



# **VESTRY UNIVERSITY EPISCOPAL DIOCESE OF NEWARK**

## **Ten Things That Will Get You Sued or in Serious Trouble**

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# If Nothing Else, Remember That Churches Are Legal Entities Subject To

- New Jersey Statutes
- Canons Of the National Church & Diocese of Newark
- Convention Resolutions
- IRS Regulations
- Property Tax Rules
- Rules Regarding Day Care & Adult Care Centers
- Zoning Ordinances

# If Nothing Else, Remember That Churches Are Legal Entities Subject To – Cont'd

- Health & Safety Regulations
- Laws & Ordinances Regarding Games of Chance
- Legal Obligations Involving Negligence, Invitees, Sexual Harassment and much more

# If Nothing Else, Remember That Churches Are Legal Entities Subject To – Cont'

- As Wardens & Vestry Members, you are officers of a corporation with all related responsibilities.

<http://www.dioceseofnewark.org/njstats.html>

- Responsible to your congregation and to the Diocese of Newark.

<http://www.dioceseofnewark.org/constitution.html>

# I. Financial Control Issues

Problems:

- No Internal Controls
- Inadequate Rules That Are Not Current
- Failure to Follow Rules That Exist
- Resources: Manual of Business Methods

Church Affairs [www.ecusa.anglican.org/documents/MANUAL\\_2009.pdf](http://www.ecusa.anglican.org/documents/MANUAL_2009.pdf)

- Finance Office – Diocese of Newark  
Annual Audit

# Simple Rules

- Appropriate Modern Bookkeeping Systems
- Check Signing – A Big Issue
  - Who?
  - How Many People?
  - Making Deposits
- Church Budget & Management of Line Items –  
If it is the Budget – Can you Spend It?

## II. Insurance

Problems:

- Finding the Policy
- Limits & Self Insured Retentions (Deductible)
  - Saving Money vs. Adequate Coverage
- What is Covered?
  - Directors/Officers
  - Clergy Malpractice
  - Sexual Abuse/Adult Abuse
  - Fidelity Bonds-Coverage for Theft
  - Replacement Valve

# Insurance – Solution

- Have a policy that is specifically designed for Houses of Worship
  - Clergy Malpractice
  - Counseling Issues
  - Day Care
- Review annually-limits, coverage, SIR



# Insurance – Solutions

- When Something changes at church review it again
  - New Tenant
  - New Programs
- Lease/Agreements with Tenants
  - Certificates of Insurance make Sure they are current
  - Indemnity Agreements – Indemnity without Insurance is worth nothing

## III. Property Taxes

Problem: Churches can be subject to property taxation depending upon the situation.

Issue is USE & Not Ownership

- Special Rules for Rectories
- Profit vs not-for-profit rentals
  - If you rent to a not-for-profit then the exemption remains
- Partial vs total rentals – proportionate taxation

# Property Tax Issues - Solutions

- Ask a Lawyer (seriously)  
(Who Actually Knows About Property Taxes)
- Tax Clauses in Leases Making Tenant Responsible for Any Tax Payments or Increased in Costs
- Understand the consequences of Leasing/Renting Property
- Standing Committee Approval

## IV. Invitees (People who you invite onto your church property)

You have a duty to:

- Tenants
- Visitors to Fundraisers
- Guests attending Events – Weddings, Baptisms, Funerals
- Snow& Ice Removal
- Nursery School
- As a church you owe a “legal duty” to invitees that is almost as high as business invitees.
  - Yes – churches can be sued

# Invitees - Solution

- Insurance Coverage – Regular Review
- Regular Maintenance Plans-if it is broken, you have to fix it – Property Management Guide  
<http://www.dioceseofnewark.org/property.html>
- Snow and Ice Removal – Check Local Ordinances
- Agreements with Tenants
  - Indemnity
  - Insurance

# V. Lay Employees

Problem: Failing to Properly Classify and Manage Lay Employees

- Employee v. Independent Contractor
- Exempt v. Non-Exempt-Wage and House Laws
- Withholding Taxes and Paying Them

# Lay Employees - Issues

- Wrongful Termination
  - Policies
  - Documentation-proof of the problem
  - Letter Agreements

# Lay Employees - Solutions

- Policies and Procedures are Ways to Limit Liability - if you follow them.
- Employee Handbook
- Manual of Church Business Affairs
- Employee Policies/Letter of Agreement  
<http://www.dioceseofnewark.org/crd.html>



## VI. Records Retention

Problem: When there is an issue -  
who has the file?

- Insurance Policies
- Leases/Letters of Agreement with Tenants
- Building Maintenance/Capital Expenditure Information
  - \_ Bills/Agreements with Contractors etc.
  - Warranties
  - Guarantees

# Records Retention – Cont'd.

- Proof of Loss for Insurance
  - Pictures
  - Receipts
- Financial Records
- Incorporation Papers, Etc. – Issues involving Bank Account Openings

# Records Retention - Solutions

- Maintain Files/Binder w/Information
- Make Part of Annual Audit Process
- Keep Copies - Backups

## VII. Sexual Abuse/Harassment

Problem: Maintaining Adequate Policies & Procedures to protect against child/adult sexual abuse/harassment.

- Church-Parishioners
- Church School
- Day Care/Day School

<http://www.dioceseofnewark.org/crd.html>

# Sexual Abuse/Harassment - Solutions

## Solution

- Training Procedures
- Draft Model Policies
- Safe Congregations

## VII. Confidential Disclosure of Information

- This is becoming a significant issue
  - Counseling Records
  - Parish Records/Pledge Information
  - Private/Personal Information
  - Illness-The Prayer List
  - Solutions: Have secure files.
    - Limit Access to Church Computer Records

# IX. Inappropriate Computer Usage

Part of the Safe Congregation Concept

- Use of Church computer to review, download, etc. illicit material
- Forwarding materials/emails

Problem-Why

When accessed at Church

- Other employees may see it (harassment)

# Inappropriate Computer Usage

- Church volunteers or parishioners may see it
- Inappropriate use of employer's equipment and/or internet service provider
- Inappropriate use of work time
- Demonstrates poor judgment
- If child porn, it's illegal



# Current Sexual Misconduct Issues

- Prevention and Management
  - Have a policy
    - Cover all electronic devices and service providers
    - Check state law on employee privacy
    - Allow for minimal personal use
    - Create expectation of monitoring
    - Specify what is clearly unacceptable
    - Create expectation of having device examined

# Inappropriate Computer Usage

- Cover email, instant messaging, texting, Twitter, etc.
  
- Educate
  - About the problem
  - About help that may be available
  - About the potential personal and corporate legal consequences

# Inappropriate Computer Usage

- Prevention and Management
  - Monitor
    - Review cell phone records
    - Review land line records
    - Investigate software that reviews content
    - Review times devices are being used
    - Look for too many messages to one person

# In appropriate Computer Useage

- Maintain Control of the Devices
  - Be clear about who owns what
  - Be sure devices are returned when employment/service ends

# X. Misuse of Discretionary Fund

- ◆ Problem: Misuse or Lack of Controls on Discretionary Funds.

1. The discretionary fund is a fund of the parish or mission. It is the Discretionary Fund of the Rector of St. Swithin's church. The funds belong to the church and remain with the church once the priest ceases to be the rector/vicar.

2. All donations for the discretionary fund should be made to the church, deposited in a church account and then transferred to the discretionary fund. The only deposits made to the discretionary fund should be checks drawn on a church account. There may be rare occasions where direct deposits to the discretionary fund are necessary. Such transactions should be extremely rare and the nature of the transaction should be shared with a warden or the treasurer.

3. The discretionary fund should be audited annually along with the rest of the church's finances. Such an audit should be conducted in accordance with the audit requirements of the Diocese of Newark.

# X. Misuse of Discretionary Fund (continued)

- ◆ Problem: Misuse or Lack of Controls on Discretionary Funds. (continued)

4. National Church guidelines permit the use of the discretionary fund for expenses "related to the exercise of ministry not otherwise provided in the church's budget" so long as the vestry/executive committee gives prior general approval for such a use of the fund. This could include the purchase of books, journals and related expenses, but should not be used for the general operating expenses of the church. While such a use of the discretionary fund is permitted, it is recommended that such items be provided through a budget line entitled "rector or vicar's expenses" rather than being paid out of the discretionary fund.

5. If the discretionary fund is maintained as a separate account, the priest should keep detailed records of the funds transactions. When checks are written to cash, the priest should keep a private record of what is done with the proceeds. Monthly the bank statement for the account is to be submitted to the treasurer for verification that all deposits made into the account came from disbursements from a church account. The treasurer should make a notation on the bank statement and file it with the church's financial records.

## X. Misuse of Discretionary Fund (continued)

6. The primary use of discretionary funds is to assist the poor of the congregation and the larger community. Wherever possible it is preferable that payments for rent, utilities, medical care and the like be made directly to the provider rather than to the individual or family.

7. The Canons provide for funding for discretionary funds to come from the un-designated "alms and contributions" at one service per month throughout the calendar year. In practice this has traditionally meant the loose offering at one service. Some congregations also provide funding through the church budget. Churches also may have a policy that all fees for weddings, funerals and baptisms be deposited in the discretionary fund.

# Conclusion

- ◆ Purpose is to alert you to various issues, which you may not be aware of so they can be dealt with before they become serious problems.