenth of each month. Texas Payday Law further provides that an absent employee should be paid on another business day as requested by the employee. An employee who has quit must be paid in full at the next regular payday, and an employee who is terminated must be paid in full within six days. Wages may be paid by electronic funds transfer, negotiable check, or cash unless the employee agrees in writing to payment in another form. An employer who employs an employee with the intent to avoid payment of wages owed to the employee commits a third-degree felony if such employer withholds those wages after demand. Other administrative penalties may also apply.

3. Wage Garnishment

An employee's wages can only be garnished in Texas for court ordered child support payments or for default on student loans. Any other withholding must be for a lawful purpose and must be authorized in writing by the employee. The authorization must be specific to be given effect.

4. The Texas Workers' Compensation Act

Churches that have at least four employees are subject to The Texas Workers' Compensation Act, Tex. Lab. Code Ann. §§ 401.001 et seq. The amount of compensation for illnesses or injuries incurred on the job to which an employee is entitled varies depending on the severity of the injury or illness. If the church elects to have workers' compensation insurance coverage, then the employee is entitled to receive benefits in the amount provided by the Act for injury or illness incurred during the course of employment. The rights provided to the employees under the Act are the employees' exclusive remedy. By the employer providing such coverage for its employees, the employees waive all causes of action against the employer. If the employer elects not to provide workers' compensation insurance coverage, then the employer is subject to the claims of its employees for their illnesses or injuries. Additionally, in these cases, the employer may not rely upon affirmative defenses otherwise available to defendants in personal injury cases. Therefore, most employers elect to purchase workers' compensation insurance.

5. New Hire Reporting

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (42 U.S.C. § 653a) (federal) and the New Hires Act (Texas Family Code §§ 234.101-234.104) (at the state level) requires that Texas employers report all new hires and rehired employees within 20 calendar days of hire. In the event the employer makes new hire reports electronically, these reports must be submitted at least twice each month with each report being within 12 to 16 calendar days of the prior report. A knowing failure to submit these reports results in a penalty of \$25 per unreported employee and potentially a penalty of \$500 for conspiring with a newly-hired employee to make such report. The report is made to the Texas Employer New Hire Reporting Operation Center. That agency's toll free number is 1-800-850-6442. The web address is <https://portal.cs.oag.state.tx.us/wps/portal/EmployerHome>. These reports are used primarily to track parents who owe back child support as well as to reduce fraud under various social programs, including unemployment benefits.

6. Other Laws

The sections above address certain Texas employment laws that have general applicability. These are not the only Texas laws that affect employers. More information is available at the Texas Workforce Commission (www.twc.state.tx.us/businesses). The Texas Workforce Commission also has a helpful publication entitled *Especially for Texas Employers* that can be accessed at www.twc.state.tx.us/news/efte/efte.pdf. This resource provides an overview of legal issues for employers in Texas; however, churches should be aware that this resource is not focused on churches or charitable organizations, and thus, some of the rules set out therein may not be applicable.

V. Taxes and Governmental Compliance

A. Ad Valorem Taxes

1. Property Qualifying for Exemption

Article VIII, section 2 of the Texas Constitution allows the state legislature to exempt from taxation certain property owned by religious organizations. The Texas Property Tax Code sets forth the types of property that are exempt from taxation. These types of property include the following:

a) Place of Regular Religious Worship

The real property owned by a church and used as a place of regular religious worship, with respect to that portion of the real property and its contents that are reasonably necessary for engaging in religious worship, may be exempted.

b) Tangible Personal Property

The tangible personal property that is owned by a church and is reasonably necessary for engaging in worship at the church's place of regular religious worship may be exempted.

c) Clergy Residence

The real property and contents owned by the church which are reasonably necessary for use as a clergy residence (limited to not more than one acre of land for each residence), if used exclusively for those individuals whose principal occupation is to serve on the clergy staff of the church, and which produces no revenues for the church, may be exempted.

d) Incomplete Improvement to be Used in Worship When Complete

An incomplete improvement under active construction or other physical preparation and that is designed and intended to be used by the religious organization as a place of regular religious worship when complete, and the land reasonably necessary for the church's use of the improvement as a place of regular religious worship, may be exempted for up to three years during construction. After this time period, the property must then qualify as a place of regular religious worship in order to continue the exemption. An incomplete improvement is under physical preparation if the religious organization has engaged in architectural or engineering work, soil testing, land clearing activities, or site improvement work necessary for the construction of the improvement or has conducted an environmental or land use study relating to the construction of the improvement.

e) Land Held for Expansion

The land that the religious organization owns for the purpose of expansion of the religious organization's place of regular religious worship or construction of a new place of regular religious worship may be subject to exemption. For such land to be exempt, the religious organization must qualify other property, including a portion of the same tract or parcel of land, owned by the organization for an exemption under the provisions of (a) or (d) above and the land must produce no revenue for the religious organization. A tract of land that is contiguous to the tract of land on which the religious organization's place of regular religious worship is located may be exempted under this provision for up to six years. A tract of land that is not contiguous to the tract of land on which the religious organization's place of regular religious worship is located may not be exempted under this provision for

more than three years. A tract of land is considered to be contiguous with another tract of land if the tracts are divided only by a road, railroad track, river, or stream.

f) Property Leased for School Purposes

The real property owned by a religious organization that is leased to another person (or entity) and used by that person for the operation of a school that qualifies as a school under the provisions of the Property Tax Code is eligible for exemption.

2. Procedure to Obtain Exemption

To obtain an exemption, the following must be met:

- a. To qualify as a religious organization for the exemption, the church must have as part of its governing documents the language contained in Part 1.A.3. above.
- b. The qualifying use, ownership or activity, as described above, must exist on January 1 of the applicable year and continue through the date the application is granted by the Appraisal District.
- c. A written application for exemption (available from the local appraisal district) must be filled out, signed and submitted to the Appraisal District between January 1 and April 30 of the applicable year. A copy of the application form is included at [Appendix 25](#).
- d. If the application for exemption is granted, there is no need to refile the application in subsequent years unless specifically requested to do so by the Chief Appraiser of the Appraisal District. If the exemption is denied, the church has the right to protest the denial. There are deadlines for filing and pursuing a protest.

Failure to use the property for an exempt purpose on January 1 of that tax year (e.g., beginning construction of the church improvement after January 1), or failure to file the application by its due date, prevents a church from being entitled to an exemption for that year.

3. Size of the Property

The parsonage exemption applies to only one acre. The acreage surrounding a church is limited to that which is reasonably necessary for the church's use, including the building, parking lot, and open areas where fellowship activities are regularly engaged in, such as areas having picnic tables, softball fields, volleyball courts, etc. Raw land which is not used in regular activities involving individual or group ceremony or meditation, education or fellowship does not qualify.

4. Occasional Secular Uses

The use of exempt property for occasional secular purposes rather than religious worship purposes does not result in loss of the exemption if the primary use of the property is for religious worship and all income from the secular use is devoted exclusively to the maintenance and development of the property as a place of religious worship. It should be noted that the primary use of the church property must be for religious purposes pursuant to the Property Tax Code to prevent a loss of the exemption.

The Texas Supreme Court has held that in the determination of whether the primary use of the church property is for religious purposes, the use of the church property must be examined qualitatively as well as quantitatively. *First Baptist Church of San Antonio v. Bexar County Appraisal Review Bd.*, 833 S.W.2d 108 (Tex. 1992). Thus, the Court has placed less importance on the quantity of the secular use than it has on the church's primary purpose for owning and using the property. In the particular case before the Court, a downtown church's parking lot was

leased to a parking lot rental company during the week. The church had exclusive rights to use a limited number of spaces at all times and all of the parking lot on weeknights and weekends. Because the jury found that the primary use of the parking lots was for religious purposes, the Court held that the property was exempt even though the quantity of the secular use (i.e., rental during weekdays for commercial purposes) was greater than the religious use (i.e., parking for church members).

In the event the church allows a property be used by another party in a way that is consistent and substantial, the church risks its property tax exception. Note that many appraisal districts will split a piece of property for purposes of property tax, making one parcel taxable and another exempt depending on use of the property. To avoid this result, a church should check with counsel to determine if the use by the third party is consistent with the church's property tax exemption. Further, the church should consider limiting use of its property by third parties and particularly exclusive use of any portion of its property by third parties. Note that special rules apply where a church allows its property to be used for educational purposes.

B. IRS Compliance

1. Federal Tax Identification Number

A church that employs and pays compensation to employees for their services must obtain a federal tax identification number from the Internal Revenue Service. To obtain a number, the church must apply to the Internal Revenue Service. Application is made online via the Internal Revenue Service website at www.irs.gov (<https://sa.www4.irs.gov/modiein/individual/index.jsp>). The church will use this identification number on all tax forms it subsequently files with the Internal Revenue Service, including employment tax returns, Forms W-2 for its employees, and correspondence with the Internal Revenue Service.

2. Obtaining and Maintaining Tax-Exempt Status

a) Obtaining Tax-Exempt Status

The tax-exempt status of churches and other religious organizations is governed by § 501(c)(3) of the Internal Revenue Code. Churches are automatically treated as tax-exempt entities without any application being filed with the Internal Revenue Service. Additionally, local Baptist churches should check with their state conventions as to the existence of a group exemption ruling under which they may qualify. For example, in Group Ruling No. 1703 issued to the Baptist General Convention of Texas, dated December 28, 1964, the Internal Revenue Service confirmed that the BGCT, affiliated district associations, and affiliated churches are exempt from federal income taxation under § 501(c)(3) of the Internal Revenue Code. A religious organization that is not a church, a convention or association of churches, or an integrated auxiliary of a church and is not a part of a group ruling must separately apply for recognition of tax-exempt status by filing Form 1023 with the Internal Revenue Service.

b) Operating for Charitable Purposes

To be entitled to recognition as exempt from taxation, an organization must be organized and operated exclusively for one or more of the purposes set forth in § 501(c) of the Internal Revenue Code. Churches meet this test from an operational standpoint by definition of what they do, i.e. churches are religious organizations by nature. However, implicit in the requirement that the organization be operated for an exempt purpose is the requirement that it not be operated for private benefit. In other words, benefits cannot be limited to a defined and unchanging group of persons (i.e. a closed class). Further, the organization must be operated for charitable or public purposes. Within the larger concept of the prohibition on private benefit is the private

inurement doctrine discussed in Part III.B.9. Private inurement (allowing the assets of the organization to be used to inappropriately benefit the decision makers) can result both in excise taxes being levied against the decision makers (intermediate sanctions) as well as revocation of tax-exempt status. As such, it is critical that churches ensure that transactions between the church and persons with substantial influence over the affairs of the church are reasonable and do not provide an excess benefit (e.g. more than reasonable salary, more than fair market value for property being transferred, etc.) to the decision maker.

Private benefit and private inurement can be illustrated in considering the use of church property for non-church purposes. With respect to use of church property by organizations that are recognized as exempt under Section 501(c)(3) of the Code, the church does not need to be concerned about creating private benefit. As a result, the church may allow the property to be used without cost, for market value, or at some other cost. However, where an individual or an entity not exempt under Section 501(c)(3) seeks to use the church's property, the church must charge fair rental value for use of the property to avoid engaging in private benefit. Aside from the concern over private benefit, if the church allows individuals in leadership/decision-making positions to use church property for their personal purposes without paying fair value, the church risks engaging in an excess benefit transaction which can result in excise taxes on the leader/decision-maker as well as those who approved the use as well as potentially (though unlikely absent multiple flagrant violations) loss of the church's tax-exempt status. For example, assume a church allows a for profit caterer owned by a church member to use the church kitchen during the week at no cost. This creates prohibited private benefit. Next assume the owner of the for-profit caterer is the spouse of the senior pastor. This creates private inurement and constitutes an excess benefit transaction. The only "exception" to the rule of requiring fair rental value for use of church property by individuals or non-exempt organizations is use of the property for a purpose that is consistent with the church's exempt purposes. This is not truly an exception because in such instance the property is being used for church purposes, not private purposes. For example, use of the church for a wedding, a funeral, or a Bible study may involve the church property being used by private individuals. Nevertheless, because these individuals are using the property for an activity that furthers the church's charitable and religious purposes, the church is not required to charge fair rental value, though it may choose to do so at its discretion.

c) Unrelated Business Income/Debt-Financed Property Issues

When the church charges a fee for use of its property, the church must consider whether the revenue generated will be subject to the unrelated business income tax. The unrelated business income tax applies where a tax-exempt organization, such as a church, engages in a trade or business that is regularly carried on and not substantially related to the exempt purpose of the organization. There are certain exclusions, one of which includes the receipt of passive income, such as rents. However, if, in addition to providing the property, the church provides substantial services to the third party, passive rents could be converted into taxable income. The church should consult its legal or tax counsel regarding taxability of revenue as a result of the provision of services in conjunction with the rental of real property. Additionally, if the real property is debt-financed (i.e., if the church has a mortgage on the property), the revenue received will be taxable to the extent of the value of the mortgage as compared to the value of the property. This is true even if there are no services provided and is known as the unrelated debt-financed income rule. In addition to these rules, income received from rental of personal property will always be considered unrelated business taxable income.

For example, assume a church rents its worship center to a for-profit organization that is conducting a seminar. If no services are provided and there is no mortgage on the property, the funds received by the church will not be taxable. However, next assume the property is valued at \$1 million and there is a \$500,000 mortgage on the property. In such event, 50% of the revenue received (the amount of the mortgage in comparison to the overall value of the property) would be taxable. Even this rule has an exception whereby revenue escapes the unrelated debt-financed property rule in the event 85% or more of the property is used for the church's exempt purposes. These rules, exclusions, and exceptions are complex and any time a church charges for use of its property, it is well advised to seek advice and guidance from someone with expertise in these rules.

As a cautionary reminder, in addition to concern over the federal tax issues discussed above, a church allowing its real property to be used must be mindful of its property tax exemption as discussed in Section V.A. above.

d) Lobbying Activities

Churches, as § 501(c)(3) public charities are prohibited from engaging in substantial lobbying efforts. Lobbying is defined as an attempt to influence legislation by propaganda or otherwise. Legislation is any action by Congress, by any state legislature, by any local council or similar governing body, or by the public in referendum, initiative, constitutional amendment, or similar procedure. There is no definitive guideline as to what constitutes "substantial" lobbying. Generally, factors to be considered are the cost to the organization, the time spent by the organization, the importance of the lobbying to the organization's mission, and the frequency of the lobbying efforts. While generally organizations described in Section 501(c)(3) may file an election under Section 501(h) to lobby and thereby create a bright line test as to the amount of funds to be spent, Section 501(h) is not available to churches. Accordingly, if a church intends to engage in lobbying, church leaders should take care to investigate the specifics of the rules related to lobbying.

e) Political Activities

In order for a church to be treated as a § 501(c)(3) tax exempt entity and have the contributions of its donors treated as tax deductible by those donors, churches must comply with rules related to political activities. Internal Revenue Service rules prohibit a church from engaging in the following activities: (1) endorsing candidates, (2) making donations to candidates' campaigns, (3) engaging in fund raising on behalf of a candidate, (4) distributing statements supporting or opposing a political candidate, and (5) becoming involved in any other activities that may be beneficial or detrimental to any candidate. However, staff and church members may support any candidate or issue they choose, on an individual basis. Thus, care should be used not to have statements issued from the pulpit, on church letterhead stationery, or in official church publications or communications which would violate these prohibitions. Churches should be aware that this rule, known as the Johnson Amendment, is the subject of legislative discussion.

A church may choose to publicly support ethical or moral issues if that support does not endorse or denounce an individual candidate.

3. Worker Classification

The wrong classification of workers will result in the church either paying more in taxes to the Internal Revenue Service than it is required to pay, or result in the church not paying enough, which subjects the church to liabilities for further taxes, penalties, and interest.

a) The Control Test

The test involving the determination of whether persons providing services to the church are either employees or independent contractors is ultimately based upon “control” by the church over the individual. If control exists, then the individual is an employee. If control does not exist, then the individual is an independent contractor. In this context, “control” refers not only to the results to be accomplished by the individual but also the details and means by which the results are to be accomplished. In other words, an individual is an employee if the church determines not only what must be done, but also how it must be done. Actual direction or control is not necessary as long as the right to control the manner in which the services are performed exists. Examples of church workers who usually should be classified as employees include part-time child care workers, musicians, custodians, foodservice workers, and yard maintenance workers.

If the church only controls or directs the result that the individual is to accomplish, but not the means and methods that are to be used in accomplishing the result, then the individual most likely is an independent contractor. The Internal Revenue Service at one time used a twenty-factor test in order to assist in the determination of the status of a worker as either an employee or independent contractor. More recently, the IRS consolidated the factors into eleven main tests in three groups: behavioral control, financial control, and the type of relationship among the parties. These tests are set forth in [Appendix 13](#). The importance given to the questions raised by these tests varies with each particular situation (i.e., there is no predetermined number of “yes” or “no” answers to these questions that the Service will consider). These questions are a guide but not a formal legal test. The legal test is the existence of the right to direct and control the means and details of the work. More information on determining whether an individual is properly classified as an employee or an independent contractor is available in the Internal Revenue Service’s Publication 15-A, Employer’s Supplemental Tax Guide, available as a free download at www.irs.gov/pub/irs-pdf/p15a.pdf.

b) Independent Contractors

If a worker is classified as an independent contractor, income taxes and social security taxes under the Self-Employment Contributions Act (SECA), I.R.C. §§ 480-482, are paid by the worker. Federal law does not impose an income or a social security tax withholding requirement for independent contractors. After the end of the calendar year, if the aggregate payments to any independent contractor total \$600.00 or more during a calendar year and the independent contractor is not a corporation, then the church must prepare a Form 1099-MISC and provide a copy to the independent contractor on or before January 31 of the following year. The church must also file a copy of all Forms 1099 with the Internal Revenue Service on or before February 28, using a Form 1096 as a transmittal.

c) Non-clergy Employees

The church must withhold income taxes, social security taxes, and Medicare taxes from compensation paid to non-clergy employees. For income tax withholding, the church may use the tables published annually in *Publication 15, Circular E, Employer’s Tax Guide*, by the Internal Revenue Service. The amount of income tax withholding is based upon the marital status and the number of exemptions claimed by the employee on a Form W-4 that the employee must complete, sign, and give to the church on or before the date the first payroll check is given to the employee. For 2017, social security tax withholding is computed at 6.2% of employee compensation up to \$106,800.00 and Medicare tax withholding is computed at 1.45% of all employee compensation.

With respect to the social security and Medicare taxes withheld from the compensation of non-clergy employees, the church is also responsible for paying a matching amount (the employer's share) to the Internal Revenue Service.

During the course of each calendar year, the social security and Medicare taxes and the withheld income taxes are reported quarterly by the church on a Form 941, which is due one month after the end of each calendar quarter. Generally, the church will have to make deposits of social security and Medicare taxes and withheld income taxes before the Form 941 is due. The deposit must include both the church's portion and the employee's portion of the social security and Medicare taxes. Deposits are made to an authorized financial institution or Federal Reserve Bank. Deposits may be made with a Form 8109 (Federal Tax Deposit Coupon) or electronically using the Electronic Federal Tax Payment System (EFTPS). Large church employers who make employment tax deposits of more than \$200,000 during a calendar year are required to use the EFTPS. The church must use this system beginning in the second calendar year after the church paid more than \$200,000 in employment tax deposits. For more information about EFTPS, see www.eftps.gov. Publication 966, available from the Internal Revenue Service (www.irs.gov), also has helpful information about securely paying federal taxes using the EFTPS.

After the end of the calendar year, the church must provide a Form W-2 to each employee on or before January 31. The Form W-2 reflects the gross compensation paid to the employee and the income, social security, and Medicare taxes withheld from the employee's compensation. The church must file copies of all Forms W-2 with the Social Security Administration Data Operations Center on or before February 28, using a Form W-3 as the transmittal document. The various totals reflected on Form W-3 must agree with the comparable amounts reported for the current calendar year on the four quarterly Forms 941.

Churches are not subject to federal unemployment taxes (FUTA taxes) and are generally not subject to the Texas Unemployment Compensation Act.

4. Clergy Employees

Because different rules apply to clergy employees than to non-clergy employees, the church must correctly determine which employees are, in fact, clergy employees. The determination is important because it affects the application of a number of federal tax provisions which will be described later. The factors that a church should use in making a clergy employee determination are as follows:

- a. Is the individual ordained, commissioned or licensed by the religious body according to its rules?
- b. Does the individual conduct religious worship activities of the church?
- c. Does the individual administer the sacraments or ordinances of the church?
- d. Is the individual considered a religious leader of the church?
- e. Does the individual have management level responsibility in the church?

For an individual to be treated as a clergy employee, the person must always meet the first factor (ordained, commissioned, or licensed). The remaining factors require a fact-intensive analysis examining whether the individual is performing the services of a minister.

Cautionary Note: While clergy employees are considered self-employed for social security tax purposes, pastoral staff will almost always be considered W-2 employees for federal tax purposes and not independent contractors. Any church believing that a member of their pastoral staff should be treated as an independent contractor should seek independent tax advice from an attorney or certified public accountant familiar with clergy tax issues.

5. Tax Benefits and Burdens of Clergy

a) Self-Employed for Social Security Purposes

The Internal Revenue Code provides that clergy must be treated as self-employed for social security purposes. Thus, a church must not withhold FICA taxes or Medicare taxes from the wages of a clergy employee. Generally, this means that the clergy employee must pay self-employment tax, which is always double the amount of FICA taxes that non-clergy employees pay.

The clergy's self-employed status for social security purposes does not mean that the clergy is also self-employed for income tax purposes. For income tax purposes, the typical minister of a church is an employee. Thus, the minister will receive an earnings statement (Form W-2) from the church at the end of the year, the same as any other (non-clergy) employee.

Clergy may exempt themselves from payment of the self-employment tax if they are opposed to the acceptance of social security benefits based upon religious beliefs or convictions. It should be noted that the opposition must be to the receipt of all social security benefits (including Medicare benefits) that are attributable to ministerial earnings rather than an opposition to the payment of the self-employment tax. A clergy member who has this conviction and wishes to be exempt from payment of the self-employment tax must file a Form 4361 with the Internal Revenue Service no later than the due date of the income tax return (Form 1040) for the second year that the clergy receives ministerial net earnings from self-employment of \$400 or more. In addition, prior to filing the Form 4361, the clergy employee must notify the church that ordained or licensed him of his religious opposition to the receipt of social security benefits and of his intention to file the Form 4361 before such exemption exists.

b) Income Taxes

Clergy employees are statutorily exempt from any income tax withholding by the church with respect to the clergy employee's ministerial income. Thus, the church need not secure a Form W-4 from a clergy employee. However, the fact that clergy are exempt from income tax withholding does not mean that clergy are exempt from the payment of income taxes. Rather, the clergy employee will usually have to resort to making estimated tax payments on a quarterly basis sufficient to cover the clergy employee's income tax and self-employment tax liability.

Clergy employees have the option to elect voluntary income tax withholding by their church in lieu of making quarterly estimated tax payments. The amount of any voluntary income tax withholding is reflected on the minister's Form W-2 in Block 2. Most clergy employees find the optional withholding method of tax payment much easier to comply with than the quarterly estimate method. However, if the optional withholding is used, the clergy employee must ensure that the amount being withheld by the church is sufficient to cover both the income tax and self-employment tax liability. If the church uses the published income tax withholding tables for computing the withholding tax on its clergy employees, then the clergy employees will usually find that their withholding tax is considerably less than their tax liability for year (on their Form 1040).

c) Housing Allowance

A tax benefit for clergy employees that a church should never overlook involves clergy housing. The church should consider providing some kind of housing to each of its clergy employees. The housing may consist of either church-owned housing (a parsonage) for the clergy employee or a designated housing allowance as part of the clergy employee's compensation. The designation of a housing allowance by the church must be by official action of the church (usually by adopting the church budget containing a line item for housing allowance) in advance of payment.

The designated housing allowance should be sufficient to cover all anticipated housing expenses of the clergy employee (mortgage payments, utilities, insurance and furniture acquisitions, etc.). Even if the church provides a parsonage for a clergy employee, some portion of this compensation should usually be designated as a housing allowance since a church does not typically pay all of a minister's housing expenses.

Neither the fair rental value of a parsonage nor the designated housing allowance (if fully used by the clergy employee) is reportable for income tax purposes by the clergy employee. However, the exclusion is limited to the lesser of the amount officially designated (in advance of payment) as a housing allowance, the fair rental value (including furnishings, utilities, etc.) of the employee's residence, or the actual amount used to provide a home. Further, the housing allowance that is excluded from gross income cannot exceed reasonable pay for services rendered. If any portion of a designated housing allowance is not spent on qualified housing expenses, then the unspent portion is reportable as taxable income on the income tax return. Furthermore, the entire designated housing allowance (or the fair rental value of the parsonage) is reportable for computing the self-employment tax of the clergy employee.

At the time of writing this 4th edition, the constitutionality of the housing allowance is a question being considered by the Seventh Circuit Court of Appeals after a lower court determined it to be in violation of the First Amendment. After ruling in favor of the plaintiffs, the lower court delayed the effectiveness of its ruling to allow the Seventh Circuit to hear the case. Churches should continue to monitor the case of *Gaylor v. Mnuchin* as the Court of Appeals is expected to consider the case in 2018.

d) Clergy Business Expenses

If the church has not adopted an accountable reimbursement plan for reimbursing the business and professional expenses incurred by clergy (and non-clergy) employees, then the expenses can sometimes be deducted by the clergy employee on the income tax return. Since the expenses are employee business expenses, they must first be itemized on a Form 2106. The expenses then go through a series of statutory reductions. Meals and entertainment expenses must be reduced by 50%. The remaining 50% is then combined with other expenses (including auto expenses) and further reduced by a percentage commonly called the "Deason Allocation Rule." This rule frequently prevents ministers who receive tax-exempt housing from deducting business expenses attributable to their tax-exempt income. Clergy unfamiliar with the "Deason Allocation Rule" should consult IRS Publication 517 for a more complete explanation and example. Whatever expense remains (after the above reductions) is then transferred to Schedule A as an itemized deduction (shown as a Miscellaneous deduction), where it is reduced again by an amount calculated at 2% of Adjusted Gross Income. All business expenses that survive the above reductions are then combined with other itemized deductions and compared with the current standard deduction. The figure that is the larger amount is used in arriving at Taxable Income.

If the church adopts an accountable reimbursement plan, then the clergy employee does not deduct his employee business expenses but also does not report the reimbursement as income. Under an accountable reimbursement plan, the clergy employee must account for (by proper documentation) all business expenses to the church, which will then periodically (at least every 60 days) reimburse the employee for the business expenses. Automobile expenses are usually reimbursed at a standard rate per mile. The mileage rate cannot exceed the amount designated by the Internal Revenue Service.

6. Church Contribution Records

Although by law a church is not required to maintain individual contribution records on each of its members, most churches do so as a favor to their membership who deduct charitable contributions on their income tax returns. A church contribution statement is especially important to those church members who make their contributions in the form of cash (rather than by check) since the contribution statements (listing the name of the church, the date, and the amount of the contribution) will be required to support their contribution deduction.

a) The \$250 Substantiation Rule

For church members who make single contributions to the church of \$250 or more during the year, the church contribution statement is even more important. No charitable deduction is allowed for any charitable contribution of \$250 or more unless the donor receives a contemporaneous written receipt (called an acknowledgment) from the church.

There is no prescribed format for the written acknowledgment. Letters, postcards, or computer-generated forms are all acceptable receipts, provided that they contain the name of the church, the donor's name and address and note the date and amount of each contribution made by cash or check. It does not have to include the donor's social security number. If non-cash property is contributed, the acknowledgment should describe (but not value) the property. In addition, the acknowledgment must include a statement as to whether any goods or services were provided to the donor in return for the contribution. If no goods or services were provided to the donor, the acknowledgment must state that no goods or services were provided. If goods or services were provided to the donor, the acknowledgment must include a statement of the value of any goods or services received by the donor.

The written acknowledgment can be issued on a gift-by-gift basis, or a monthly, quarterly, or annual basis. Most churches find that it is usually easier to issue an acknowledgment for all gifts, whether they are over or under \$250.

The written acknowledgment must be received by the donor on or before the earlier of the following two dates: (1) the date that the donor files a tax return claiming a deduction for the contribution, or (2) the due date (including extensions) for filing the return. To alert their membership of this requirement, in early January many churches place a notice in their newsletters and bulletins similar to the following:

Important Notice: To ensure the deductibility of your church contributions, please do not file your income tax return until you have received from the church a written acknowledgment of your contributions. You may lose a deduction for some contributions if you file your tax return before receiving written acknowledgment of your contributions.

b) Substantiation of Other Cash Gifts

While a donor making a contribution of \$250 or more cannot claim a deduction without obtaining a contemporaneous, written acknowledgement of the contribution from the church, donors making gifts in any amount, cannot claim a tax deduction unless the

donor maintains a record of the contribution either in the form of a bank record or a written acknowledgement from the church. This means that donors who make cash contributions (and thus will not have a bank record such as a cancelled check) of less than \$250 will need a written acknowledgement from the church in order to properly claim their deduction. Churches may simply choose to provide written acknowledgements for all gifts.

c) The \$75 Disclosure Rule

Churches that receive “quid pro quo contributions” of more than \$75 must provide the donor (at the time of the donation) a written disclosure statement regarding the deductibility of the contribution. A quid pro quo contribution is a payment to a church that is partly in consideration for goods or services furnished to the donor by the church and partly a contribution to the church. For example, a church conducts an auction of donated items to raise funds for missions. A member purchases a used bicycle (with a value of \$50) for \$100. Since this a quid pro quo contribution (part goods and part contribution) in excess of \$75, the church must provide a written disclosure statement to the donor that includes the amount of the payment (\$100) and the value of the bicycle (\$50) received by the donor. The statement must also tell the donor that only the amount of the payment in excess of the value of the bicycle is tax deductible.

The disclosure rule also imposes a penalty of \$10 per contribution (or a maximum of \$5,000 per fund raising event) upon charities (including churches) that fail to make the required quid pro quo disclosures, unless the failure was due to reasonable cause.

Churches and other charitable organizations do not have to disclose the value of benefits where the donor receives only a de minimis benefit. A benefit is a de minimis benefit in the following instances: (i) when the fair market value of the benefit is not more than 2% of the contribution or an inflation-adjusted amount determined annually by the IRS (\$107 in 2017), whichever is less or (ii) when the contribution/payment from the donor is at least \$53.50 (adjusted annually) and the donor receives a low-cost item with the charity’s name or logo valued at \$10.70 or less (adjusted annually).

d) Contributions of Clothing and Household Items

No tax deduction is allowed to donors making donations of clothing and household items to churches and other § 501(c)(3) organizations unless the item is in good used condition. As with all non-cash gifts, it is the donor’s responsibility to assign a value to the items donated. The Secretary of Treasury is authorized to disallow contributions with minimal monetary value. However, the Secretary of Treasury may not disallow a deduction for a donor who contributes any single item for which a deduction of more than \$500 is claimed if the donor obtains and files a qualified appraisal of the donated property with the donor’s tax return. Contributions of items for which a deduction of \$5000 or more is claimed require the donor to obtain and file a qualified appraisal.

C. Secretary of State Report

If a church is incorporated in Texas, it must file a public information report every four years, which is provided by the Secretary of State, listing the church’s name, state of incorporation, registered office address, registered agent, and names of its directors and officers. A copy of this form is included in [Appendix 14](#). Failure to file this report could result in the corporation forfeiting its rights to conduct business or affairs in the State of Texas, and being involuntarily dissolved by the state.

D. State Tax Exemptions (Franchise, Sales, Hotel Occupancy)

While churches qualify for exemption from the federal income tax as organizations described in § 501(c)(3) without being required to file Form 1023, Application for Recognition of Exemption, the

same rule does not apply to state taxes. In Texas, churches remain subject to the sales and use taxes as well as hotel occupancy taxes. In addition, incorporated churches remain subject to the revised franchise tax (sometimes called the margin tax). However, churches are eligible for exemption from each of these taxes upon application being made with the state comptroller. Specifically, a church is exempt from the margin tax, sales tax, and the state portion of the hotel occupancy tax if it can establish upon application to the state comptroller that it is an organized group of people regularly meeting at a particular location with an established congregation for the primary purpose of holding, conducting and sponsoring religious worship services. Application AP-209 is available from the website of the Comptroller of the State of Texas and can be accessed at <http://window.state.tx.us/taxinfo/taxforms/ap-209.pdf>. A copy of the form is included at [Appendix 26](#).

In order to make purchases of goods or services without paying sales tax for such items, the church must fill out and provide to the seller of the item a Sales Tax Exemption Certificate. Copies of the exemption certificates are available at the state comptroller's office. The church should obtain these blank forms and keep them on hand. The church may then sign and provide the exemption certificate to any seller of goods or services who does not have a copy on file.

VI. Intellectual Property

Intellectual property is an umbrella term that refers to creations of the mind that the law protects against unauthorized use by others. The term “intellectual property” is inclusive of other terms including patents, trademarks and service marks, copyrights, and trade secrets. Depending upon the intellectual property, the methodology for establishing protection and the protection afforded by law may differ.

A. Copyright

At its most basic, a copyright is an exclusive right of an author/creator in his or her writings/creations secured for a limited time by federal law pursuant to the provisions of the Copyright Act of 1976. In other words, copyright is protection provided to authors of “original works of authorship.” Copyright protection extends to a creative work fixed in a “tangible medium of expression” including literary works, dramatic works, musical works, artistic works, etc. Significantly, copyright protection attaches to the creative work when the work is first reduced to a tangible medium of expression, i.e. when the work is typed, written, or recorded for the first time. Copyright is a property interest meaning it can be transferred, sold, protected, and breached.

1. Copyright Ownership

Ownership of a copyright provides the following exclusive rights: the right to reproduce the work, to prepare derivative works, to distribute copies of the work, to perform the work publicly, and to display the work publicly. According to the Copyright Act, copyright of a work is owned initially by the author or authors of the work. Despite the general rule, there are rules that alter this result. Application of these rules is made when the work is first reduced to tangible form. Perhaps the most important of these rules is the Work Made for Hire doctrine.

2. Work Made for Hire

A work made for hire is defined as a work prepared by an employee within the scope of his or her employment or certain works specially commissioned for use as a contribution to a collective work. Determining whether an individual is operating within the scope of his or her employment is not always simple. The factors that should be considered include whether the work is created during regular working hours, whether the work is created on the church’s premises, whether the work was created utilizing church staff and/or church equipment, and whether the job duties for the particular creator include creating such works (i.e. is creating worship music a part of the music minister’s job duties?). Under the Copyright Act, the employer is considered the author of a work made for hire, and unless the parties have expressly agreed otherwise in a written instrument signed by them, the employer owns all of the rights comprised in the copyright. As a corollary, any creative work created by a member of the staff created outside the scope of his or her employment, created away from the church’s premises, created during non-work hours, and created using only personal resources, will not be a “work made for hire” and the creator will retain ownership of the copyright and the rights that go with it.

Where a member of the staff created an original work of authorship prior to his or her employment by the church and brought such intellectual property to the workplace for use by the church, the copyright status of the work will not be altered by the individual’s employment by the church. To avoid any disagreement on copyright ownership, the church should have any new employee provide the church a list of any such creative works created prior to the time of his or her employment with the church. This list should be included in the employee’s employment file.

3. Situations in which Ownership is Uncertain

Occasionally, works may be created regarding which copyright ownership is uncertain. Such situations may arise where a member of the staff creates work related to his or her area of ministry within the church and the staff member utilizes assets of the church (such as in the form of research assistance or administrative support) or adapts works regarding which the church is the copyright owner. Situations in which copyright ownership is uncertain should be dealt with by agreement between the church and the staff member. In making this agreement, the church must ensure that it does not confer a private benefit or engage in private inurement, the latter of which could be treated as an excess benefit transaction.

4. Private Benefit

The private benefit doctrine prohibits a tax-exempt organization from using its assets (real or personal property, including intellectual property) in a way that more than incidentally benefits private individuals, regardless of who those private individuals may be. The private benefit doctrine arises due to the requirement that charitable organizations be operated exclusively for one or more charitable purposes. An organization is not operated exclusively for one or more charitable purposes unless it serves a public interest rather than a private interest. In the context of an agreement regarding intellectual property, even if the employee is not an officer or decision-maker, the church must ensure the agreement is an arms-length transaction and the church is treated fairly.

5. Private Inurement

The private inurement doctrine prohibits any assets of a tax-exempt organization from directly or indirectly unduly benefiting individuals with a close relationship with the organization which allows those individuals to exercise a significant degree of control over the organization. The private inurement doctrine can be viewed as a subset of the private benefit doctrine. Though it applies to the same types of transactions, unlike the private benefit doctrine which applies regardless of the identity of the private individual being benefited, the private inurement doctrine applies only when the individual is an insider (referred to in tax law as a “disqualified person”) – a person who exercises a significant degree of control over the organization. Private inurement may lead to excise taxes for engaging in an excess benefit transaction or may even lead to revocation of tax-exempt status.

6. Excess Benefit Transaction

An excess benefit transaction is a form of private inurement involving a transaction between a public charity, such as the church, and an insider whereby the insider receives more than fair market value. Such a transaction may arise in the context of excess compensation, a loan at below-market interest, or the free or discounted transfer of copyright ownership. The consequences for engaging in an excess benefit transaction are penalty taxes leveled against the insider equal to 25% of the excess benefit, and where not corrected in a timely manner, a second tier of 200% of the excess benefit. Any member of the organization’s governing body that knowingly approves of an excess benefit transaction may also be penalized in 10% of the excess benefit, not to exceed \$20,000.00.

7. Transfer of Ownership

Some churches consider agreements with their staff on a case-by-case basis that would alter the results reached under the Copyright Act. These agreements may take the form of the church transferring copyright ownership to the author for fair market value, the church licensing intellectual property rights from the copyright owner for no more than fair market value, or the church and the author signing a royalty sharing arrangement. Sharing or transferring intellectual property raises the concern over private benefit and private inurement discussed above. This can be particularly difficult to handle in the context of intellectual property because it is often unclear when intellectual property is created what the commercial

value of that property may be, particularly where the author has no history of commercially distributing similar intellectual property. Because these agreements raise a significant risk of creating private benefit and/or private inurement and should not be undertaken without the benefit of legal counsel.

8. Registration

It is not necessary to register a copyright with the United States Copyright Office; however, registration provides specific benefits. Perhaps most importantly, registration enables a copyright owner to seek statutory damages and attorneys' fees for copyright infringement. This can be an important factor as proving actual damages can be difficult. Should a party wish to register a copyright, he or she may do so by completing the application online at copyright.gov. If registration is not sought, a copyright owner is still well advised to note the copyright with the © symbol along with the owner's name and year of the copyright to protect against infringement and defeat an innocent infringer defense.

9. Copyright Infringement

As addressed above, copyright protection provides certain exclusive rights to the owner of the copyright regarding the copyrighted work, including the exclusive right to reproduce the copyrighted work, to prepare derivative works based upon the copyrighted work, to distribute copies of the work, to perform the work publicly, and to display the work publicly. Infringement occurs when one of these exclusive rights is violated without a defense.

One of the most often cited defenses (though not nearly so broad as some would believe) is the "fair use" defense. Copyright law provides a "fair use" limitation on the copyright owner's exclusive rights, which allow other persons to use the work in a reasonable manner without the consent of the copyright owner. The test of fair use requires consideration of four factors: (1) the purpose and character of the use (i.e. is the use for commercial or nonprofit purposes); (2) the nature of the copyrighted work; (3) the amount and substantiality of the portion of the copyrighted work used compared to the whole; and (4) the effect of the potentially infringing use on the market value of the copyrighted work. This test is fact-specific; however, examples of fair use include quotations or excerpts for the purpose of illustration or comment, quotation of short passages in a scholarly or technical work, use in a parody, and reproduction of a small part of a work to illustrate a lesson.

The Copyright Act contains a religious services exemption; however, this exemption merely allows for the performance of a nondramatic musical work, a dramatic musical work of a religious nature, or the display of a religious work in the course of religious services at a place of worship. Notably, this would not include making copies for the choir or broadcasting the performance. A similar exemption is available for nonprofit organizations where the performance is not based on a profit motive, there is no fee for the performers or organizers, and no admissions charge unless all profit is used for charitable purposes.

Because copyright law does not exempt unauthorized use by churches or other charitable or nonprofit entities of copyrighted work other than the narrow exceptions described above, churches should use care in obtaining and using legal copies of works or recordings. Churches should consider obtaining a blanket music license from Christian Copyright Licensing, Inc. (www.ccli.com) and a video license from Christian Video Licensing International (www.cvli.com). In each instance the church should understand and abide by the applicable restrictions of the license agreement.

B. Trademark

The United States Patent and Trademark Office defines a trademark as a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others. The familiar symbol on the side of a Starbucks® cup is an example of a

trademark. A service mark is similar to a trademark but points to the source of a service as opposed to the source of goods.

Trademark protection is based on the strength of the mark which is based on the distinctiveness of the mark. Trademarks fall into four categories that exist on a continuum from least protectable to most protectable: (1) generic marks, (2) descriptive marks; (3) suggestive marks; and (4) arbitrary and fanciful marks. Marks in categories three and four are said to be “inherently distinctive” and are afforded the most protection. Marks in category one are not afforded trademark protection. Marks in category two must have acquired distinctiveness by acquiring a secondary meaning to be entitled to protection. A mark acquires a secondary meaning when it is uniquely associated with a specific source in the mind of the consuming public.

Trademark protection is based on actual use of the mark in interstate commerce, though application for federal registration can be based on an intent to use the mark if certain conditions are met. While rights in a trademark may be established at common law based on being the first to use the mark in commerce, registration provides certain benefits. Those benefits include notice to the public of a claim to ownership, legal presumption of ownership, and the exclusive right to use the trademark in association with those goods or services identified in the registration application. However, these rights depend upon successful registration on the principal trademark register. A church is well advised to consult legal counsel to assist in registering a trademark to ensure the mark is available and the application properly submitted. Violation of a trademark constitutes infringement and is actionable both at common law and pursuant to statute. To avoid such claims, a church should not use trademarks—particularly trademark symbols—without authorization.

For additional information on copyright and trademark protection, church leaders may visit the United States Patent and Trademark Office at www.uspto.gov. An additional useful resource is the *Essential Guide to Copyright Law for Churches* by Richard R. Hammar J.D., LL.M., CPA, which is published by Christianity Today International (see www.YourChurchResources.com).

APPENDIX 1 - CERTIFICATE OF FORMATION (formerly known as Articles of Incorporation)

CERTIFICATE OF FORMATION

OF

**(Name of Church)*

We, the undersigned, natural persons, over the age of eighteen (18) years, acting as organizers of a corporation under the Texas Business Organizations Code, do hereby adopt the following Certificate of Formation for such corporation.

ARTICLE I

ENTITY NAME AND TYPE

Section 1.1

The name of the corporation is **(Name of Church)* (the "Corporation").

Section 1.2

The Corporation is a nonprofit corporation organized under the Texas Business Organizations Code and shall have all the powers, duties, authorizations and responsibilities as provided therein. Notwithstanding the foregoing, the Corporation shall neither have nor exercise any power, nor engage directly or indirectly in any activity that would invalidate its status as an organization exempt from federal income tax and described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or the corresponding provision or provisions of any subsequent United States Internal Revenue law or laws (the "Code"). The Corporation shall be the successor to an unincorporated religious **(Name of Church)* and located in **(Your Town)*, which was an unincorporated association under Chapter 252 of the Texas Business Organizations Code. The organizers have been authorized to execute this Certificate of Foundation by the consent of a majority of the members of the unincorporated association.

ARTICLE II

REGISTERED OFFICE AND REGISTERED AGENT

The registered office of the Corporation shall be located at **(Church's street address)* and the name of the initial registered agent at such address shall be **(Name of Registered Agent)*.

ARTICLE III

MANAGEMENT

The Corporation is a church and the management of its affairs is vested in its members pursuant to Section 22.202 of the Texas Business Organization Code.

ARTICLE IV

MEMBERSHIP

The Corporation shall have one or more classes of members. The number, qualifications, and relative rights of each class shall be as set forth in the Corporation's Bylaws.

ARTICLE V **PURPOSES**

Section 5.1

The Corporation is organized and shall be operated exclusively for religious, charitable and educational purposes within the meaning of Section 501(c)(3) of the Code, and to conduct, accomplish and carry on its objectives, functions and purposes or any part thereof set forth in the governing documents of the Corporation as amended from time to time, within or without the State of Texas. More particularly, the purposes of the Corporation are:

To spread the Gospel of Jesus Christ and the worship of God among its members and attendants, and practice the Christian virtues inculcated in the Holy Scriptures.

(b) To employ and discharge ordained ministers of the Gospel, and others, to conduct and carry on divine services at the place of worship of the members of the Corporation, and elsewhere, and to collect and disburse any and all necessary funds for the maintenance of said Corporation and the accomplishment of its purposes.

(c) To conduct, accomplish and carry on its objectives, functions and purposes or any part thereof set forth in the Bylaws or Constitution, if any, of the Corporation, as amended from time to time, within or without the State of Texas.

Section 5.2

This Corporation is additionally organized to promote, encourage, and foster any other similar religious, charitable and educational activities; to accept, hold, invest, and reinvest and administer any gifts, legacies, bequests, devises, funds and property of any sort or nature, and to use, expend, or donate the income or principal thereof for, and to devote the same to, the foregoing purposes of the Corporation; and to do any and all lawful acts and things which may be necessary, useful, suitable, or proper for the furtherance of accomplishment of the purposes of this Corporation. Provided however, no act may be performed which would violate Section 501(c)(3) of the Code as it now exists or as it may hereafter be amended.

Section 5.3

In order to carry out the above-stated purposes, the Corporation shall have all those powers set forth in the Texas Business Organizations Code, as it now exists or as it may hereafter be amended. The powers of the Corporation to promote the purposes set out above are limited and restricted in the following manner:

a) (i) No part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its organizers, directors, officers or other private persons, except that the Corporation shall be authorized and empowered to make reasonable payments and distributions (including reasonable compensation for services rendered to or for the Corporation) in furtherance of its purposes as set forth in this Certificate of Formation.

(ii) No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publication or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

(iii) Notwithstanding any other provisions of this Certificate of Formation, the Corporation shall not carry on any other activities not permitted to be carried on by (i) a corporation exempt from Federal Income Tax under Section 501(c)(3) of the Code, or corresponding provisions of any subsequent federal tax laws, or (ii) a corporation, contributions to which are deductible under Section 170(c)(2) of the Code, or corresponding provisions of any subsequent federal tax laws.

- b) The Corporation shall not accept any gift or grant if the gift or grant contains major conditions which would restrict or violate any of the Corporation's religious, charitable or educational purposes or if the gift or grant would require serving a private as opposed to public interest.

ARTICLE VI
TERMINATION AND MANNER OF DISTRIBUTION

Upon the termination of the Corporation, the Corporation shall, after paying or making provision for payment of all the liabilities of the Corporation, distribute all of the assets of the Corporation to another church or other organization of like faith and order that is a qualified charitable organization under Section 501(c)(3) of the Code, or corresponding section of any future federal code, which will be determined by church action and shall require at least two-thirds (2/3) of the vote of the members present at a meeting at which a quorum is present, which is duly called and held in accordance with the Corporation's adopted procedures. No member, director, or officer of the Corporation and no other private individual will be entitled to any distribution of any assets of the Corporation in the event of its termination.

ARTICLE VII
OFFICERS

The officers of the Corporation, if any, shall be as set forth in the Corporation's Bylaws.

ARTICLE VIII
INDEMNIFICATION

To the maximum extent permitted or required by Chapter 8 of the Texas Business Organization Code, as it now exists or as it may be amended in the future, the Corporation shall indemnify and advance expenses to persons who are officers, directors, employees, agents, or other persons identified as governing persons or delegates in Chapter 8, for amounts such persons pay directly. The Corporation shall not indemnify or advance expenses to such persons for any amount paid by a third party pursuant to a plan or contract of insurance.

ARTICLE IX
AMENDMENTS

The Corporation's Certificate of Formation, or any part thereof, may be amended or repealed by the members, which may do so at a meeting of the members, duly called and held in accordance with the laws and Bylaws of the Corporation, at which a quorum is present, upon receiving the affirmative vote of two thirds (2/3) of the members present at such meeting, provided that notice of the proposed amendment, repeal or adoption be given to each member, and provided further that the foregoing notice requirement shall not prohibit the members from adopting the proposed amendment, effecting the proposed repeal or adopting the proposed new Articles, as the case may be, in the modified form which is not identical to that described or set forth in the notice of such meeting.

ARTICLE X
ORGANIZERS

The name and address of the organizers of the Corporation are:

<u>NAME</u>	<u>ADDRESS</u>
*	*
*	*
*	*

ARTICLE XI
CONSTRUCTION

All references in this Certificate of Formation to statutes, regulations, or other sources of legal authority shall refer to the authorities cited, or their successors, as they may be amended from time to time.

IN WITNESS WHEREOF, we have hereunto set our hands, this _____ day of _____, 20____.

ORGANIZERS:

*

*

*

APPENDIX 2 - BYLAWS

(Congregationally-Led Church)

[Note: This is a sample only. A church must thoughtfully craft its Bylaws to reflect the desired methods of church operation.]

BYLAWS OF

_____ **BAPTIST CHURCH OF** _____

PREAMBLE

For the more certain preservation and security of the principles of our faith, and to the end that this body may be governed in an orderly manner, and for the purpose of preserving the liberties inherent in each individual member of _____ Baptist Church of _____ (the "Church") and the freedom of action of this body with respect to its relation to other churches of like faith and order, we do declare and establish these Bylaws.

ARTICLE I

NAME AND PURPOSE

Section 1. Name

THE NAME OF THE CHURCH SHALL BE _____
BAPTIST CHURCH OF _____.

Section 2. Purpose

The Church is formed to support public worship and to proclaim the Gospel of Jesus Christ through such ministries as may be determined by the Church.

ARTICLE II

CHURCH GOVERNMENT AND MEMBERSHIP

Section 1. Government

This sovereign Baptist Church under the Lordship of Jesus Christ retains unto itself the exclusive right to temporal life of this Church. The membership reserves the exclusive right to determine who shall be members of this Church and the condition of such membership. This Church is a democracy, its authority vested in its members, as set forth herein. The Church is subject to the control of no other ecclesiastical body, but enjoys mutual counsel and corporation with other churches of like faith and order.

Section 2. Candidacy

Any person may become a candidate for membership in the Church. All candidates desiring to become members of the Church shall be presented to the Church for election to membership at any regular Church service for membership in any of the following ways:

- (1) By profession of faith and for Baptism according to the policies of this Church.
- (2) By promise of letter of recommendation from another Baptist Church.

- (3) By restoration upon a statement of prior conversion experience and Baptism in a Baptist Church where no letter is obtainable.
- (4) By statement of faith and prior Baptism by immersion after review by the Pastor and Deacons.

Should there be any dissent as to any candidate becoming a member of the Church, the affirmative vote of three-fourths of those members present at the Church service shall be required to elect such candidate to membership.

Section 3. Classes of members

- (1) There shall be two classes of members of the Church.
- (2) The first class of members shall be referred to as the "active members." The names of the members of this class shall be put on the active membership roll. This class shall consist of all initial members of the Church as of the date of these Bylaws who are actively involved in the Church, as that term is defined herein, and all members admitted hereafter from time to time, unless such members are transferred to the inactive membership roll.
- (3) The second class of members shall be referred to as the "inactive members." The names of the members of this class shall be put on the inactive membership roll. This class shall consist of those members who once were members on the active membership roll, but whose names are transferred from the active membership roll to the inactive membership roll by the Membership Committee when those members are not "actively involved" in the Church.
- (4) The membership Committee shall annually, or as the need arises, inspect the active membership roll and identify those members on said roll who have not been "actively involved" in the Church within the last twelve months. Upon identification of those members, the Membership Committee shall transfer those members from the active membership roll to the inactive membership roll. The determination by the Membership Committee to transfer a member from the active membership roll to the inactive membership roll shall be final and conclusive, subject to Article II, Section 3(6).
- (5) In order to be determined by the Membership Committee to be "actively involved" in the Church, a member must have attended a regular or special service of the Church or have made a substantiated contribution to the Church, within the last twelve months.
- (6) Any member whose name appears on the inactive membership roll may request that his or her name be transferred to the active membership roll by making such request to the Membership Committee after becoming "actively involved" in the Church again. Such transfer to the active membership roll shall be made by the Membership Committee effective thirty days after the request if the Membership Committee is able to confirm that the member has become "actively involved" in the Church again.

Section 4. Rights of members

- (1) Every member of the Church who is on the active membership roll is entitled to vote at all elections and on all questions submitted to the Church in conference, provided the member is present or special provision has been made by the Church for absentee balloting. Members of the Church on the inactive membership roll are not entitled to vote. Cumulative voting shall not be allowed on any matter to be voted upon.
- (2) Every member of the Church on the active membership roll is eligible for consideration by the membership as candidates for elective offices in the Church. Members on the inactive membership roll are not eligible for such consideration.

(3) Every member of the Church may participate in the ordinances of the Church as administered by the Church.

Section 5. Termination of membership

Membership shall be terminated in the following ways: (1) death of the member, (2) dismissal to another Baptist church, (3) exclusion by action of this Church, or (4) erasure upon request or proof of membership in a church of another denomination.

Section 6. Exclusion of a member

Should a member become an offense to the Church by reason of immoral or unchristian conduct, or by denying acceptance of fundamental doctrines of the Church, it shall be the responsibility of the Membership Committee to take steps to resolve the offense in accordance with Matthew 18:15-20. If the Membership Committee determines exclusion of the member becomes necessary, after due personal notice and hearing in private by the Membership Committee and after faithful efforts have been made to bring such member to repentance, membership may be withdrawn upon recommendation of the Membership Committee, and upon the vote of the majority of the members present at a regular business meeting to approve the recommendation of the Membership Committee. The basis for the recommendation of the Membership Committee shall not be required to be made officially public, announced in public, or disclosed to the general Church membership or the general public.

The Church may restore to membership any person previously excluded, upon request of the excluded person, and after the excluded person has met with the Membership Committee and indicated such person's repentance, upon recommendation of the Membership Committee and by a majority vote of the Church members present at a regular business meeting to approve said recommendation.

It shall be the practice of the Church to emphasize to its members that every reasonable measure will be taken to assist any troubled member. The attitude of members toward one another shall be guided by a concern for redemption rather than punishment.

ARTICLE III CHURCH OFFICERS, STAFF AND COMMITTEES

All who serve as officers and staff of the Church and those who serve on Church Committees shall be members of this Church.

Section 1. Church officers

The officers of this Church shall be the Pastor, the Ministerial staff, the Deacons, a Moderator, a Clerk, a Treasurer, and Trustees.

(1) Pastor

The Pastor is responsible for leading the Church to function as a New Testament church. The Pastor will lead the congregation, the organizations, and the Church staff to perform their tasks.

The Pastor is leader of pastoral ministries in the Church. As such he works with the Deacons and Church staff to: (1) lead the Church in the achievement of its mission, (2) proclaim the Gospel to believers and unbelievers, and (3) care for the Church's members and other persons in the community.

A Pastor shall be chosen and called by the Church whenever a vacancy occurs. The election shall take place at a meeting called for that purpose, of which at least one week's public notice has been given.

A Pastor Selection Committee shall seek out a suitable Pastor, and its recommendation will constitute a nomination. Any Church member has the privilege of making other nominations according to the policy established by the Church. The Committee shall bring to the consideration of the Church only one name at a time. Election shall be by ballot, an affirmative vote of three-fourths of those present being necessary for approval. The Pastor, thus elected, shall serve until the relationship is terminated by his relinquishment or the church's declaration as hereinbelow provided.

The Pastor may relinquish the office of Pastor by giving at least two weeks written notice to the Church of the resignation. The Church may declare the office of Pastor to be vacant and the Pastor's employment terminated. Such action shall take place at a meeting called for that purpose, which shall be called as and shall constitute a special business meeting. The meeting may be called upon the recommendation of a majority of the personnel committee or by written petition signed by not less than one-fourth of the church members on the active membership roll. The moderator for this meeting shall be designated by the members present by majority vote, and that person shall be someone other than the Pastor. The vote to declare the office vacant shall be by secret ballot, and the affirmative vote of two-thirds of the members present shall be necessary to declare the office vacant and the Pastor's employment thereby terminated. Except in instances of gross misconduct by the Pastor, upon the Church declaring the office to be vacant, the Church will compensate the Pastor with no less than one-twelfth of his total annual compensation. The termination shall be immediate, and the compensation shall be rendered in not more than thirty days.

(2) Ministerial Staff

The ministerial staff shall be called and employed as the Church determines the need for such offices. A job description shall be written when the need for a staff member is determined.

Each employed staff member shall serve until the relationship is terminated by the staff member's relinquishment or the Church's declaration as hereinbelow provided. A staff member may relinquish the position by giving at least two weeks' notice at the time of resignation. The Church may declare the position to be vacant and the staff member's employment terminated at a meeting called for that purpose. The meeting shall be called upon recommendation of a majority of the personnel committee or by written petition signed by not less than one-fourth of the Church members on the active membership roll. The vote to declare the office of the staff member vacant shall be by secret ballot, and the affirmative vote of two-thirds of the members present shall be necessary to declare the office vacant and the staff member's employment thereby terminated. Such vacancy shall be effective immediately unless otherwise so stated. Except in instances of gross misconduct by the staff member, upon the Church declaring the office to be vacant, the Church will compensate the staff member with no less than one-twelfth of his total annual compensation. The termination shall be immediate and the compensation shall be rendered in not more than thirty days.

c) Deacons

Deacons of the church shall be ordained to provide spiritual leadership for and service to the fellowship of the church. They shall guard the unity of spirit within the church, and shall recommend establishment of policies concerning the material interests of the Church and its ministries, subject to the will of the Church.

Every Deacon of the church is expected to seek out and occupy a chosen place of service in the Church program in addition to performing services as a Deacon. All Deacons shall actively support with time and finances, the work of the Lord through the various ministries of the church. All Deacons are expected to attend all business meetings of the Church as a matter of example and service, in supplying their voice to these deliberations. All Deacons are expected to attend the Church worship services and perform assigned duties incident to the conduct of the Sunday services.

The Church shall elect the number of Deacons desired by the Church from time to time. Only those persons who meet the scriptural qualifications set forth in Acts 6:1-6 and I Timothy 3:8-13, and who have been members of the Church for at least one year shall be elected.

Elections shall be by secret ballot after receiving the affirmative vote of a majority of the church members present at regular business meeting. Once elected, Deacons shall serve thereafter as long as they are faithful to their duties. A Deacon may no longer serve if the Deacon becomes inactive until such time as the Deacon becomes faithful again, or if requested to separate from the Deacon body upon a majority vote by the Deacons present at a meeting of the Deacons with advance notice to the Deacon so voted upon.

The officers of the Deacons will be Chairman, Vice-Chairman, and Secretary. They shall be elected each year. The Pastor shall be notified of Deacon meetings and invited to attend. In accordance with the New Testament, Deacons are to be servants of the Church. The ministry of the Deacon is to serve with the Pastor and shall be to carry out God's work in the Church and community in helping the Church members and others in the community any way they can.

There shall be no obligation to recognize a Deacon who comes to this Church from another church of like faith, but after six months the Deacon may be considered by the Deacon body and recommended by the Deacon body to the Church. A majority vote of the Church members present shall entitle the Deacon to serve as part of the Deacon body of this Church.

d) Moderator

The Pastor shall serve as Moderator, presiding over Church business meetings, or upon the Pastor's request, the Church shall elect annually a Moderator from the membership as its presiding officer. In the absence of the Moderator, the chairman of the Deacons shall preside or, in the absence of both, the Clerk shall call the Church to order and preside for the election of an acting Moderator.

In guarding and maintaining the fellowship of the Church, the aim of the Moderator must be to bring about unity among people of different views, ideas, and convictions. The objectives of the Moderator should be to maintain the spirit of Christian love while presiding, to be fair and courteous to all members, to help members understand parliamentary procedures without embarrassment to them, to insist that motions be stated and seconded before discussed, to suggest that a member make a motion by stating "A motion is in order to," to call on the person who makes a motion to discuss it first, to encourage full and free debate by leading members to talk through their disagreements and try to avoid trivial matters, to alternate discussions so as to bring out both sides of a question by giving a member who has not spoken preference over the one who has, to respect the minority who has a right to be heard even though the majority must prevail, and to always take the affirmative vote first and the negative vote second.

The Moderator must maintain a neutral position while presiding. If the Moderator wishes to debate a question under consideration, he should ask an assistant to preside.

e) Church Clerk

The Church shall elect annually a Clerk as its clerical officer, who shall serve until a successor has been elected. The Clerk shall be responsible for keeping a suitable record of all official actions of the Church and recording minutes of the church business meetings, except as otherwise herein provided. The Clerk or assistant must be present at all regular and special Church business meetings to record the results of all matters voted upon. In regular meetings the Clerk shall record information on applicants for church membership and other decisions. In business meetings, the Clerk shall record all actions voted on by the Church and follow through on all necessary correspondence related to the actions. The Clerk shall be responsible for keeping a register of names of members with dates of admission, dismissal, death, or erasure, the active membership roll and the inactive membership roll, together with a record of Baptisms and applications of new members who respond to the invitations. The Clerk shall issue letters of dismissal voted on by the Church, preserve on file all communications and written official reports, and give required notice for all meetings where notice is necessary, as indicated in these Bylaws. The Clerk shall be responsible for preparing

the annual letter of the church to the local association. The Clerk shall also preserve the records for present and future use, correspond with other churches and members, and preserve records of Church history. The Clerk shall also work with the Moderator in preparation of an agenda for Church business meetings.

All Church records are Church property and shall be kept in the Church office when an office is maintained.

f) Church Treasurer

The Church shall elect annually a Church Treasurer as its financial officer who shall serve until a successor has been elected. It shall be the duty of the Treasurer to receive, preserve, and pay out, upon receipt of vouchers approved and signed by authorized personnel, all money or things of value paid by or given to the Church, keeping at all times an itemized account of all receipts and disbursements. It shall be the duty of the Treasurer to render to the Church at each regular business meeting an itemized report of the receipts and disbursements of the preceding month. The Treasurer's report and records may be audited annually by an auditing committee or public accountant.

The Treasurer shall serve on or work closely with the Stewardship Committee to develop and recommend to the Church adequate policies and procedures related to receiving, accounting, disbursing, and reporting Church monies, and to maintain members' records of contributions and provide quarterly and annual reports of the same. The accounting section of the Stewardship Committee shall assist the treasurer.

Upon rendering the annual account at the end of each fiscal year and its acceptance and approval by the Church, the records shall be delivered by the Treasurer to the Church Clerk, who shall keep and preserve the annual account as a part of the permanent records of the Church.

g) Trustees

The Church shall elect annually four or more Trustees to act for the church in legal matters who shall serve until successors are elected. They shall hold the Church property in the corporate name of the church. Upon specific vote of the Church authorizing each action, they shall have the power to buy, sell, mortgage, lease or transfer any Church property, but not otherwise. When the signatures of the Trustees are required, any three or more shall sign legal documents, involving the sale, mortgage, purchase, or rental of property, or other legal documents related to Church approved matters.

Section 2. Nonministerial staff

The nonministerial staff members shall be employed as the Church determines the need for their services.

The Church personnel committee shall have the authority to employ and to terminate services of nonministerial staff members. Such employment and termination of services shall occur after consultation with the supervising staff member and, as appropriate, with the consultation of related committees of the Church.

Section 3. Church committees

The following committees shall serve at the discretion of the Church as needed in its ministry.

(1) Nominating Committee

The members of the Nominating Committee shall be nominated by the Pastor and Deacons and elected annually by the Church to serve until their successors are elected. The Committee shall consist of seven or more persons. The Nominating Committee shall act on behalf of the Church to nominate persons to fill positions, including Committee members, Committee chairmen, and Church elected leadership positions, with the persons whose gifts, potential, and commitment match the requirements of the positions. This Committee shall work to be certain that every leader and every potential leader find personal fulfillment and an opportunity

to use their God-given gifts. The Committee shall first approve the person considered for a position before approaching the person for recruitment. The Nominating Committee shall present to the church for election all who accept the invitation to serve.

(2) Stewardship Committee

The Stewardship Committee, elected annually by the Church after recommendation by the Nominating Committee, to serve until their successors are elected, shall consist of seven or more persons. The Committee shall develop and recommend an overall stewardship development plan, a unified church budget, and budget subscription plans. The Stewardship Committee will advise and recommend in the administration of gifts of Church members and others, using sound principles of financial management. The Stewardship Committee will work with the Treasurer in the preparation and presentation to the Church of required reports regarding the financial affairs of the Church.

The word "steward" refers to the management of the affairs of another. It is seen most clearly as a Christian relates to the material world God created. The Christian who understands that he is a manager of God's world will demonstrate a distinctive Christian lifestyle. This Church is a steward too. The Church shall recognize missions as a primary responsibility.

The characteristics of a distinctive steward are as one who makes Christ his Lord, acknowledges God as owner and himself as trustee, seeks to discover God's purpose in his own life for every material possession, and pursues God's purpose as he reflects Christ's control in acquiring possessions, gives testimony of his love for Christ in spending, demonstrates a redeemed life in giving, and extends his Christian commitment in financial planning for the future.

The Stewardship Committee chairman has a special responsibility to fulfill. The Stewardship Committee chairman will be elected by the Church in the same manner the other leaders are elected, will relate to the Church staff in stewardship areas and in planning stewardship activities for the Church, will be responsible to the Church for fulfilling the objectives of the Stewardship Committee to develop in Church members an understanding of, and commitment to, the biblical concepts of individual and corporate stewardship, will be recognized as the resource person for all Church program areas in the matter of stewardship, will schedule and preside at Committee meetings, will coordinate the total stewardship calendaring for the Church, will present the proposed budget to the Church, and will be a key person as the church fulfills its responsibility to develop Christian stewards.

The Stewardship Committee shall have four subcommittees made up of the (1) Stewardship Education Section, (2) Missions Section, (3) Budget Section, and (4) Accounting Section.

The **Stewardship Education Section** shall develop and recommend methods of using the appropriate channels of the Church to introduce biblical stewardship concepts to Church members. This will involve such decisions as selecting activities and resources (Bible studies, visual aids, money management conferences, tracts, testimonies) that will communicate the stewardship message to all age groups.

The **Missions Section** shall seek to increase mission understanding and develop Christian stewards through sharing mission education materials and mission support information. This Section will lead in developing the understanding of and commitment to associational missions and to mission support through the Cooperative Program. Cooperation with church leaders will be essential in promoting special mission offerings.

The **Budget Section** shall discover ways to plan and support Church ministries through budget development, promotion, and commitment. The Church should be encouraged to develop its budget in relation to its opportunities for ministries. This section will determine the

best ways to challenge members to make financial commitments in support of the Church's ministries.

The **Accounting Section** shall take steps to insure that sound procedures are instituted for collecting, counting, safeguarding, and disbursing funds. The activities of this Section include the following: determining the best methods for receiving and counting money given to the Church, accurate record-keeping, and faithful reporting and auditing.

(3) Lord's Supper Committee

The Lord's Supper Committee, elected annually by the Church after recommendation by the Nominating Committee, to serve until their successors are elected, shall work with the Pastor in preparing the ordinance. This Committee shall consist of four members. Their duties are to maintain an adequate inventory of materials and supplies, to determine the equipment needed to serve more effectively and make recommendations to the Church for anything needed to perform this important ministry of the Church, to be responsible for seeing that all materials are in the auditorium prior to services, to make sure all materials are taken up and all cups are taken up and cleaned after the services, to work with the Pastor in setting dates in which the supper will be served, to work with the Pastor in evaluating each service when the Lord's Supper is served and determine ways in which the service could be more meaningful.

(4) Baptism Committee

The Baptism Committee, elected annually by the Church after recommendation of the Nominating Committee, to serve until their successors are elected, shall help the Pastor minister to those who have been saved and need to follow through in Baptism. They shall also work with the Pastor to make the Baptismal experience an uplifting experience to members who have joined this Church. This Committee shall consist of four members, two men and two women. Their duties are to work with the Pastor in determining the dates for Baptism and notifying the candidates in advance, to see that all the things needed in the Baptism service are at hand, to make sure, the Baptismal is clean, full of water, the right temperature, and to have an understanding of how the lighting shall be done in the auditorium and Baptismal areas of the Church, to arrange for the Pastor and the candidates to have a time of prayer and instruction, to make sure all candidates know where the dressing rooms are and to instruct them as to what they will need to wear and bring with them, and to help the candidates in and out of the pool during the time of Baptism.

(5) Ushering Committee

The chairman of the Ushering Committee, elected annually by the Church after recommendation of the Nominating Committee, to serve until the successor is elected, shall minister to the Church by greeting guests. The chairman shall be responsible for appointing additional Committee members on a monthly rotating basis and educating them regarding their duties. The duties of the Ushering Committee are to know in advance the schedule of services (and any changes), to be present before all services, to greet others and hand out materials such as bulletins, to have assigned positions, to insure rooms are comfortable, to assist in finding seats once services have begun, to take offerings, and to help escort the handicapped and the elderly.

(6) Evangelism Committee

The Evangelism Committee shall consist of three to twelve members with a deep faith in Jesus Christ as Lord and Savior. The members of the Evangelism Committee will be elected annually by the Church after recommendation by the Nominating Committee to serve until their successors are elected. The duties of this Committee are to consult with and assist the Pastor in planning evangelistic programs and to present those programs to the Church Council and members for approval. If an evangelistic program is approved by the members, the Evangelism Committee shall assist the Pastor in implementing the program. The Evangelism Committee shall meet regularly and especially prior to the Church Council meetings to allow their chairmen to present the results of their meetings to the members of the Church Council.

A subpart of the Evangelism Committee shall be the outreach program. The outreach ministry will work to effectively find the gifts of ministry of each one of the members of the Church. The outreach program will be divided into five different areas of concern, as follows:

Salvation: to do the work of leading people to the Lord Jesus Christ. This part will consist of five or more people depending upon the interest of the Church family. Their desire will be to lead others to Jesus Christ as Savior. They will work with the Pastor in training and encouragement in seeing their desire completed. Their goal will be to lead as many to the Lord as possible.

Telephone: to call all absentees each week; to call all visitors and prospective members. Their goals will be to encourage members who miss Sunday School and Church, to let people know they were missed and see if they need anything or if there is any way the Church can minister to their needs, and to encourage them to come back to Church.

Visitation: to visit prospective members and to visit Sunday School members that have missed three weeks in a row. This group shall consist of five to eight members. Their goal is to encourage prospective members as well as absent members to be a part of the Church.

Reclaim: to encourage members that have not been in Sunday School or Church for one year or more. This team shall consist of five to eight members. Their goal is to encourage members to become active in the Church, to minister to the people, and love them back into the fold.

Prayer: to pray for the other programs of the Evangelism Committee and their tasks, to pray for needs that have been discovered while ministering to people, and to pray for God to bless their efforts. This group will consist of an unlimited number that will meet for special prayer meetings. If unable to meet at the church, they will be supplied a list of things to pray for. Their goal will be to see God moving and blessing the efforts of the Church.

(7) Church Property and Grounds Committee

The Church Property and Grounds Committee, also known as the Maintenance Committee, shall be elected annually by the Church after recommendation of the Nominating Committee to serve until their successors are elected. This Committee will minister by keeping the Church and grounds clean and working properly. Their duties are to take care of the building and grounds not cared for by the custodian, to see that repairs are made when necessary, to supervise preventive maintenance for all equipment, and to insure that the grounds are kept clean and attractive.

(8) Missions Committee

The Missions Committee, elected annually by the Church after recommendation of the Nominating Committee, to serve until their successors are elected, shall seek to discover areas of ministry for the Church, share these findings with the Church program organizations, and serve the Church in establishing and conducting such ministry projects as may be assigned to it.

(9) Benevolence Committee

The Benevolence Committee, elected annually by the Church after recommendation of the Nominating Committee, to serve until their successors are elected, shall serve to reach out to those who need help with their basic needs when the church desires to give financial help or other assistance to meet those needs, for people in or outside of the Church body. This Committee shall consist of three to five members. Their duties will be to work with the Pastor in determining the needs of those requesting help from the church and to make recommendations to the Church if there is a need that the Committee feels should be met by other or special means.

(10) Food Service Committee

The Food Service Committee, elected annually by the Church after recommendation of the Nominating Committee, to serve until their successors are elected, is a ministry to serve others through fellowships, weddings, funerals, receptions, etc. If carried out in a well-organized manner, the Church will have a reputation of being a good host. Members of this committee are to have knowledge of all activities in which it is necessary for the church to provide, prepare or serve food, to purchase and maintain kitchen supplies and appliances, to keep necessary records (budget, inventory), to plan meals, and to communicate upcoming fellowships and needed food or supplies to Church members.

(11) Flower Committee

The Flower Committee, elected annually by the Church after recommendation by the Nominating Committee, to serve until their successors are elected, shall minister to the Church body by decorating the auditorium. Their duties shall be to recommend policies and procedures to obtain, arrange and dispose of flowers before and after services, to recommend policies to the Church relating to providing flowers for the sick and families of bereaved members of the Church, to work with the budget committee in providing flowers in the auditorium when needed, and to be responsible for disposing of the flower arrangements.

(12) Family Life Committee

The Family Life Committee, elected annually by the Church after recommendation by the Nominating Committee, to serve until their successors are elected, shall assist the Church in promoting family life education and conducting selected family life projects. The Family Life Committee shall consist of three to six members. Their duties will be to survey family life needs, plan and direct family life projects, lead the Church to develop a ministry to singles, senior adults, and intergenerational groups, and coordinate plans and activities through the Church Council.

(13) Public Relations Committee

The Public Relations Committee, elected annually by the Church after recommendation by the Nominating Committee, to serve until their successors are elected, shall not only minister to the church body but also to the entire community. Their duties will be to work with the Pastor to communicate the work of the Church to the public through the media, to determine within the Church and community the understanding and acceptance of the work of the Church, and to communicate to the Church through bulletins, bulletin boards or temporary signs in front of the Church.

(14) History Committee

The history Committee, elected annually by the Church after recommendation by the Nominating Committee, to serve until their successors are elected, shall work to remind the Church body of their history and how God has been with them throughout the past years. The History Committee will provide a way in which the Church can effectively maintain current records, photographs, etc. to record the Church's history. This committee shall be made up of two people. Their duties shall be to assist the Church in making and keeping accurate records of its current life and works, to gather and safeguard all historical records of the Church, to minister to the Church body by giving them an understanding of the Church history and to help them to learn from its history, to help the Church to know, understand and appreciate their larger heritage as Southern Baptists.

(15) Pastor Selection Committee

The Pastor Selection Committee shall be selected by the Church body, and shall, when called to do so, seek the proper person to serve the Church as Pastor. This Committee shall be composed of between five to seven members and should be led by the Holy Spirit in seeking out the proper person to lead this Church in its God-given ministry.

(16) Personnel Committee

The Personnel Committee, elected annually by the Church after recommendation by the Nominating Committee, to serve until their successors are elected, shall assist the church in matters related to employed personnel administration. Their work includes such areas as determining staff needs, employment services, benefits, salaries and job descriptions, and hiring and terminating staff.

(17) Membership Committee

The Membership Committee, elected annually by the Church after recommendation of the Nominating Committee, to serve until their successors are elected, shall consist of seven members. It shall be the duty of this Committee to investigate and report to the Church on any questions regarding admission or dismissal of members, exclusion of members, and to determine the classification of members on either the active membership roll or the inactive membership roll.

Section 4. Committee Organization and Governance

After the Committees and the chairmen of said Committees are elected by the Church, the Committees may elect such other officers of the Committees as they may deem appropriate. A majority of each Committee shall constitute a quorum for any meetings, and all actions of a Committee, not otherwise set forth herein, shall be by majority vote of those present including the chairman. Committee members shall receive actual verbal or written notice of meetings prior to any meeting of a Committee. Committee meetings shall be called by the chairman or by a majority of the Committee members.

**ARTICLE IV
CHURCH PROGRAM ORGANIZATIONS**

The Church shall maintain programs of Bible teaching, Church member training, Church leader training, new member orientation, mission education, action and support, and music education, training, and performance. All organizations related to the Church program shall be under Church control, all officers being elected by the Church and reporting regularly to the Church, and all program activities subject to Church coordination and approval. The Church shall provide the human resources, the physical resources, and the financial resources for the appropriate advancement of these programs.

(1) Sunday School

The basic responsibility of the Sunday School is Bible teaching and biblical revelation in a way that would reach people for Christ and Church membership, and aid in the interpretation of information pertaining to the Church and denomination.

The Sunday School shall be divided into departments and/or classes depending on its size, in order to meet the needs of all ages, and shall be under the direction of a Sunday School director nominated by the Nominating Committee and elected annually by the Church, to serve until a successor is elected.

(2) Church Training

The Church Training organization shall serve as the training unit of the Church. Its tasks shall be to train Church members to perform the functions of the Church, train Church leaders, orient new Church members, teach Christian theology, Christian ethics, Christian history, and Church policy and organization, and provide and interpret information regarding the work of the Church and denomination.

Church training shall be organized by departments for all ages and conducted under the direction of a general director nominated by the Nominating Committee and elected by the Church, to serve until a successor is elected.

(3) Woman's Missionary Union

The Woman's Missionary Union shall be the mission education, mission action, and mission support organization of the church for women, young women, girls, and preschool children. Its tasks shall be to teach missions, engage in mission action, support world missions through prayer and giving, and provide and interpret information regarding the work of the Church and denomination. The Woman's Missionary Union shall have such officers and organizations as the program requires.

(4) Baptist Men

Baptist Men shall be the church's organization for mission education, mission action, and mission support for men, young men, and boys. Its tasks shall be to teach missions, engage in mission action, support world missions through prayer and giving, and provide and interpret information regarding the work of the Church and denomination. The Baptist Men shall have such officers and organization as the program requires.

(5) Music Organization

The Church music organization, under the direction of the Church-elected music director, shall be the music education, training, and performance organization of the Church. Its tasks shall be to teach music, train persons to lead, sing, and play music, provide music in the Church and community, and provide and interpret information regarding the work of the Church and denomination. The Church music program shall have such officers and organization as the program requires.

ARTICLE V
CHURCH COUNCIL

The Church Council shall serve the Church by leading in planning, coordinating, conducting and evaluating the ministries and programs of the Church and its organizations.

The primary functions of the Church Council shall be to recommend to the Church suggested ministries and goals, to review and coordinate ministries and program plans recommended by the Church body and to evaluate achievements in terms of Church ministries and goals.

Regular members of the Church Council shall be the Pastor, other ministerial staff members, the chairman of the Deacons, the Sunday School director and the Discipleship Training director.

All matters agreed upon by the Council which call for action not already approved shall be referred to the Church for approval or disapproval.

ARTICLE VI
CHURCH ORDINANCES

(1) Baptism

The Church may receive for Baptism all persons who have received Jesus Christ as their Savior by personal faith, who profess Him publicly at any worship service, and who indicate a commitment to follow Christ as Lord. Baptism shall be by immersion in water. The Pastor, or whomever the Church shall authorize, shall administer Baptism. The Baptism Committee shall assist in the preparation for and the observance of Baptism. Baptism shall be administered as an act of worship during any worship service of the Church. A person who professes Christ and is not baptized after a reasonable length of time shall be counseled by the Pastor and/or staff or deacons. If negative interest is ascertained on the part of the candidate, he shall be deleted from membership in the Church and from those awaiting Baptism.

(2) Lord's Supper

This Church shall observe the Lord's Supper as scheduled by the Church. The Pastor and Deacons shall administer the Lord's Supper. The Lord's Supper Committee is responsible for the preparations.

ARTICLE VII
CHURCH MEETINGS

Section 1. Worship services

The Church shall meet regularly each Sunday morning, Sunday evening, and Wednesday evening for the worship of Almighty God. Prayer, praise, preaching, instruction, and evangelism shall be among the ingredients of these services. The Pastor shall direct the services for all Church members and for all others who may choose to attend.

Section 2. Special services

Revival services and any other church meetings for the advancement of the Church's objectives shall be held as recommended by the Pastor and approved by the Church.

Section 3. Regular business meetings

The Church shall hold regular business meetings monthly, on Wednesday after the second Sunday of each month, except as otherwise rescheduled by the Church Council. No notice of any regular business meeting is required unless such meeting is a rescheduled meeting.

Notice of any such rescheduled meeting shall be announced at two advance worship services.

Section 4. Special business meetings

The Church may call special business meetings to consider matters of special nature and significance. The notice of a special business meeting shall include the subject, the date, the time, and the place of the meeting, and it must be given by announcement in the Sunday worship services and the Wednesday evening service of the Church immediately prior to the meeting. No business except that for which the meeting was called may be transacted.

A special business meeting may be called by the Church council or by a written petition signed by not less than one-fourth of the church members on the active membership roll, or as otherwise provided specifically in these Bylaws.

Section 5. Quorum

A quorum shall consist of those members who attend any regular or special business meeting.

Section 6. Rules of procedure

The most recently revised version of Robert's Rules of Order shall guide the procedure for all business meetings of the Church. However, in all cases, custom and practice of the church shall control.

ARTICLE VIII
CHURCH FINANCES

Section 1. Budget

The Stewardship Committee, in consultation with the Church Council, shall prepare and submit to the Church for approval an inclusive budget, indicating by items the amount needed and sought for all expenses. Offering envelopes will be provided for members' use.

It is understood that membership in this Church involves financial obligation to support the church and its causes with regular, proportionate gifts. Annually there shall be opportunity provided to secure worthy commitments of financial support from the Church members.

Section 2. Accounting procedures

All funds received for any and all purposes shall pass through the hands of the Church Treasurer, or financial secretary, and be properly recorded on the books for the Church.

A system of accounting that will adequately provide for the handling of all funds shall be the responsibility of the Stewardship Committee.

The Trustees shall be authorized to select and designate such depository or depositories for the funds and securities of the church as they shall deem proper, upon recommendation of the Stewardship Committee. All checks, notes, and contracts of the Church, and all orders for deposit or withdrawal of securities from the designated depository or depositories shall be signed by the church Treasurer or someone authorized by the Church.

Section 3. Fiscal year

The Church fiscal year shall begin on October 1st and end September 30th.

ARTICLE IX INDEMNIFICATION

To the maximum extent permitted or required by Chapter 8 of the Texas Business Organizations Code, as it now exists or as it may be amended in the future, the Church shall indemnify as well as advance expenses to persons who are officers, directors, employees, agents, or other persons identified in Chapter 8, for amount such persons paid directly regarding liabilities incurred by such persons. The Church shall not indemnify or advance expenses to such persons or any amount paid by a third party pursuant to a plan or contract of insurance.

ARTICLE X MISCELLANEOUS

Section 1. Dividends prohibited

No part of the net income of the church shall inure to the benefit of any private individual and no dividend shall be paid and no part of the income of the Church shall be distributed to its Members, Directors, or officers. The Church may pay compensation in a reasonable amount to its officers for services rendered and may compensate and reimburse its Directors as provided in Section 2.10 of Article Two hereof.

Section 2. Gender

Words of either gender used in these Bylaws shall be construed to include the other gender, unless the context requires otherwise.

Section 3. Invalid provisions

If any part of these Bylaws shall be held invalid or inoperative for any reason, the remaining parts, so far as is possible and reasonable, shall remain valid and operative.

Section 4. Headings

The headings used in these Bylaws are for convenience only and do not constitute matter to be construed in the interpretation of these Bylaws.

ARTICLE XI
AMENDMENTS

Changes in these Bylaws may be made at any business meeting of the Church provided each amendment shall have been presented in writing at a previous business meeting and copies of the proposed amendment shall have been furnished to each member present at the earlier meeting or upon request. Amendments to the Bylaws shall be adopted by receiving the affirmative vote of two-thirds of the church members present at a business meeting.

ARTICLE XII
OPERATION AND TERMINATION

The Church is organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals. It is to be operated in a way that does not result in the accrual of distributable profits, realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

The Church pledges its assets for use in performing the organization's religious functions. It directs that on discontinuance of the church by Termination or otherwise, the assets are to be transferred to a charitable, educational, religious, or other similar organization that is qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1986, as amended.

* * * *

The undersigned, being the duly elected and qualified Secretary of the Corporation, hereby certifies that the foregoing Bylaws of the Corporation were duly adopted by the Corporation on _____, 20____*.

Signature

_____, Secretary
Printed Name

APPENDIX 3 - CONSTITUTION

[Note: A church is not required to have a Constitution and may include these provisions in its Bylaws. If a church does have a separate Constitution, its focus should be ecclesiastical issues so as to avoid any conflict with the church's Bylaws.]

PREAMBLE

We declare and establish this Constitution to preserve and secure the principles of our faith and to govern the Church in an orderly manner while pursuing its ministry. This constitution will guide this Church in conducting His ministry locally, nationally or across all borders as He leads.

I. NAME

This Church shall be known as the _____ BAPTIST
CHURCH OF _____.

II. OBJECTIVES

To be a dynamic spiritual body empowered by the Holy Spirit to teach, baptize, and disciple as many people as possible (Matthew 28:18-20).

To help members realize their spiritual gifts and encourage them to use these gifts in the sharing of Christ (I Corinthians 12).

To be a Church whose purpose is to be Christlike in our daily living by emphasizing total commitment to the lordship of Christ (I Thessalonians 2:1-13).

To help members grow in the knowledge of God and man through Church programs of Bible teaching, training and education (Acts 2:42-47).

To encourage members to support the ministry of this Church, Baptist association and convention through personal stewardship (Luke 6:38).

III. STATEMENT OF BASIC BELIEFS

We affirm the Holy Bible as the inspired infallible word of God and the basis for our beliefs. This church subscribes to the doctrinal statement of The Baptist Faith and Message as adopted by the Southern Baptist Convention in 1963. We voluntarily band ourselves together as a body of baptized believers in Jesus Christ personally committed to sharing the good news of salvation to lost mankind and to minister to all. The ordinances of the Church are believer's Baptism and the Lord's Supper.

IV. CHURCH COVENANT

Having been led as we believe by the Spirit of God to receive the Lord Jesus Christ as our Lord and Savior and, on the profession of our faith, having been baptized in the name of the Father, and of the Son, and of the Holy Spirit, we do now in the presence of God and this assembly most solemnly and joyfully enter into covenant with one another as one body in Christ.

We engage, therefore, by the aid of the Holy Spirit to walk together in Christian love; to strive for the advancement of this Church in knowledge, holiness, and comfort; to promote its prosperity and spirituality; to sustain its worship, ordinances, doctrines, and discipline; to contribute cheerfully and regularly, as God has prospered us, toward its expenses, for the support of a faithful and evangelical ministry among us, the relief of the poor and the spread of the Gospel through the world. In case of difference of opinion in the Church, we will strive to avoid a contentious spirit, and if we cannot unanimously agree, we will cheerfully recognize the right of the majority to govern.

We also engage to maintain family and personal devotions; to study diligently the word of God; to religiously educate our children; to seek the salvation of our kindred and acquaintances; to walk circumspectly in the world; to be just in our dealings, faithful in our engagements, and exemplary in our deportment; endeavoring in the purity of heart and good will towards all men to exemplify and commend our holy faith. We pledge as a Church and to each other to take a stand against deeds of the flesh and to live according to the fruits of the spirit according to Galatians 5:19-26.

We further engage to watch over one another in brotherly love; to remember one another in prayer; to exhort and encourage each other unto every good word and work; to guard each other's reputation, not needlessly exposing the infirmities of others; to participate in each other's joys; to aid one another in sickness and distress; to cultivate Christian sympathy in feeling and Christian courtesy in speech; to be slow to take offense, but always ready for reconciliation and mindful of the rules of our Savior to secure it without delay; so seek to live to the glory of God, who hath called us out of darkness into His marvelous light.

We moreover engage that when we remove from this place we will as soon as possible unite with some other church were we can carry out this spirit of this covenant and the principles of God's word.

V. POLITY AND RELATIONSHIPS

The government of this Church is vested in the body of believers who compose it. Persons duly received by the members shall constitute the membership (see Article II of the Bylaws).

All internal groups created and empowered by the Church shall report to and be accountable only to the Church, unless otherwise specified by Church action.

This Church is subject to the control of no other ecclesiastical body, but it enjoys mutual counsel and cooperation which are common among Baptist churches. Insofar as is practical, this Church will, in a democratic sense, cooperate with and support the association, the state convention, and the Southern Baptist Convention.

VI. AMENDMENTS

Changes in the Constitution may be made at any business meeting of the Church provided each amendment shall have been presented in writing at a previous business meeting and copies of the proposed amendment shall have been furnished to each member present at the earlier meeting or upon request. Amendments to the Constitution shall be adopted by two-thirds vote of Church members present.

The undersigned, being the duly elected and qualified Secretary of the Corporation, hereby certifies that the foregoing Constitution of the Corporation was duly adopted by the Corporation on _____ 20_____*.

Signature

Printed Name

_____, Secretary

APPENDIX 4 - SIGNATURE BLOCK FOR CHURCH REPRESENTATIVE

NAME OF CHURCH: _____

By: _____

Name: _____

Title: _____

[Jurat, if needed]

SWORN TO AND SUBSCRIBED BY ME on this _____ day of _____, 20__*.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

[Acknowledgment, if needed]

STATE OF TEXAS §

§

COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 20__* by

_____ (***name***), as _____ (***title***) of

_____ (***name of church***), on behalf of said church.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

APPENDIX 5 - APPLICATION FOR EMPLOYMENT

_____ BAPTIST CHURCH OF _____

APPLICATION FOR EMPLOYMENT

Please note: This employment application will become void and not considered after 30 days from the date of application. After the 30-day period, it will be necessary to submit a new application to be considered for employment.

Please respond to all questions and do not leave any response space blank. If you do not believe that a response is applicable, put "not applicable" in the blank. Use additional paper to respond if necessary.

PERSONAL

Name _____ Date _____
Last Maiden First Middle

Address _____

City _____ State _____ Zip Code _____

Business Phone _____ Home Phone _____

Driver's License # _____ State _____ Expiration Date _____

Social Security # _____ - _____ - _____ Date of Birth _____ Place of Birth _____

1. Position applying for: _____

2. On what date would you be available? _____

3. Minimum length of commitment: _____

4. Are you a member of _____ Baptist Church of _____ (the "Church")? Yes _____ Since _____ No _____

5. List cities and states in which you have lived; any denominations or churches of which you have been a member, including addresses; and all previous church service, volunteer or paid, you have provided since you were 17 years of age. Include approximate dates. (Attach a separate page, if necessary.)

City	State	Church	Address	Service
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

6. Do you have any friends or relatives presently or formerly employed by the Church?

Yes _____ No _____ If yes, please identify by name and relationship.

7. Have you previously applied for employment with or worked for the Church?
Yes _____ No _____ If yes, please identify the date(s) of employment or application.

8. Do you currently or have you previously volunteered with the Church?
Yes _____ No _____ If yes, please identify the ministries for which you volunteered and the dates.

EMPLOYMENT HISTORY

List your present job first, or most recent job if you are now unemployed and then all others in reverse chronological order. LIST ALL FORMER EMPLOYMENT. (Additional Sheets are available if necessary.)

EMPLOYER #1

Name _____

Address _____

Telephone _____ Your job title _____

Your last rate of pay _____

Your supervisor's name _____

Your date of hire _____ Your date of termination _____

Work performed _____

Reason for leaving _____

How many days did you work after giving notice of leaving? _____

Were you ever disciplined, warned or counseled about your job performance, attendance or any other work-related matter by this employer? Yes _____ No _____. If yes, please explain the circumstances.

May the Church contact your present employer? Yes _____ No _____. If not, who should be contacted for current employment verification?

EMPLOYER #2

Name _____

Address _____

Telephone _____ Your job title _____

Your last rate of pay _____

Your supervisor's name _____

Your date of hire _____ Your date of termination _____

Work performed _____

Reason for leaving _____

How many days did you work after giving notice of leaving? _____

Were you ever disciplined, warned or counseled about your job performance, attendance or any other work-related matter by this employer? Yes _____ No _____. If yes, please explain the circumstances.

Have you ever been discharged from any job? Yes _____ No _____. If yes, please identify the employer and date of discharge, and explain the circumstances.

Please account for any periods of unemployment (of four weeks or more since you left high school) by noting the dates of unemployment and what you were doing during that time.

EDUCATION

HIGH SCHOOL

1. Name of School _____

2. City/State _____

3. Years Completed (Circle) 1 2 3 4

Did you Graduate? Yes _____ No _____

Year Last Attended _____

COLLEGE/UNIVERSITY/TECHNICAL OR VOCATIONAL

4. Name of School _____

5. City/State _____

6. Years Completed (Circle) 1 2 3 4

Did you Graduate? Yes _____ No _____

Year last attended _____

7 Course of Study and Degree, if any _____

8. Do you have any special skills, training, apprenticeship, or extracurricular activities that would apply to the job for which you are an applicant?

9. Please describe below any additional education, training, or qualifications which you possess which you believe may assist the Church in evaluating your application.

10. Do you consider yourself a positive role model? Yes _____ No _____

11. Please provide the names and phone numbers of three personal references not related to you.

	Name	Home Phone	Work Phone
a.	_____	_____	_____
b.	_____	_____	_____

c. _____

12. Because the Church cares for our members, including our children, and desires to protect the, we ask you to please answer the following questions. We understand the following questions are personal and we will protect your privacy.

a. Is there any reason, including those that are physical or mental health related, that might keep you from effectively working with children or that might cause a child potential harm? Yes _____ No _____

b. Have you ever been charged with, indicted for, or pled guilty to a crime?
Yes _____ No _____

If yes, please explain (attach a separate page, if necessary):

c. Have you ever been charged with, indicted for, or pled guilty to an action prohibited by the Texas Family Code, or a similar code in any state (including, but not limited to, child abuse, indecency with a child, or injury to a child)? Yes _____ No _____

If yes, please explain (attach a separate page, if necessary):

d. Have you ever been known by any other name? Yes _____ No _____

If yes, please list all other names (including maiden name):

e. Would you be willing to be fingerprinted? Yes _____ No _____

If you were personally a victim of child abuse, we require that you make this information known to the minister under whose leadership you will serve. Admitting you were a victim will not automatically disqualify you from service. Your confidence will be respected and appreciated.

13. If you have a disability or impairment, describe or demonstrate how with or without reasonable accommodations you would be able to perform job-related functions.

14. Is there any health related reason that would keep you from effectively working with members or cause any potential harm to our members? Yes _____ No _____ If yes, please describe

You may choose to set an appointment with the Chairman of the Personnel Committee and discuss the answer to this question personally rather than provide the information on this form. Your answer will be kept confidential.

The Information contained in this application is correct to the best of my knowledge. I authorize the Church to obtain information from references, employers and churches listed herein. I also authorize any references, churches or other organizations or employers listed in this application to give you any information, including opinions, that they may have regarding my character and fitness for the job I am applying. In consideration of the receipt and evaluation of this application by the Church, I hereby release any individual, church, children's organization, charity, employer, reference, or any other person or organization, both collectively and individually, from any and all liability for damages of whatever kind or nature which may at any time result to me, my heirs, or family, on account of compliance or any attempts to comply, with this authorization. I waive any right that I may have to inspect any information provided about me by any person or organization identified by me in this application.

Should my application be accepted, I agree to be bound by the Bylaws and Policies of the Church, which are adopted from time to time, and to refrain from unscriptural conduct in the performance of my services on behalf of the Church. I have been apprised of, understand and support the Church's position on the problem of child abuse.

I understand that the Church desires to protect its members and therefore give my permission for Church leadership to conduct a criminal background check on me and to maintain my fingerprints and photo ID on file.

I further state that I have carefully read the foregoing release and know the contents thereof; and sign this release as my own free act. I understand that any misrepresentation or omission of a material fact on my application may be justification for refusal of employment.

In the event I am employed, I understand that all employees are subject to termination at the discretion of the Church. If, in the event I choose to voluntarily terminate my employment, I am free to do so at any time, and if I choose to give proper notice of termination, the Church may either permit me to continue my employment during the notice period or may accept my resignation immediately.

I understand that, in the event I am employed by the Church, my compensation (if any), hours of service and all other terms and conditions of employment are subject to modification or change by the Church at the Church's discretion.

I understand that, if employed, any misrepresentation made by me completing this application shall be considered as sufficient cause for my dismissal without advance notice.

I authorize the Church to supply my employment record, in whole or in part, and in confidence, to any prospective or future employer, governmental agency, or other party, with a legal and proper interest therein.

Applicant's Signature _____ Date _____

APPENDIX 6 - ADDENDUM TO CLERGY EMPLOYMENT APPLICATIONS

I hereby certify that:

- (1) No civil, criminal, or ecclesiastical complaint or charge has ever been brought or made against me for sexual misconduct, and
- (2) I have never resigned or been terminated from a voluntary or employed position on the basis of or due to sexual misconduct.

This certification is accurate and may be verified by _____ Baptist Church of _____ (the "Church"). I hereby authorize the Church to make any and all contacts necessary to verify this certification, and to confirm the absence of any criminal record or judicial proceeding involving sexual misconduct claims against me. I also specifically authorize all previous employers, agencies, and other organizations, agents or representatives, including law enforcement agencies or judicial authorities, to release any and all requested information to the Church. I understand that the information obtained through those sources may be used to deny me employment from the Church. I agree to hold harmless the Church and all organizations, persons, or entities who provide information from any and all claims, liabilities, and causes of action for the legitimate release or use of any information. I understand sexual misconduct includes but is not limited to a pattern, practice, or scheme of conduct, which may include sexual contact or sexual intercourse, that can reasonably be construed as being for the purposes of sexual arousal or sexual gratification or sexual abuse of any person, when the persons involved are not spouses of each other.

Clergy's Name

STATE OF TEXAS

§

COUNTY OF _____

§

§

This instrument was acknowledged before by _____

(name of clergy) on this _____ day of _____,

20__*.

Notary Public, State of Texas

Printed Name of Notary

My Commission Expires: _____

APPENDIX 7 - DRIVER INFORMATION FORM

TO BE COMPLETED BY ANYONE WHO WILL BE AUTHORIZED TO DRIVE A CHURCH-OWNED VEHICLE OR THEIR OWN VEHICLE ON CHURCH ACCTIVITIES

TO BE KEPT ON FILE BY THE CHURCH

Name of Driver _____ Date _____

Address _____

Telephone Number _____ Age: _____

Driver's License # _____ State _____ Expiration Date _____

Years of driving experience _____

Automobile(s) to be used in church activities:

Make	Model	Year	License Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

AUTOMOBILE LIABILITY INSURANCE:

Company Name _____

Policy No. _____ Amount of Coverage _____

Policy Expiration Date _____

Moving traffic violations (whether or not dismissed through defensive driving or deferred adjudication) received within the last five (5) years.

Date	Violation	Disposition
_____	_____	_____
_____	_____	_____

Automobile accidents within the last five (5) years (regardless of fault).

Date	Violation	Disposition
_____	_____	_____
_____	_____	_____

APPENDIX 8 - CHILD ABUSE PREVENTION POLICY CHECKLIST

Child abuse is a fact of today's society. It can happen at any time and in any church, large or small. The emotional trauma and personal tragedies related to this subject are extreme and the risk of this occurring should not be ignored. The legal consequences can have equally as long lasting an effect on the church. The following are steps recommended for development and adoption of a child abuse prevention policy and the issues to be addressed in it.

I. ADOPTION OF POLICY

1. Appoint a committee expressly for the purpose of policy development. The committee members should be comprised of several disciplines (law, counseling, medicine, religion, education, and so forth) and represent a broad spectrum of church membership. You may also consider having a steering committee of a larger group of people for input and an executive committee that actually performs the work of drafting and debating the detailed points of the policy.
2. Demonstrate that the church is acting proactively to prevent a future problem, and not in response to past occurrences. Ask for input from everyone. Let the entire church know that a policy is being developed, and that it is for the protection of the entire church. Circulate several drafts of the policy as it is being prepared and ask for comments at each drafting stage. Try to work comments into the policy to establish "ownership" of the policy across a broad spectrum of the membership. When you reach the point that you feel like you have a final draft, call a public forum meeting for the purpose of discussing the draft, advising parents and workers what it contains and how it is to work, and receiving further input. After this meeting, revise the draft again if necessary. Anticipate that there may be workers in the church that have gotten along fine for years without a policy who may receive the policy unfavorably. In these cases, seek their input early in the process to explain the purpose of the policy and get their buy-in.
3. Use outside sources. Also, seek professional help before the final draft of the policy is adopted. There may be legal points or other fine tuning that you can obtain from outside the church.
4. Consider a transition period to fully institute the policy, rather than trying to enforce it immediately. This will also allow everyone to grow more comfortable with the procedural "inflexibilities" of such a policy. The transition could apply first to staff, then to lay leaders, then to the volunteers. Move swiftly with an eye toward continual progress.
5. The final policy should attempt to be comprehensive, should be in writing, should be adopted as an official policy of the church in a church business meeting, and should be available for review at all times.

II. INSURANCE

The policy should require the church to obtain the maximum level of liability insurance coverage available that would cover child abuse and sexual misconduct claims. If available, the church should have the levels of coverage which are required for limited immunity under the Charitable Immunity And Liability Act of 1987 (See II. G. 2. of the Article).

III. PHYSICAL FACILITIES

The policy should address physical changes to the facilities of the church to help enforce the policy. The changes should include windows into each classroom where children are being cared for or supervised, restroom facilities that are conveniently located such that children have access to the restroom without being alone or in the company of strangers or unaccompanied adults. Attention should be given to those

areas of the church to which children are assigned so as to reduce the possibility of their being kidnapped or their having access to unsupervised areas where injury could occur. Where a large number of children are accommodated, names and photographs of workers should be displayed near and outside the doors of their rooms to give parents assurance that the persons in the rooms are properly assigned.

IV. WORKER ENLISTMENT

Any person who has been a victim of child abuse should be separately questioned by the appropriate ministerial staff to determine their present qualification to serve in the children's programs. There is data to support that victims of abuse are statistically more prone to become involved in such occurrences in the future. This is not to say all abused become abusers but rather to address a statistical risk and ensure any adult who has suffered abuse is not only a good fit for the church but is cared for as well.

1. All paid employees should be required to complete an Employment Application, such as the one attached as Appendix 5.
2. Whether a paid employee or a volunteer, each worker should also be required to complete a Preschool/Children/Youth Worker Application which is specifically designed for workers who will be working with children, such as the one contained in Appendix 9.
3. After an application is received, prior employment and volunteer service and personal references should be checked. See the Reference Check Form contained in Appendix 10 for this purpose. It is suggested that, at a minimum, personal references be telephoned and a written memorandum be made of the contents of those telephone conversations, and that prior employment and church service references be contacted in writing.
4. Any prospective worker who has prior incidents of committing sexual misconduct or child abuse should not be allowed to serve in any capacity where they would have contact with children.
5. Criminal background checks should be performed on each worker. An authorization for a background check is contained in Appendix 12 for each prospective worker to sign. The church should consider updating the background check on a routine basis, such as every five (5) years.
6. The church should consider obtaining psychological profiles on its workers. This may be more appropriate for paid employees.
7. Standard interview questions should be developed and used in personal interviews with volunteer or employee applicants, after reviewing the applications of the applicant, and checking all references. These interview sheets should be filled out with the results of the interview and kept in the employee personnel file, as well as the reference checks and the applications. A separate file should be maintained permanently on each worker, whether paid or a volunteer. Sample questions are contained in Appendix 11.
8. No volunteer should be allowed to work with children until they have been a member of the church for a minimum of six months.

V. WORKER TRAINING

Each new worker should be given the legal definition of child abuse in writing, as well as the policy of the church on the reporting of child abuse. New workers should also be required to view child abuse prevention video(s) or attend live trainings and read written materials available on this subject to help them gain an appreciation for the reality of the concern. This should help workers identify child abuse in the future if they see signs of it.

VI. WORKER SUPERVISION

1. The church should adopt the "two adult" rule, which requires a reasonable ratio of adult workers to be maintained in each situation involving the supervision of children, but with a minimum of two workers at all times.
2. Church staff should supervise on an on going basis and make unannounced visits into classes or other program sites from time to time.
3. An identification system should be adopted so that the adults who drop off a child are the same adults who pick up the child, to reduce the possibility of kidnapping.
4. In counseling sessions with minors, parental permission should be obtained prior to a minister meeting privately with a minor, or the two adult rule should be used even in that instance.

VII. REPORTING

1. The church should have an express provision in its policy for the reporting of instances of suspected child abuse by anyone in the church, including all workers. All workers should be made to be familiar with the reporting procedure. An example of such a policy provision is included at the end of this Appendix. The child abuse reporting statute in the State of Texas requires the reporting of suspected instances of child abuse to governmental agencies.
2. Fully comply with the child abuse reporting statute.
3. The church should also immediately contact its insurance company to report the occurrence and should contact its attorney.
4. In instances where child abuse is confirmed and a member of the ministerial staff is the perpetrator, denominational offices should be contacted and advised.
5. Upon the first suspicion of an instance of child abuse, the following steps should be taken immediately:
 - (a) *Do no treat any suspicion as frivolous.*
 - (b) *Commence the investigation immediately, and conclude it as soon as possible.*
 - (c) *Maintain confidentiality of the investigation as much as possible. Emphasize confidentiality of the victim and any accused.*
 - (d) *Cooperate fully with law enforcement officials.*
 - (e) *Suspend any accused from the performance of duties involving children until the investigation has been completed.*
 - (f) *Inform the victim and the victim's family of the steps that are being taken, and continue to keep them advised of the status of the investigation. If child abuse is confirmed, ask the victim and the victim's family what action they would like to take in the matter, and fully cooperate to address their request within the bounds of a legal and prudent response (church legal counsel should assist in this determination).*
 - (g) *In instances where the evidence is inconclusive, the church should immediately dismiss the worker from that position. Consideration of member termination should be considered, as appropriate in the circumstances.*

(h) In instances where the child abuse is confirmed, the church must take action depending on the strength of the evidence available and after consideration of the victim's and the victim's family's request.

(i) Keep the congregation informed of the investigation with respect to matters which are not confidential, so that the congregation will hear about the investigation from within the church rather than from the news media.

6. Promptly take steps to plan for a response to the media and attempt to speak to the media only through one contact person so that the church can emphasize through the media to the public the church's position on child abuse, its concern for the victim, and the extensive steps the church is taking to address the present occurrence and to reduce the risk and provide a safe environment for other children.

VIII. WORKER REVIEW

Workers should annually receive addition training on the risk of child abuse and the prevention of same. The prevention video(s) and written materials should be reviewed in an organized fashion by all church workers, and verification of each worker's participation in the initial training and the annual review should be placed in the worker's personnel file to show that the church regularly provided an awareness program of this problem.

CHILD ABUSE PREVENTION REPORTING POLICY

Any person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall report the person's belief in accordance with this procedure. Non-accusatory reports (reports that identify the victim of abuse or neglect whether or not the person responsible for the abuse or neglect is known) shall be made to the Texas Department of Family and Protective Services (DFPS) (24 hour/day hotline: 1-800-252-5400 or <https://www.txabusehotline.org/Login/Default.aspx>) as follows:

- (a) An oral report shall be made immediately on learning of the abuse or neglect.
- (b) All reports must contain the name and address of the child, the name and address of the person responsible for the care of the child, if available, and any other pertinent information.
- (c) This procedure is not only required as a condition of your job but is also required by law.
- (d) At the time you first learn of an instance of suspected abuse or neglect, you must advise the pastor or associate pastor of the same information you are required to report to authorities in the above paragraph. This is to ensure that proper steps will be taken by the Church.

In case of an emergency or life-threatening situation that must be dealt with immediately, first call 911 or local law enforcement and then call the hotline listed above to make a report.

APPENDIX 9 - PRESCHOOL/CHILDREN/YOUTH WORKER APPLICATION

_____ BAPTIST CHURCH OF _____
PRESECHOOL/CHILDREN/YOUTH WORKER APPLICATION

Legally speaking, the church has the RIGHT TO ASK the following questions related to the application and screening process, and the applicant has the RIGHT TO REFUSE to answer any question. These applications for service are strictly confidential. Thank you for your cooperation in this process and we hope you will understand the need for this in our efforts to act prudently to protect the children in our care.

Name _____ Date _____ Last
Maiden First Middle

Address _____

City _____ State _____ Zip Code _____

Business Phone _____ Home Phone _____

Driver's License # _____ State _____ Expiration Date _____

Social Security # ____ - ____ - ____ Date of Birth _____ Place of Birth _____

1. Position applying for: _____
2. On what date would you be available? _____
3. Minimum length of commitment: _____
4. Are you a member of _____ Baptist Church of _____ (the "Church")? Yes _____ Since _____ No _____
5. List cities and states in which you have lived; any denominations or churches of which you have been a member, including addresses; and all previous church service, volunteer or paid, you have provided since you were 17 years of age. Include approximate dates. (Attach a separate page, if necessary.)

City	State	Church	Address	Service
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

6. List all your previous non-church work, volunteer or paid, involving children. Include approximate dates, organization's name and address, type of work you performed, name of supervisor and phone number, if known. (Attach a separate page, if necessary.)

Dates	Organization	Type of Work	Supervisor's Name	Phone
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

7. Do you currently or have you previously volunteered with the Church? Yes _____ No _____ If yes, please identify the ministries for which you volunteered and the dates.

8. Do you consider yourself a positive role model for children? Yes _____ No _____

9. Please provide the names and phone numbers of three personal references not related to you.

Name	Home Phone	Work Phone
a. _____	_____	_____
b. _____	_____	_____
c. _____	_____	_____

10. Because the church cares for our children and desires to protect them, we ask you to please answer the following questions. We understand the following questions are personal and we will protect your privacy.

a. Is there any reason, including those that are physical or mental health related, that might keep you from effectively working with children or that might cause a child potential harm? Yes _____ No _____

b. Have you ever been charged with, indicted for, or pled guilty to a crime? Yes _____ No _____ If yes, please explain. (Attach a separate page, if necessary.)

c. Have you ever been charged with, indicted for, or pled guilty to an action prohibited by the Texas Family Code, or a similar code in any state (including, but not limited to, child abuse, indecency with

a child, or injury to a child)? Yes _____ No _____ If yes, please explain: (Attach a separate page, if necessary.)

d. Have you ever been known by any other name? Yes _____ No _____ If yes, please list all other names (including maiden name):

e. Would you be willing to be fingerprinted? Yes _____ No _____

If you were personally a victim of child abuse, we require that you make this information known to the minister under whose leadership you will serve. Admitting you were a victim will not automatically disqualify you from service. Your confidence will be respected and appreciated.

11. If you have a disability or impairment, describe or demonstrate how with or without reasonable accommodations you would be able to perform job-related functions.

12. Is there any health related reason that would keep you from effectively working with children or cause any potential harm to our children? Yes _____ No _____ If yes, please describe

You may choose to set an appointment with the Minister to Children and discuss the answer to this question personally rather than provide the information on this form. Your answer will be kept confidential.

13. List any gifts, callings, training, education, or other factors that have prepared you for children/youth work:

The information contained in this application is correct to the best of my knowledge. I authorize the church to obtain information from references, employers and churches listed herein. I also authorize any references, churches or other organizations or employers listed in this application to give you any information, including opinions, that they may have regarding my character and fitness for children's work. In consideration of the receipt and evaluation of this application by the Church, I hereby release any individual, church, children's organization, charity, employer, reference, or any other person or organization, both collectively and individually, from any and all liability for damages of whatever kind or nature which may at any time result to me, my heirs, or family, on account of compliance or any attempts to comply, with this authorization. I waive any right that I may have to inspect any information provided about me by any person or organization identified by me in this application.

Should my application be accepted, I agree to be bound by the Bylaws and Policies of the Church, which are adopted from time to time, and to refrain from unscriptural conduct in the performance of my services on behalf of the Church. I have been apprised of, understand and support the Church's position on the problem of child abuse.

I understand that the Church desires to protect its children and therefore give my permission for Church leadership to conduct a criminal background check on me and to maintain my fingerprints and photo ID on file.

I further state that I have carefully read the foregoing release and know the contents thereof; and sign this release as my own free act. I understand that any misrepresentation or omission of a material fact on my application may be justification for refusal of employment or acceptance of my service as a volunteer (collectively, the "engagement").

In the event I am engaged, I understand that all employees/volunteers are subject to termination at the discretion of the Church. If, in the event I choose to voluntarily terminate my employment/services, I am free to do so at any time, and if I choose to give proper notice of termination, the Church may either permit me to continue my employment/service during the notice period or may accept my resignation immediately.

I understand that, in the event I am accepted for engagement by the Church, my compensation (if any), hours of service and all other terms and conditions of engagement are subject to modification or change by the Church at the church's discretion.

I understand that, if engaged, any misrepresentation made by me completing this application shall be considered as sufficient cause for my dismissal without advance notice.

I authorize the Church to supply my employment/service record, in whole or in part, and in confidence, to any prospective or future employer, governmental agency, or other party, with a legal and proper interest therein.

Applicant's Signature

Date

APPENDIX 10 - LETTER/TELEPHONE REFERENCE CHECK FORM

LETTER/TELEPHONE REFERENCE CHECK FORM

_____ BAPTIST CHURCH OF _____

If Letter:

If Telephone Interview:

(Answer questions to record telephone interview)

Date _____	Name of Applicant _____
Church Name _____	Date of Telephone Interview: _____
Address _____	Person Conducting Interview _____
City _____	Reference Name/Telephone Number: _____
State _____ Zip _____	_____

(Applicant's Name) has applied to work with (Department) at our church and has given your name as a reference. We would appreciate your answering the following questions as soon as possible and adding any information which you consider pertinent. Thank you for your cooperation.

1. How long have you know the applicant and in what capacity?

2. Do you consider the applicant a dependable person, and one who would be a faithful worker in the area of ministry with preschoolers/children/youth?

3. How well does he/she control their emotions?

4. Have you ever observed the applicant work with preschoolers/children/youth? If so, what was your impression?

5. Do you know any reason why the applicant should not work with preschoolers, children or youth?

Comments: _____

If you would like to discuss the above questions, please do not hesitate to call:

(Name) _____ (Telephone Number) _____

Please return in the enclosed envelope as soon as possible. Thank you very much for your cooperation.

Sincerely,

(Name)

SAMPLE

APPENDIX 11 - PRESCHOOL/CHILDREN/YOUTH WORKER INTERVIEW FORM

PRESCHOOL/CHILDREN/YOUTH WORKER INTERVIEW FORM

_____ BAPTIST CHURCH OF _____

Prior to this interview, check the church records to determine the following:

- A. Name _____ Date _____
- B. How long has the prospective applicant been a member of _____ Baptist Church of _____ (the "Church")? _____
- C. Attendance Pattern _____
- D. Date of Birth _____

QUESTIONS:

1. Please share with me how you became a Christian.

2. How do you feel God has gifted you to serve in the church?

3. What is your area of interest? (At this point the interviewer can share needs and positions available.)

4. What type of Sunday School, choir, etc., experience have you had?

5. What kind of curriculum have you used?

6. Can you make a commitment to participate in planning and training?
(The interviewer should be specific as to the planning and training involved in the position.)

7. What training have you received that has contributed to your growth as a Christian?

8. Have you ever been a victim of child abuse? Yes ___ No ___

If you were personally a victim of child abuse, we required that you make this known to the minister under whose leadership you will serve. Admitting that you were a victim will not automatically disqualify you from service. Your confidence will be respected and appreciated. If you prefer, you may discuss this with the Counseling Ministry Director.

Interviewers Comments:

SAMPLE

APPENDIX 12 - CRIMINAL RECORD CHECK

CRIMINAL RECORD CHECK

_____ BAPTIST CHURCH OF _____

Name: _____

Address: _____

Phone: _____

Other names by which you have been known (if any):

Note: May include maiden names or names that were changed for other reasons.

I hereby authorize the local Police Department and other local, state or federal agencies to release any record that may be on file in my name(s) in the records of said agencies. Any such records will become part of my personal application for employment or volunteer service at _____ Baptist Church of _____.

Legal Signature _____ Date of Birth _____

Social Security # ____ - ____ - ____ Texas Driver's License # _____

APPENDIX 13 - EMPLOYEE/INDEPENDENT CONTRACTOR STATUS

INDEPENDENT CONTRACTOR TEST INTERNAL REVENUE SERVICE

IRS Independent Contractor Test

The factors used by the IRS to determine evidence of the degree of control or independence for purposes of workers classification are set forth below as grouped in IRS Publication 15-A, 2010 Edition, page 6; available for downloading from <http://www.irs.gov/pub/irs-pdf/p15a.pdf> (PDF). Another helpful resource and analysis of these factors is available as part of *Especially for Texas Employers*, a publication of the Texas Workforce Commission available at http://www.twc.state.tx.us/news/efte/appx_d_irs_ic_test.html.

Behavioral control

Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

1. *Instructions the business gives the worker.* An employee is generally subject to the business' instructions about when, where, and how to work. All of the following are examples of types of instructions about how to do work:
 - a. When and where to do the work
 - b. What tools or equipment to use
 - c. What workers to hire or to assist with the work
 - d. Where to purchase supplies and services
 - e. What work must be performed by a specified individual
 - f. What order or sequence to follow

The amount of instruction needed varies among different jobs. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved. A business may lack the knowledge to instruct some highly specialized professionals; in other cases, the task may require little or no instruction. The key consideration is whether the business has retained the right to control the details of a worker's performance or instead has given up that right.

2. *Training the business gives the worker.* An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

Financial control

Facts that show whether the business has a right to control the business aspects of the worker's job include:

3. *The extent to which the worker has unreimbursed business expenses.* Independent contractors are more likely to have unreimbursed expenses than are employees. Fixed ongoing costs that are

incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services they perform for their employee.

4. *The extent of the worker's investment.* An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment isn't necessary for independent contractor status.
5. *The extent to which the worker makes services available to the relevant market.* An independent contractor is generally free to seek out business opportunities. Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.
6. *How the business pays the worker.* An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time. This usually indicates that a worker is an employee, even when the wage or salary is supplemented by a commission. An independent contractor is usually paid by a flat fee for or on a time and materials basis for the job. However, it is common in some professions, such as law, to pay independent contractors hourly.
7. *The extent to which the worker can realize a profit or loss.* An independent contractor can make a profit or loss.

Type of relationship

Facts that show the parties' type of relationship include:

8. *Written contracts describing the relationship the parties intended to create.*
9. *Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.*
10. *The permanency of the relationship.* If the company engages a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.
11. *The extent to which services performed by the worker are a key aspect of the regular business of the company.* If a worker provides services that are a key aspect of the company's regular business activity, it is more likely that the company will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and would have the right to control or direct that work. This would indicate an employer-employee relationship.

APPENDIX 14 - FORM 802: PERIODIC REPORT OF A NONPROFIT CORPORATION

https://www.sos.state.tx.us/corp/forms/802_boc.pdf

Form 802 (Revised 08/12)		This space reserved for filing office use.
Submit in duplicate to: Secretary of State Reports Unit P.O. Box 12028 Austin, TX 78711-2028 Phone: (512) 475-2705 FAX: (512) 463-1423 Dial: 7-1-1 for Relay Services Filing Fee: See Instructions		Periodic Report of a Nonprofit Corporation

File Number: _____

1. The name of the corporation is: *(A name change requires an amendment; see Instructions)*

2. It is incorporated under the laws of: *(Set forth state or foreign country)* _____

3. The name of the registered agent is:

A. The registered agent is a corporation (cannot be entity named above) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is:

First Name MI Last Name Suffix

4. The registered office address, which is identical to the business address of the registered agent in Texas, is:
(Only use street or building address; see Instructions)

Street Address City State TX Zip Code

5. If the corporation is a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated is:

Street or Mailing Address City State Zip Code Country

6. The names and addresses of all directors of the corporation are: (A minimum of three directors is required.)
(If additional space is needed, include the information as an attachment to this form for item 6.)

<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

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7. The names, addresses, and titles of all officers of the corporation are: (The offices of president and secretary must be filled, but both may not be held by the same officer.)
(If additional space is needed, include the information as an attachment to this form for item 7.)

					Officer Title
					President
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
					Officer Title
					Secretary
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>
					Officer Title
<i>First Name</i>	<i>MI</i>	<i>Last Name</i>	<i>Suffix</i>		
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Execution:

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

Signature of authorized officer

INSTRUCTIONS FOR FILING A PERIODIC REPORT

1. Nonprofit corporations are required by law to file a periodic report not more than once every four years upon request by the Texas Secretary of State.
2. Failure to file a periodic report when request is made by the Texas Secretary of State will result in forfeiture of the Corporation's right to transact business in Texas and, ultimately, could result in involuntary termination of the corporation's existence in Texas.
3. Filing Fee:
 - a. If the report is filed within thirty days of the first notification, the fee is \$5.
 - b. If the report is not filed within thirty days, the corporation will forfeit its right to conduct affairs in Texas.
 - c. After forfeiture of the right to conduct affairs, the fee increases by \$1 per month or part of a month for 120 days following the forfeiture, but not less than \$5 nor more than \$25.
 - d. If the report is not filed within the 120-day period from the date of the second notification, the corporation will be involuntarily terminated or the registration of the foreign corporation will be revoked.
 - e. The corporation may be relieved from the involuntary termination or revocation by filing the required periodic report (Form 802) with a filing fee of \$25.
4. The report, in duplicate, and the appropriate filing fee should be submitted to:

Secretary of State
Reports Unit
P.O. Box 12028
Austin, Texas 78711-2028
(512) 475-2705
FAX: (512) 463-1423

Prior to signing, please read the statements on this form carefully. A person commits an offense under section 4.008 of the Texas Business Organizations Code if the person signs a document the person knows is false in any material respect with the intent that the document be delivered to the secretary of state for filing. The offense is a Class A misdemeanor.

APPENDIX 15 - LEGAL STEPS TO INCORPORATE

A church desiring to incorporate in the State of Texas must take the following steps.

1. The church must hold a business meeting, duly called and held in accordance with the church's adopted procedures, and vote on and pass each of the following resolutions:
 - a. if the church is a mission of another church and has not yet constituted, the mission should constitute as an independent church, to be separate and distinct from the sponsor church; in order to constitute both the mission and the sponsor church should pass resolutions confirming that the mission is constituting as a separate and distinct church independent of the sponsor church, and that the relationship between the sponsor and the mission is ended; depending upon the terms of the relationship between the two, there may be other matters to be addressed in ending the relationship;
 - b. the church should incorporate as a nonprofit corporation qualifying as a tax exempt corporation under Section 501(c)(3) of the Internal Revenue Code of 1986 (the affirmative vote of at least a majority of all of the members of the church entitled to vote must be received in order for the church to incorporate); planning will likely be necessary to ensure that the requisite number of members are in attendance at the meeting for this vote;
 - c. designate the individual who will serve as the registered agent of the corporation and the address for the registered office (the location of the registered office should be the church's physical address);
 - d. designate one or more individuals to serve as the organizers of the church (their only function will be to sign the Certificate of Formation to incorporate the church);
 - e. authorize the church, upon incorporation, to adopt bylaws containing provisions for the regulation and management of the affairs of the church.
2. Upon approval and adoption of the foregoing resolutions, the church secretary should sign and retain the resolutions in the church records for safekeeping.
3. Subsequent to the vote to incorporate the church, the Certificate of Formation must be prepared and the organizer(s) must execute the Certificate of Formation. The church should have its attorney prepare or review the Certificate of Formation prior to filing them.
4. The church should file the Certificate of Formation with the Secretary of State in Austin, Texas. The current filing fee is in the amount of \$25.00 (\$50.00 for expedited service). The church should send an extra copy of the Certificate of Formation when filing, to be file-marked and returned to the church, since the Secretary of State will keep the original in its records. If the Secretary approves the Certificate of Formation for filing, the Secretary of State will mail the church a Certificate of Filing that will indicate the corporation's charter number. Attached to the certificate should be a file-marked copy of the Certificate of Formation. Both the Certificate of Filing and the file-marked copy of the Certificate of Formation should be retained in the church's records for safekeeping.
5. If the church intends to use a name other than that under which the church incorporated, then Assumed Name Certificates must be filed with both the county and the state.
6. After incorporation, at the first business meeting held by the church, the church must adopt Bylaws. (The church may adopt the Bylaws the church was using prior to its incorporation, if those Bylaws contain the provisions necessary for the church's operation under the Texas

Business Organizations Code; the church should have its attorney review the Bylaws prior to adopting them).

7. Transfer all of the church's assets into the name of the corporation. Transfer real property by deed and personal property by a bill of sale.
8. Change all existing contracts and accounts to reflect the new corporate name (e.g., lease agreements, employment contracts and contracts for services and utilities).
9. In the event that any real property is transferred into the name of the corporation, (see 7. above), or the corporation otherwise acquires title to any real property, then the corporation must file an application for an ad valorem tax exemption with respect to each tract of property. The application must be filed between January 1 and April 30th of the year following the year in which the property was acquired (e.g., If the church acquires title to real property in 2018, then it must file its application for an ad valorem tax exemption after January 1, 2019 and no later than April 30, 2019 to receive a 2019 exemption).

APPENDIX 16 - CHURCH RECORDS CHECKLIST

It is imperative that the church adopt and implement an effective recordkeeping system whereby the church can keep its records safe, organized and easily accessible. The church should be certain that more than one person understands the system and has access to its records. These records should be organized and kept in a centralized location or in a backed-up electronic database. How well a church has kept its records can even affect the outcome of a lawsuit, an Internal Revenue Service audit, or other matter in which the church finds itself involved. The following is a list of records the church should keep.

1. The church's governing documents including its Articles of Incorporation or Certificate of Formation, Bylaws, and Constitution, if applicable.
2. The Certificate of Filing received from the Secretary of State evidencing the church's charter number and corporate status.
3. Copies of the Public Information Reports filed with the Secretary of State (see [Appendix 14](#)).
4. All resolutions adopted by the church and/or any committee or board of the church, and minutes of all meetings of the church, committees or boards.
5. All documents pertaining to real property the church owns, leases, or in which it otherwise has an interest, including deeds, deeds of trust, promissory notes, lease agreements, plats, surveys, and ad valorem tax exemption records.
6. Bills of Sale or sales receipts, warranty information, and repair and maintenance records for any significant items of personal property belonging to the church.
7. A personnel file on every employee and volunteer of the church, past or present. Employee personnel files should include an I-9 Report, Form W-4, insurance enrollment documents, employment application, reference checks, criminal background check, employment interview notes, employee training and education attendance records, performance reviews and any disciplinary actions or complaints against the employee. Volunteer personnel files should include volunteer applications for service, reference checks, criminal background checks, interview notes, training and educational attendance records, and any disciplinary actions or complaints against the volunteer.
8. Copies of all church policies duly adopted by the church.
9. Church employee handbooks or guides.
10. Tax information reports and returns filed with or received from all governmental entities, including local, state and federal.
11. Insurance policies and correspondence or information related to same, for current as well as expired policies. Expired policies can be very important if claims are made based upon events that occurred in the past.
12. All financial records of the church, including reports, bank statements, accounting records, budgets and other related documents.
13. Current list of active members.
14. All computer software licenses, registrations and related materials

APPENDIX 17 - PROPERTY ACQUISITION CHECKLIST

Before the church acquires a tract of real property, by purchase, gift, or otherwise, the church should obtain answers to the following questions:

1. How much property is being acquired, where are its boundaries and what is its proper legal description?

A professional survey will set forth the amount of property included in a particular tract of land, will identify its boundaries, and provide a proper legal description. A proper legal description is necessary to legally convey ownership of the property. The survey should also reflect any visible or recorded easements, encroachments, and setbacks as well as whether the property is located on a floodplain.

2. What ownership interest does the seller or donor have in the property?

A title search performed by a title insurance company or abstract company may be used to ascertain whether the person selling or giving the property to the church actually has an ownership interest in the property and, if so, what that interest is (e.g., does the seller own 100% of the property?)

3. Are there any liens against the property?

A title search will also reveal the existence of any liens, tax or otherwise, against the property. Ascertaining the existence of any liens is important, since the transfer of property is subject to any outstanding liens not paid as part of the closing. The property may prove to be more of a burden than a benefit. For example, the amount owed to pay off an unknown tax lien on the property may be more than the property is worth, and receiving a gift of the property would actually be a liability rather than a benefit.

4. Are there any environmental hazards or other problems associated with the property?

A professional environmental assessment may be obtained to confirm the property is free from any environmental hazards and other concerns. This is extremely important since property "owners," past and present, have liability for environmental cleanup of property and any damages resulting from any hazard. Liability will be present irrespective of whether the environmental damage occurred prior to one acquiring ownership.

5. What zoning governs the particular tract of land sought to be acquired?

Zoning may restrict the types of permitted uses of property to be acquired.

Before acquiring a tract of land, the church should ascertain the zoning for the property and determine whether the intended use of the property by the church is an allowable use under the applicable zoning.

6. What, if any, are the future plans of the city or county in which the tract of land is located for roadways and other construction that may affect the value or use of the property?

The city or county may have maps that show planned development or expansion of roadways and public facilities.

7. Are there any defects in the improvements on the property?

A structural engineer can inspect property to determine if structural problems exist in foundations, load-bearing walls or other components of the improvements. Pest inspections can determine whether termites or other insects or rodents exist, and whether any damage has been caused to the improvement. Construction consultants can test electrical, plumbing, air conditioning, heating and other systems to determine whether any repairs or improvements would be necessary or anticipated after acquisition.

APPENDIX 18 - COMMUNICABLE DISEASE POLICY CHECKLIST

Every church should adopt a Communicable Disease Policy. This Policy will govern the manner in which particular circumstances are handled in order to help prevent the spread of any type of communicable disease, including the common cold. The following is a list of items that should be addressed in your church's Communicable Disease Policy:

1. Whether a child who has a communicable disease of any kind should be allowed to stay in the nursery or daycare facility with other children, or whether a separate facility will be provided. The Policy may specify the symptoms which, if displayed by the child, the child must be removed from the facility.
2. The Policy should establish procedures to prevent the spread of disease or infection. The Policy should provide for the following:
 - a. Workers should be required to wear gloves when changing a child or handling soiled garments.
 - b. Children should not be allowed to eat or drink after one another.
 - c. Workers should never use the same cloth or tissue for a child once it has been used on another child.
 - d. Disposable diapers and other items, including tissues, Q-tips, and wipes should be disposed of in such a way as to prevent contact with persons.
 - e. Procedures should be established for rendering care to any person who bleeds or becomes ill, so that other persons do not come into direct contact with another's blood or bodily fluids.
3. The church should develop a method to obtain health information on children, employees, and volunteer workers in the church to assist in the prevention of the spread of disease and for proper training related to same.

APPENDIX 19 - DRIVERS POLICY CHECKLIST

Your church should adopt a Drivers Policy. The Policy should apply to every use of vehicles driven for church business or church activities whether the vehicles are owned by the church or not. The following subjects should be addressed in your church's Drivers Policy:

1. A driver's application should be developed and used as follows:
 - a. Anyone operating a motor vehicle on behalf of the church should be required to fill out a driver's application.
 - b. The driver's application should obtain the individual's name, address, age, driver's license number, description of vehicle, proof of automobile insurance, and driving record. The driving record should include the number of moving traffic violations within the last 5 years, the automobile accidents the driver has been involved in within the last 5 years, and the person at fault with respect to each accident. The application should contain a release that will allow the church to obtain a copy of the individual's driving record from the state.
 - c. A committee or individual at the church should be responsible for reviewing all applications, and approving the drivers who are authorized to operate vehicles on church business. The committee or responsible person should prepare a written list of authorized drivers and such list should be maintained in the church records and kept current.
2. The Policy should set a minimum age limit for drivers.
3. The Policy should establish procedures to be followed in the event of accident or injury.
4. The Policy should establish a two adult rule with respect to the use of vehicles to transport children. The two adult rule simply means that there will be a minimum of two adults in the vehicle any time children are transported, so that instances of child abuse accusations or actual occurrences of child abuse will be reduced.
5. The Policy may include a separate authorized drivers list for church buses or vans, if special experience or training is necessary for the operation of those vehicles.
6. The Policy should specifically state that a person is not authorized to operate a vehicle, even the person's own vehicle, on church business unless: (i) that person is an authorized driver for the church, and (ii) the church has authorized the driver to operate a vehicle on church business in the specific instance. In other words, the driver must have received permission to operate his or the church's vehicle for the specific trip undertaken, as opposed to allowing drivers to determine themselves whether they should operate a vehicle on church business.

APPENDIX 20 - COUNSELING POLICY CHECKLIST

A church should adopt and implement a Counseling Policy, if the church's clergy are involved in counseling. Counseling provided at the church should emphasize ministering to the individual on a spiritual level, unless the church has licensed counselors on staff. Texas law requires counselors to be licensed by the state, unless the counseling activity is performed by a recognized religious practitioner consistent with such person's training, any code of ethics, and state law. The state interprets this exception to the licensing requirement to be limited to the church's clergy staff, not lay persons. Non-licensed individuals cannot represent themselves to the public as "licensed counselors" or by any similar term. Accordingly, churches should never allow their unlicensed clergy staff to counsel people outside of the scope of ministering. The Counseling Policy should be displayed and shared with all those who are ministered to by the church's clergy, and should provide the following information:

1. The clergy staff members are not licensed.
2. The clergy staff will minister to an individual on a spiritual level only. If the individual being ministered to needs licensed counseling assistance in addition to ministering, the clergy staff will refer that individual to a licensed counselor.
3. The information communicated to the clergy member in a counseling session will be confidential and will not be disclosed to any third parties, except for the following information, which if learned, will be disclosed to authorities:
 - a. Any occurrence of or intention to commit child abuse.
 - b. An intention to commit a felony.
 - c. An intention to commit suicide.
4. The counseling session may be audio or video taped or the counselor may take notes.
5. The Policy should require that each time an individual is counseled who is of the opposite sex from the clergy member or who is a child, some procedure will be used to provide proof that sexual misconduct or child abuse was not committed during the counseling session. Examples of such procedure include a video camera to video the counseling session, two clergy members being present in the counseling session or installation of a glass wall in the room so that a person stationed outside the room may see into the room during the counseling session.
6. The Policy should require that a parent or custodian consent to the counseling prior to a child being counseled.
7. The Policy should require that a written memorandum signed by the person being counseled acknowledging the receipt of the Policy prior to any counseling, stating that the person has read the Policy and indicating the person understands its contents.

APPENDIX 21 - SECURITY POLICY CHECKLIST

The most important thing to remember about having a Security Policy at your church is that once it is adopted, it must be followed. Adopting a Security Policy could obligate the church to provide security beyond what it ordinarily would be required to provide by law and failure to then follow its own policy could lead to church liability for any resulting damages or injury. However, a policy is important for the safety of those persons attending church activities.

THE SECURITY POLICY COULD INCLUDE THE FOLLOWING:

1. The minimum qualifications that will be required of anyone who provides security for the church.
2. Persons at the church will have available to them a security officer or other individual who will walk them to their vehicles.
3. The days and hours that security personnel will be provided by the church.
4. The days and hours the church will be open for member use, and the procedure to gain access at other times.
5. The procedure that should be followed in the event a crime or other incident occurs on church property.
6. A disclaimer that the church is not assuming any responsibility or liability for any injuries or accidents occurring on church property.
7. The procedure for how the tithes and offerings will be collected, the type of accounting method to be used, and the precautions to be taken to prevent loss or theft of the church's tithes and offerings. In this regard, at least two persons should be in charge of receiving and accounting for collections.
8. A determination as to whether the church will prohibit the open or concealed carrying of guns on church property and, if so, the person(s) responsible for posting and/or providing required notice of the prohibition.

APPENDIX 22 - BUILDING USE POLICY CHECKLIST

A church often receives requests from the community to use the church's buildings and other facilities for purposes unrelated to church activities when the church is not in need of them (e.g., for meetings of Boy Scouts and civic organizations, family reunions, and marriage receptions). If the church agrees to allow non-church use of its facilities as a community outreach, it should develop a Building Use Policy that it will apply to all non-church functions. Each time a group uses the church's facilities, a copy of its Policy should be delivered to the person responsible for that group. A Building Use Policy should address the following:

1. The Policy should designate the committee or church representative in charge of approving non-church uses and keeping the calendar for building use so that the church is always aware of who will be using its facilities, who will be responsible for paying the amounts charged (if any) for either rental or cleanup, whether the charges have been prepaid or are owing, and when the building is scheduled to be used so that more than one group is not scheduled for the same time.
2. The Policy should require an application form or agreement to be filled out by the responsible person for each group who intends to use the church facilities.
3. The Policy should establish whether a deposit will be required in order to use the facilities and if so, the amount of same. The church should consider whether the amount of the deposit will be the same for any requested use or different amounts depending on the use intended. Additionally, the Policy should establish under what conditions the deposit will not be returned.
4. The Building Use Policy should establish whether the church will allow nonmembers to use church facilities or will limit building use to church members only.
5. If the Policy requires security personnel at the functions held at the church, the Policy should establish who will be responsible for paying for those services.
6. The Policy should establish the days and hours of use that will be permitted (e.g., whether any use will be permitted on Sunday and how late the building may be used).
7. The church should specify in its Policy any activities that are absolutely prohibited (e.g., the use of alcoholic beverages).
8. Responsibility for cleanup of the facility after use should be set forth in the Policy as well as the person who will be in charge of making certain the church facility is properly locked and secure at the end of each use.
9. The Policy can require that any group must provide liability insurance coverage related to their use of the church's facilities, and provide to the church a certificate of insurance reflecting such coverage in the amount and through such insurance companies as may be acceptable to the church. The certificate of insurance should reflect the church as an "additional insured" on the policy.
10. A written agreement between the church and the person responsible for the group using the church's facilities can include important terms such as rental, cost of cleanup, cost of security, deposits, a requirement that the group provide the church with a certificate of insurance, and the date or dates and time which the facilities may be used.

Note: The use of church facilities for non-church purposes may implicate federal, state and local tax laws. Care should be taken that use of church facilities by private individuals or non-501(c)(3) organizations where such use is unrelated to the church's exempt purposes should only be allowed where the church is fairly compensated for the use of its assets. Such compensation should be analyzed to determine whether the compensation results in unrelated business taxable income under the Internal Revenue Code.

APPENDIX 23 - LEGAL STEPS TO TERMINATE A CONGREGATIONALLY-LED CHURCH

1. A congregational meeting must be called in accordance with the church's bylaws with appropriate notice being given of the time, place and purpose of the meeting the purpose being to vote on termination and a plan of distributing assets.
2. At the congregational meeting, assuming a quorum is present, two-thirds of the votes of the members present must be cast in favor of termination for the process to move forward (e.g., Should _____ Church terminate?).
3. The proposed plan of distribution must receive votes of two-thirds of the members present to be adopted (e.g., Should the Plan of Distribution proposed by _____ be adopted?). The church secretary should certify the minutes.
4. Following an appropriate affirmative vote, notice of the proposed termination must be mailed to each known creditor and claimant as well as anyone with whom the church has contracted.
5. Following adoption of a plan of distribution, the church must follow the plan by distributing the church's assets as follows:
 - a. Pay all liabilities and obligations of the church;
 - b. Convey real property by deed and personal property by bill of sale;
 - i. If receiving fair market value for the transfer, then distribute assets (cash) to a qualified 501(c)(3) organization.
 - ii. If receiving no consideration for the transfer, transfer of real or personal property must be to a qualified 501(c)(3) organization.
6. Following the distribution of assets, an officer of the church must sign Certificate of Termination to be filed with the Texas Secretary of State.
7. File the original and a copy of the Certificate of Termination with the Texas Secretary of State.
8. The Texas Secretary of State will return a file-marked copy along with a certificate of filing which should be kept among any remaining church documents.

If the church is Board of Director-led, the Board of Directors must first adopt a resolution recommending termination and a plan of distribution and directing that the question be submitted to a vote of the membership.

APPENDIX 24 - LEGAL STEPS TO AMEND ARTICLES OF INCORPORATION/CERTIFICATE OF FORMATION

A church desiring to amend its Articles of Incorporation or Certificate of Formation, if it is incorporated in the State of Texas, should take the following steps:

1. The church must adopt a resolution approving the proposed amendments in accordance with its governing documents. The procedure for this approval will depend on how the church is organized:
 - a. If a church is a congregational church, where the management of the affairs of the church is vested in its members and it has no board of directors, the proposed amendment or a summary of the changes to be effected thereby must be given to the members within the time and in the manner provided for the giving of notice of meetings of members. For example, if it is the custom and it is in accordance with the bylaws of a church to give notice of meetings verbally from the pulpit or in the church bulletin at the service prior to such meeting, the proposed amendment or a summary of the changes to be effected thereby should be given to the members in that notice (i.e., as part of the verbal notice from the pulpit or in a written description in the church bulletin, as applicable). At the meeting to which such notice has been given, the proposed amendment shall be submitted to a vote of the members and will be adopted upon receiving at least two-thirds of the votes of the members present at such meeting.
 - b. For a church having members with voting rights but which also has a board of directors, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of the members. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby must be given to each member within the time and in the manner provided by the church's governing documents for the giving of notice of meetings of members. At the meeting of the members, the proposed amendment shall be adopted upon receiving at least two-thirds of the votes of the members present at such meeting. However, the board of directors, without members' approval, may amend the articles of incorporation/certificate of formation to extend the duration of the corporation, to delete the names and addresses of the initial directors, to delete the name and address of the initial registered agent or registered office, or to make certain types of changes to the name of the church.
 - c. If a church has no members with voting rights, an amendment is adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.
2. Upon approval and adoption of the foregoing resolution, the church secretary should sign and retain the resolution in the church records for safe keeping.
3. Subsequent to the vote to amend, Articles of Amendment must be prepared if amending the Articles of Incorporation or a Certificate of Amendment if amending a Certificate of Formation. The church should have its attorney prepare or review the Articles of Amendment prior to filing.
4. The church should file the Articles of Amendment/Certificate of Amendment with the Secretary of State in Austin, Texas. The current filing fee for such a filing is \$25.00. The church should send an extra copy of the Articles of Amendment/Certificate of Amendment when filing to be file-marked and returned to the church since the Secretary of State will keep the original in its records. If the Secretary of State approves the document for filing, the

Secretary of State will mail the church a Certificate of Amendment that will certify the effectiveness of the amendment. The Certificate of Amendment and file-marked copy of the Articles of Amendment/Certificate of Amendment should be retained in the church's records for safe keeping.

5. If the amendments to the Articles of Incorporation/Certificate of Formation are extensive, or if for some other reason the church desires to do so, it may also file Restated Articles of Incorporation or a Restated Certificate of Formation which restates its governing document in its entirety including the amendments, so that one document contains the church's governing Articles. This can be done at the same time as the filing of Articles of Amendment/Certificate of Amendment.
6. The Texas Secretary of State has promulgated a form designed to meet the statutory requirements for certain filings (https://www.sos.state.tx.us/corp/forms/424_boc.pdf). Use of this form is permissive, not mandatory. The Texas Secretary of State's form Certificate of Amendment is attached.

Form 424
(Revised 05/11)
Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512/463-5709
Filing Fee: See instructions



This space reserved for office use.

Certificate of Amendment

Entity Information

The name of the filing entity is:

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- For-profit Corporation
- Nonprofit Corporation
- Cooperative Association
- Limited Liability Company
- Professional Corporation
- Professional Limited Liability Company
- Professional Association
- Limited Partnership

The file number issued to the filing entity by the secretary of state is: _____

The date of formation of the entity is: _____

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is:

First Name *M.I.* *Last Name* *Suffix*

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

Street Address (No P.O. Box) *City* *TX* *State* *Zip Code*

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

Add each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

Alter each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

Delete each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. This document becomes effective when the document is filed by the secretary of state.
- B. This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

By: _____

Signature of authorized person

Printed or typed name of authorized person (see instructions)

APPENDIX 25 - APPLICATION FOR RELIGIOUS ORGANIZATION PROPERTY TAX EXEMPTION

(<https://comptroller.texas.gov/forms/50-115.pdf>)

Texas Comptroller of Public Accounts

Form
50-117

Application for Religious Organization Property Tax Exemption

Appraisal District's Name		Phone (area code and number)	
Address	City	State	Zip Code

GENERAL INSTRUCTIONS: This application applies to property that is owned or leased by an organization that qualifies as a religious organization pursuant to Tax Code Section 11.20. This application applies to property you own or lease from a political subdivision of the state on Jan. 1 of this year or acquired during this year.

Such property qualifies for an exemption under Tax Code Section 11.20(h) if the property:

- Is used primarily as a place of regular religious worship and is reasonably necessary for engaging in religious worship; or
- Meets the qualifications of Tax Code Section 11.20(a)(5) as real property consisting of an incomplete improvement that is under active construction and is intended to be used as a place of regular religious worship.

FILING INSTRUCTIONS: You must furnish all information and documentation required by this application so that the chief appraiser is able to determine whether the statutory qualifications for the exemption have been met. This document and all supporting documentation must be filed with the appraisal district office in each county in which the property is located. Do not file this document with the Texas Comptroller of Public Accounts. A directory with contact information for appraisal district offices may be found on the Comptroller's website.

APPLICATION DEADLINES: You must file the completed application with all required documentation beginning Jan. 1 and no later than April 30 of the year for which you are requesting an exemption. If you acquired the property after Jan. 1 of this year and wish to qualify for the exemption this year, you must apply before the first anniversary of the date you acquired the property, or before the first anniversary of the date any property was acquired after Jan. 1.

DUTY TO NOTIFY: If the chief appraiser grants the exemption, you do not need to reapply annually. You must reapply if the chief appraiser requires you to do so, or if you want the exemption to apply to property not listed in this application. You must notify the chief appraiser in writing if and when your right to this exemption ends.

OTHER IMPORTANT INFORMATION

Pursuant to Tax Code Section 11.45, after considering this application and all relevant information, the chief appraiser may request additional information from you. You must provide the additional information within 30 days of the request or the application is denied. For good cause shown, the chief appraiser may extend the deadline for furnishing the additional information by written order for a single period not to exceed 15 days.

State the Year for Which You are Applying

Tax Year

STEP 1: Organization Information

Name of Organization

Mailing Address

City	State	ZIP Code	Phone (area code and number)
------	-------	----------	------------------------------

Organization is a (check one):

Partnership
 Corporation
 Other (specify): _____

The Property Tax Assistance Division at the Texas Comptroller of Public Accounts provides property tax information and resources for taxpayers, local taxing entities, appraisal districts and appraisal review boards.

For more information, visit our website:
comptroller.texas.gov/taxes/property-tax

50-117 • 03-17/14

STEP 2: Applicant Information

Name of Person Preparing this Application _____ Title _____ Driver's License, Personal I.D. Certificate or Social Security Number* _____

If this application is for property owned by a charitable organization with a federal tax identification number, that number may be provided in lieu of a driver's license number, personal identification certificate number or social security number: _____

* Pursuant to Tax Code Section 11.48(a), a driver's license, personal I.D. certificate or social security number provided in an application for an exemption filed with a chief appraiser is confidential and not open to public inspection. The information may not be disclosed to anyone other than an employee of the appraisal office who appraises property, except as authorized by Tax Code Section 11.48(b).

STEP 3: Property Information

- Attach one Schedule AR form for each parcel of real property to be exempt.
- Attach one Schedule BR form listing all personal property to be exempt.
- Attach one Schedule LR form for each parcel of land to be exempt.

STEP 4: Questions About the Organization

Attach a copy of the charter, bylaws or other documents adopted by the organization which govern its affairs.

1. Is the organization organized and operated primarily for the purpose of engaging in religious worship or promoting the spiritual development or well-being of individuals? Yes No
2. Does the organization operate in such a manner that does not result in the accrual of distributable profits, the distribution of profits or the realization of any other form of private gain? Yes No
3. Does the organization use its assets in performing its religious functions or the religious functions of another religious organization? Yes No
4. Does the organization's charter, bylaws, or other regulation adopted by the organization direct that on the discontinuance of the organization, the organization's assets are to be transferred to the State of Texas, the United States or to an educational, religious, charitable or other similar organization that is qualified for exemption under Internal Revenue Code Section 501(c)(3), as amended? Yes No

If yes, give the page and paragraph numbers. Page _____ Paragraph _____

STEP 5: Certification and Signature

By signing this application, you designate the property described in the attached Schedules AR, BR and LR, if applicable, as the property against which the exemption for religious organizations may be claimed in the appraisal district. You certify that the information provided in this application is true and correct to the best of your knowledge and belief.

print here ▶

Print Name _____ Title _____

sign here ▶

Authorized Signature _____ Date _____

If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Penal Code Section 37.10.

Schedule AR: Real Property Used as Actual Place of Religious Worship, Clergy Residence or Endowment Fund Property

Complete one Schedule AR form for each parcel of real property to be exempt. List only property owned by the organization. Attach all completed schedules to the application for exemption.

Name of Property Owner*

Address City State Zip Code

Legal Description (if known) Appraisal District Account Number (if known)

* If owner is state or political subdivision of the state, attach copy of lease agreement.

Type of Property

Actual place of religious worship

1. Is the property currently under construction or physical preparation? Yes No

If under construction, when will construction be completed? _____

If under physical preparation, check which activity the organization has done. (Check all that apply.)

Architectural work Soil testing Site improvement work

Engineering Land clearing activities Environmental or land use study

2. Is the property primarily used for religious worship? Yes No

3. Are worship services regularly held at the property? Yes No

4. Does any portion of this property produce income? Yes No

If yes, attach a statement describing use of the revenue.

5. Is the property reasonably necessary for religious worship? Yes No

Clergy residence

1. Is the property used exclusively as a residence? Yes No

2. Is the property occupied by persons whose principal occupation is to serve in the organization's clergy? Yes No

3. Does any portion of this property produce income? Yes No

4. How much land is used for the residence? _____

5. Is all of the property reasonably necessary for use as a residence? Yes No

Foreclosure sale property held by endowment fund

1. Was the property acquired by foreclosure to protect a bond or mortgage held by endowment fund and used exclusively for support of the organization? Yes No

If yes, what was the date of the foreclosure sale? _____

Property leased by a school qualified under Tax Code Section 11.21.

Land owned for the purpose of expansion of regular religious worship or construction of a new place of regular worship. Complete Schedule LR.

Schedule LR: Land Owned for the Purpose of Expansion of Regular Religious Worship or Construction of a New Place of Regular Worship

Complete one Schedule LR form for each parcel of land to be exempt. List only property owned by the organization. Attach all completed schedules to the application for exemption.

Name of Property Owner

Address

City

State

Zip Code

Legal Description (if known)

Appraisal District Account Number (if known)

Tract Size or Acreage Amount

Tax Code Section 11.20(a)(6) provides that land owned by the religious organization for the purpose of expansion of a place of regular religious worship or construction of a new place of regular religious worship may be exempt. Subsection (j) provides that a tract of land contiguous to the tract of land on which the religious organization's place of regular religious worship is located may be exempt for no more than six years. A tract of land not contiguous to the tract of land on which the religious organization's place of regular religious worship is located may be exempt for no more than three years. A tract is contiguous with another tract of land if the tracts are divided only by a road, railroad track, river or stream.

Statement of Expansion or Construction:

The above described land owned by this religious organization will be used for the purpose of expanding the current place of regular religious worship or for the construction of a new place of regular religious worship. The land does not produce revenue for this religious organization.

I certify that this statement is true and correct to the best of my knowledge and belief.

**print
here** →

Print Name

Title

**sign
here** →

Authorized Signature

Date

If you make a false statement on this application, you could be found guilty of a Class A misdemeanor or a state jail felony under Penal Code Section 37.10.

APPENDIX 26 - TEXAS APPLICATION FOR TAX EXEMPTION FOR RELIGIOUS AND RELIGION-BASED ORGANIZATIONS

(<https://comptroller.texas.gov/forms/ap-204.pdf>)



Texas Application for Exemption – Federal and All Others

GLENN HEGAR TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

Texas tax laws provide exemptions from sales, franchise and/or hotel taxes for organizations meeting specific requirements. The exemptions available vary, depending upon the category of exemption under which the organization might qualify.

Please use this application, Form AP-204, to apply for exemption if you are

- applying on the basis of the organization's designation as a qualifying 501(c) organization, or
- applying on any basis OTHER THAN as a religious, charitable, educational organization or a homeowners' association.

Separate applications are available for organizations applying for exemption as a religious (Form AP-209), charitable (Form AP-205), educational (Form AP-207) or homeowners' association (Form AP-206).

The applications, laws, rules and other information about exemptions are online at

www.Comptroller.Texas.Gov/taxes/exempt

You can submit your completed application along with required documentation by mail, fax or email

Mail: Texas Comptroller of Public Accounts
Exempt Organizations Section
P.O. Box 13258
Austin, Texas 78711

FAX: (512) 475-5862
Email: exempt.orgs@cpa.texas.gov

We process applications in the order they are received. To establish claimed exemptions, we may require additional information. After review of the material, we will inform the organization in writing if it qualifies for exemption. The Comptroller, or an authorized representative of the Comptroller, may audit the records of an exempt organization at any time during regular business hours to verify the validity of the organization's exempt status.

If you have questions or need more information, contact us at 800-252-5555.

You have certain rights under Chapters 552 and 559, Government Code, to review, request and correct information we have on file about you. Contact us at the address or phone number listed on this form.



Texas Application for Exemption – Federal and All Others



• Remove All Staples • TYPE OR PRINT • Do NOT write in shaded areas.

1. Organizations applying for exemption under one of the categories listed below should check the appropriate box and complete this application.

Our publication, *Guidelines to Texas Tax Exemptions (96-1045)*, includes a description of the additional documentation required for each category of exemption. For the category you select, be sure to read the requirements listed in the publication. **If you send in an application without including the documentation described in the publication, we will return the application to you with a request for additional information. We are unable to process incomplete applications.**

- Federal Exemption under qualifying Internal Revenue Code (IRC) Section 501(c). Attach IRS Determination Letter.
- Cemetery Corporations
- Certain Insurance Corporations for Farm Mutuals, Local Mutual Aid Associations and Burial Associations
- Certain Insurance Corporations Licensed as Title Insurance Companies and Title Insurance Agents
- Certain Corporations Subject to the Insurance Code
- Chambers of Commerce
- Convention and Tourist Promotional Agencies
- Cooperative Associations
- Cooperative Credit Associations
- Corporations Exempted by Another Law
- Corporations with Business Interest In Solar Energy Devices
- Corporations Organized for Agricultural Purposes
- Corporations Organized for Conservation Purposes
- Corporations Involved with City Natural Gas Facility
- Corporations Organized to Provide Cooperative Housing
- Corporations Organized to Provide Convalescent Homes for Elderly
- Corporations Organized for Student Loan Funds or Student Scholarship Purposes
- Credit Unions - Federal
- Credit Unions - State
- Development Corporations
- Electric Cooperatives
- Emergency Medical Service Corporations
- Farmers' Cooperative Societies or cooperatives whose single member is a farmers' cooperative described in Section 521(b)(1), IRC, that has at least 500 farmer-fruit grower members.
- Health Facility Development Corporations
- Hospital Laundry Cooperative Associations
- Housing Finance Corporations
- Local Organizing Committees
- Lodges
- Marketing Associations
- Nonprofit Water Supply Corporations
- Open-End Investment Companies
- Corporations Organized to Promote County, City or Another Area (Public Interest Organizations)
- Railway Terminal Corporations
- Recycling Operations
- Telephone Cooperatives
- Volunteer Fire Departments
- Youth Athletic Organizations

2. ORGANIZATION NAME

(Legal name as provided on Articles of Incorporation, or if unincorporated, the governing document.)

3. ORGANIZATION MAILING ADDRESS

Street number, P.O. Box or rural route and box number

City	State/Province	ZIP Code	County (or country, if outside the U.S.)
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

4. Texas taxpayer number (if applicable)

5. Federal Employer Identification Number (EIN) (Required if applying for exemption on the basis of a federal exemption)

6. a) Enter filing information issued by the Texas Secretary of State:

File Number <input type="text"/>	File Date <table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="width: 20px;">Month</td> <td style="width: 20px;">Day</td> <td style="width: 20px;">Year</td> </tr> <tr> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>	Month	Day	Year	<input type="text"/>	<input type="text"/>	<input type="text"/>
Month	Day	Year					
<input type="text"/>	<input type="text"/>	<input type="text"/>					

OR

b) Check this box if this organization is not registered with the Texas Secretary of State.

Special note to non-Texas organizations: Include a file-stamped copy of your organization's formation documents AND a current Certificate of Existence from the Secretary of State or equivalent officer in your home state.

7. Contact information of the person submitting this application

Name <input type="text"/>		Email Address <input type="text"/>	
Firm or Company Name <input type="text"/>		Daytime Phone (Area code and number) <input type="text"/>	Extension <input type="text"/>
Address <input type="text"/>	City <input type="text"/>	State <input type="text"/>	ZIP Code <input type="text"/>

We will notify you by email when the exemption has been added to let you know where the exemption can be verified online. If an email address is not provided, indicate where our response should be mailed: organization's mailing address or mailing address of the submitter.