



"God is not a God of disorder but of peace — as in all the congregations of the Lord's people ... Let all things be done decently and in order."

(1 Cor. 14:33-40 ESV)





501(c)(3) Non-Profits



Missouri Revised Statutes

Title XXIII - Corporations, Associations and Partnerships Chapter 355 - Nonprofit Corporation Law.

355.116. Bylaws. — The incorporators or board of directors of a corporation shall adopt bylaws for the corporation. The bylaws may contain any provision for regulating and managing the affairs of the corporation that is not inconsistent with law or the articles of incorporation.



The Fundamentals



While income tax exemption for the church and tax deduction for members of the church are not the most important



thing in the bylaws, it is necessary for the by laws to contain certain language if the church desires to receive the benefits of income tax exemption provided by the IRS. Without certain specific language, a church is not exempt from taxation and is not a 501(c)(3) organization. However, if a church utilizes this specific language and operates to the terms contained herein, the church is automatically, WITHOUT DOING ANYTHING ELSE, a 501(c)(3) organization and exempt from income tax on the intake of the church.



The Fundamentals



IRS Requirements

Tax Exemption (Five Requirements):

- 1. 501(c)(3) Purpose Statement Clause
- 2. Private Inurement / Conflict of Interest Clause
- 3. Political Activities Clause
- 4. Dissolution Clause
- 5.. Exempt Activities Clause





501(c)(3) Purpose Statement Clause



This statement should reflect that the church is organized for three primary purposes: religious, charitable, and educational.

"the corporation is organized exclusively for religious, charitable, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provision of any future United States Revenue Law), including but not limited to..."

NOTE: The remainder of the sentence should then set forth the specific purposes of your church, such as establishing and maintaining religious worship, proclaiming the Gospel and providing Christian education.



Private Inurement/Conflict of Interest Clause

The church organizational document should set forth the following limitation:

"No part of the net earnings of the church shall inure to the benefit of, or be distributable to, its members, directors, officers, or to other private persons, except that the church shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the tax-exempt purposed of the church."





Political Activities Clause



Any organization that is tax exempt under Section 501 (c)(3) of the IRS Code must refrain from certain political activities to remain tax exempt. A provision should be included in your organizational documents which states:

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

NOTE: Campaigning by the pastor on his own time and by his own initiative is fine. The pastor may not be endorsed or funded by the church for his political views.



Dissolution Clause



The organizational document shall include a provision which states:

"Upon the dissolution of the corporation, after paying or making provision for payment of a its liabilities, the corporation shall dispose of all its remaining assets to such an organization, or organizations formed and operated exclusively for religious purposes as shall at the time qualify as and exempt organization or organizations under 501(c)(3) of the Internal Revenue's Law!"



Dissolution Clause



NOTE: The bylaws may add provisions to this statement relating to the procedure by which the dissolution and distribution will be carried out.

Example: "Any action to dissolve the church must be approved by a two-thirds (2/3) vote of members of the church present at a meeting called to specifically consider such action, for which meeting written notice has been issued to all members in accordance with the provisions of these bylaws."

Example: "Assets may be distributed only to organizations that agree with the church's Statement of Faith."



Exempt Activities Clause



The organizational document shall include a clause which states:

"Notwithstanding any other provision of these Articles, the corporation shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law) or by an organization, contributions to which are deductible under Section 170 (c)(2) of the Internal Revenue Code of 1986 (or the corresponding provisions of any future United States Internal Revenue Law)."





Articles of Incorporation



Articles of Incorporation: the basic, top level governing rules for your corporation. I encourage every church to form this type of entity to protect the church from liability. The Articles of Incorporation are the top-level rules, but they are the simplest as well.

These Articles contain information such as when the organization was formed, how long it is to last (generally in perpetuity), and they name the people who formed the organization.

This is also the place you want to put key information such as that the nonprofit organization you are forming will be filling for a 501(c)3. There is specific language which is needed in your.

Addicles of incorporation for that



Church Charters – Articles of Incorporation



Church Charters

The application for incorporation that is filed with the secretary of state generally is called the articles of incorporation or articles of agreement.

This document, when approved and certified by the appropriate government official, is commonly referred to as the corporate charter.

Church charters typically set forth the following information:

- corporate name
- corporate address
- · period of duration
- purposes of the corporation
- names and addresses of incorporators and directors



What are Church Bylaws?



Bylaws detail the vision, mission, governance, and operational activities that are established in a church's articles.

Church bylaws also form an agreement among church members, acting as guardrails necessary for healthy church governance and action.

Church bylaws encourage fair and transparent decision-making, holding leaders accountable for church procedures and decisions.



What are Church Bylaws?



Church By-Laws: the day-to-day operational rules of the church.

By-laws are the place you want to set out some of the basic operational rules that should be followed by both the pastors and members of your church.

Rules such as:

- (1) When do you hold an annual business meeting?
- (2) What is the physical end of your year? (i.e. calendar year, fiscal year, or another kind of year),
- (3) What rolls do the officers of the corporation fill?
- (4) Who can sign a large check?
- (5) What kind of vote is needed to incur debt? These are selfprescribed rules that keep you in check when you, as the pastor, or elders are leading the church.



Church Constitutions



Church Constitution: the highest beliefs and tenants of the church. You have probably served or attended a church where you talked about the church constitution. Generally, what is set out in the constitution is the high order of how the church operates, most often from a biblical perspective.

The constitution commonly states if you are affiliated with a denomination, the church hierarchy (if this were to be a pastor lead church, an elder lead church or something similar), what the church believes about some of the big tenants of their faith, and how the church handles things like church discipline.

These are the governing principals that the church will subscribe to and how they will handle biblical matters going forward.



"What is the difference between a church constitution and church by-laws?"

A church's governing documents include a corporate charter and a constitution or bylaws (sometimes both).

NOTE: Under Robert's Rules of Order, the constitution supersedes the bylaws.





"What is the difference between a church constitution and church by-laws?"

- A constitution is the primary document of an organization that
 determines the fundamental aspects of the said organization.
 These fundamentals include matters such as the organization's
 name, purpose, membership, officers, meetings, rules of
 procedure, and amendments. These are the basic elements upon
 which an organization is created.
- Constitutions should consist of fundamentals that are not going to be changed: If you are going to change every single detail of a constitution very often, it is not a proper constitution.



"What is the difference between a church constitution and church by-laws?"

- Bylaws are based on the constitution of an organization. Bylaws determine the
 detailed guidelines of the fundamental aspects of the organization and also
 state the daily work of the organization. This section consists of matters such as
 duties of officers, duties of advisors, committees, impeachment, elections,
 finance, and amendments.
- Bylaws should be constructed with the ability to change them. This does not
 mean you can change anything even in bylaws as you just think. You still must
 follow the amendment rules regarding bylaws, which will follow the pattern of
 the constitution. However, bylaws have the ability to be changed easily.



Identifying a single body of rules as the "constitution and bylaws" without any attempt to distinguish between the two is a common but inappropriate practice.





To illustrate, some churches have:

- (1) a constitution that can only be amended by providing members with advance notice of the proposed amendment prior to a membership meeting, and by a two-thirds vote of the membership at the meeting; and
- (2) bylaws that can be amended at a membership meeting, without prior notice to the members, and by a simple majority vote. The church places provisions of greatest importance in the constitution, such as church doctrine and the purchase or sale of church assets, since these can be changed only through a more deliberative process involving advance notice and a super-majority vote. Routine provisions are assigned to the bylaws.

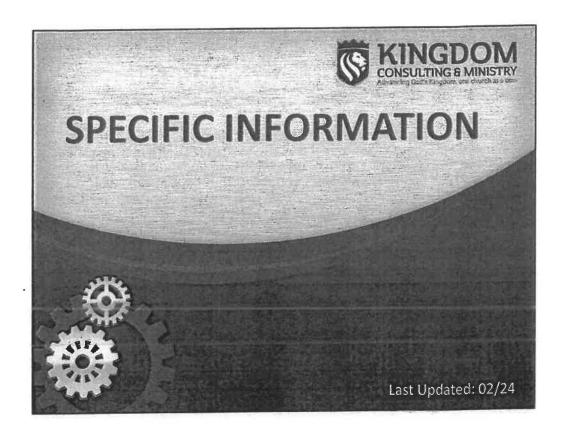


RESOLUTIONS



A Resolution. This is where the governing body agrees to do a one-time thing; it does not need to be in the by-laws or the constitution and is reserved for operational decisions.

For example, the church needs to open a new bank account to segregate funds for a building project. A resolution authorizing the pastor or a business administrator to open a new account would be entirely appropriate; and the bank would have the needed authorization to open the account.





Know Your Current Version



In many churches, their bylaws were adopted long ago, and have been amended numerous times over the years. As a result, there may be various "editions" in circulation. Often, these editions are undated, making it difficult (if not impossible) to identify the current one. This can create confusion.

Identify copies of the church bylaws with a <u>numeric designation</u>. To illustrate, a church identifies its current bylaws as "version 1.0." During the church's membership meeting, two amendments are made to the bylaws. Following the meeting, the revised bylaws are printed, and designated as "version 1.1."

OR.

Identify copies of the church bylaws by date. For example, designate the current bylaws "Current as of 3:14:24]



Structure (1)



Article I. Name, Purpose and Mission

Section A - Name

Section B - Purpose

Article II. Membership

Section A - Statement of Faith

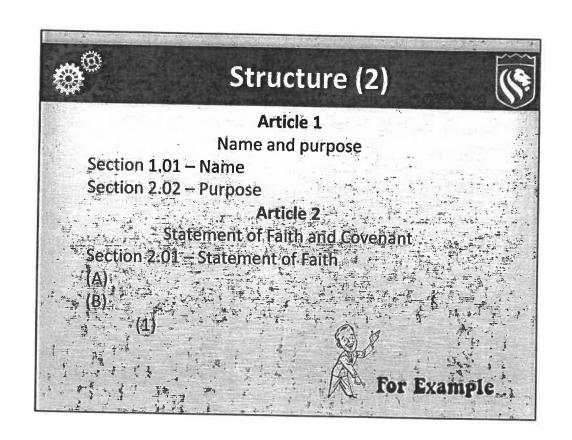
1.

2.

(a)



For Example.





Preamble



- The Preamble is a short paragraph explaining the reasons for the constitution. It gives a brief preview of what is to come in the document, and state what will be accomplished by having a constitution.
- Think of it as a purpose statement for the constitution.



Preamble Examples



EXAMPLE 1:

"For the more certain preservation of the principles of our faith, and to the end that this body may be governed in an orderly manner consistent with the accepted tenets of the Southern Baptist Convention, and for purposes of preserving the liberties inherent in each individual member of this church and the freedom of action of this body with respect to its relation to other churches of the same faith, we do declare and establish this constitution."



Preamble Examples



EXAMPLE 2:

"We declare and affirm these principles in the light of the Holy Scripture to govern the body in an orderly manner. These principles will preserve the liberties of each individual church member and the freedom of action of this body in its relation to other churches."



NAME



Document the church's official name. The name listed in the constitution is what will be used on deeds, bills and bank accounts.

Example:

This body of believers shall be known as MEGA.

LIFE CHURCH, Springfield, INC. and is a Southern-Baptist Church.

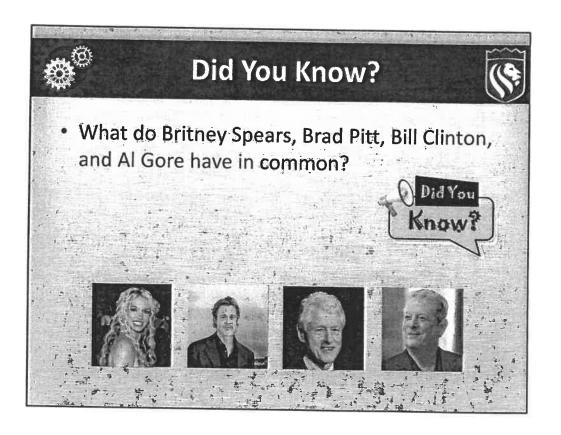


Statement of Faith



While the Statement of Faith should not be limited to these matters, it is recommended that, at a minimum, the church address the following social issues:

- Sexual Immortality
- Sanctity of Life (Abortion)
- Euthanasia
- Biblical Marriage Statement "BIOLOGICAL"
- Divorce/Remarriage
- · Role of Women
- Separation
- Believer's Disputes
- Baptist Faith & Message Statement





Membership



The United States Supreme Court has observed that "all who unite themselves to [a church] do so with an implied consent to its government and are bound to submit to it."

A church's "government" generally is defined in its charter, constitution, bylaws, resolutions, and practice.



Membership



The following issues concerning members should be specifically addressed in a church's bylaws:

- Types of Membership
- · Qualifications of Membership
- Member's Lega Rights
- Member's Right to Vote
- · Member's Right to Sue
- Discipline of Members
- Termination of Membership



- Resident & Non-Resident
- Active & Inactive
- Watch care, etc.





Qualifications of Membership

Church bylaws must clearly state and define the church's qualifications for membership.

- State formal ways by which a person can become a member.
 - Statement, Baptism or Letter Transfer
 - Membership class requirement
- State the minimum standards of conduct and agreement with your statement of Faith.
 - Set a membership standard which provides you with solid legal authority to refuse toe accept or retain members who are openly living in sin or who do not subscribe to your Statement of Faith.

NOTE: Membership is a privilege and should be treated as such.





Member's Legal Rights



Membership creates a special legal status!

- The bylaws should state that members have no contract, property, or civil legal rights in the property or other ministry affairs of the church.
- Members do have the right by law to review the minutes of a meeting, the bylaws of the church, and any prepared financial statements, etc.

NOTE: The church can limit these default legal rights by placing a reasonable restriction in the bylaws.



Case Study



CASE STUDY 1 - Inspection of Church Records

A Louisiana court ruled that an incorporated church had to allow members to inspect church records. Four members asked for permission to inspect the following records of their church:

- (2) the check register and canceled checks for all the church's bank accounts;
- (3) the cash receipts journal; and

(4) monthly financial reports. The pastor denied the members' request. The members then sought a court order compelling the church to permit them to inspect the records.

The pastor insisted that such an order would interfere with "internal church governance" in violation of the First Amendment. A state appeals court ruled that allowing the members to inspect records, pursuant to state nonprofit

Amendment. A state appeals court ruled that allowing the members to inspect records, pursuant to state nonprofit corporation law, would not violate the First Amendment.

The court quoted from an earlier Louisiana Supreme Court ruling:

A voting member of a nonprofit corporation has a right to examine the records of the corporation without stating reasons for his inspection. Since the judicial enforcement of this right does not entirely courts in questions of religious doctrine, polity, or practice, the Eirst Amendment does not be a suite implement the statutory dight. First Amendment values are glainly not leaparaized by a civil court's enforcement of a voting member's right to examine these records. No dispute arising in the course, of this litigation requires the count to resolve an underlying controversy overreligious doctrine.



Member's Right to Vote



- The bylaws should limit voting rights to only members who are eighteen and older and who are present at the meeting.
 - Many states allow for voting by proxy unless the bylaws strictly prohibit it.
 - Absentee and proxy voting should not be allowed.
- The bylaws should authorize the pastor, elders or deacons to remove any member from a meeting if they determine that the member is being disruptive.

NOTE: If the church restricts voting to "Active Members" only, a detailed definition of "Active Members" should be provided along with a valid litmus test to determine if they are in fact "active."



Member's Right to Sue



- All members have the right to bring a lawsuit against the leadership of the church.
- A non-member may not sue to challenge the actions of the church leadership.
- Require "Binding Arbitration"

arbitration noun arrangement, promise.



Discipline of Members



Church bylaws must clearly state and define what disqualifies a person from membership.

- The bylaws must contain a detailed procedure to be followed in dealing with and erring member.
- Scripture references provide the Biblical foundation of the church's decision, but specific steps should be stated.
- The bylaws should also state who is given authority to carry out the discipline steps, pastor, elder, deacon or discipline committee including a lay person.

NOTE: The specific steps stated must be followed to the letter....no exceptions.



Discipline of Members



NOTE 2: If your church bylaws contain a provision addressing the discipline of members who violate your standards of membership, they should clarify that members who have been charged with conduct in violation of the standards of membership waive their right to resign from membership in the church.

Without such a provision, members can preempt a church's disciplinary procedure by simply informing their pastor that they are resigning as members.

Guinn V. Church of Christ, 775 P.2d 766 (Okla. 1989).



Termination of Members



- Bylaws should automatically terminate members who have not attended services in 6-12 months (individual church decision).
- Bylaws should automatically remove from membership any member that joins another church.

NOTE: The most common source of trouble for a church is non-attending members. I believe it is a legal imperative that an automatic termination for church membership be included.



Automatic Termination



An automatic termination provision automatically removes from the church membership rolls any person — other than a college student, military member, shut-in, missionary or evangelist who has not attended a regular church service in the proceeding period of time (as defined in your by laws), or any member who is engaged in lifestyle conduct (e.g. homosexuality, adultery, abortion) which is identified in your bylaws as being Biblically prohibited.

Additionally, anyone who has brought a lawsuit against the church or another Christian should be automatically terminated.



Organization



The types, eligibility, qualifications, election, terms of office, duties, authority, and termination of church leadership and administration (officers, board members, pastor, elders, deacons, clerk, treasurer, recording secretary, moderator, trustees and all paid staff) must be outlined in your church bylaws.



Organization



Rules of Thumb:

- <u>Do not</u> create such an elaborate set of checks and balances that none of the church leadership have sufficient liberty to accomplish anything on behalf of the church.
- <u>Do not</u> list all committees/teams in the bylaws. Rather, retain flexibility and the authority to create and dissolve committees/teams as necessary



Indemnification



Indemnification is an important protection for this in authority in church. It assures the officers and paid staff that the church is willing to support their good-faith decisions on behalf of the church.

Indemnification simply means the church is able to pay for the defense or any damage arising from an officer's decision for which they are later sued.



Meetings



It is important that the church's bylaws carefully spell out rules and procedures for all church administration meetings. Concerns that should be addressed:

- How often and where will the meetings be held?
- How will special meetings be called and who can call them?
- What are the procedures for notifying members of annual, regular, and special meetings?
- What are the rules governing church meetings?
- ·. Who will preside over church business meetings?
- Quorums requirements?
- · Participation requirements? (age, proxy/absentee)
- Virtual Meetings?
- · How are meetings governed? (Robert's Rules or other)



Adoption and Amendments

Make the amendment process simple! Circumstances will arise that create a need to change the bylaws, remain flexible.

- Make sure to follow the amendment process.
- Once amendments are formally adopted, a copy of the new bylaws need to be maintained in the minutes of the church.
- New bylaws do not have to be filed with the state.

NOTE: A church may include that a particular bylaw can never be amended; however, the provision has no legal effect. Whatever the organization adopts, it may always amend or repeal using the bylaws amendment procedure.

NOTE: If a church does not adhere to its own bylaws, it renders itselfsusceptible to government involvement and interpretation.





Supplementary Provisions



If the church operates a school or Day Care:

- Amend the bylaws to appropriately reflect the relationship and governing authority of the church over the school.
- Ensure the bylaws outline the following:
 - the purpose of the school
 - The expected teaching and walk of the school's



Supplementary Provisions



Designated/Restricted Giving:

Contributions/tithes that are designated by a contributor for a specific purpose impose a "trust" obligation upon the recipient church to use the designated funds for that purpose only.

- · Have a designated funds policy that:
 - Provides Clear Steps for Establishing a Designated Fund
 - Clarifies who is responsible for: receipts, reporting and fund disbursement
 - Provides a clear explanation of how a designated fund is closed; including what happens to the any remaining balance
 - Clearly list each fund with a description of that fund

NOTE: The policy, to including all of the above and any additional funds added at a late date must be approved at business meeting and documented in the meetings minutes to be considered valid.



Designated Giving



If the church receives a designated contribution, you legally have only three options:

- Use it for the purpose designated
- Return the gift to the donor
- Have the donor change or remove the designation

NOTE: If you wish to avoid being required to ask the donor for permission to use the funds for a purpose other than, the designated purpose the bylaws should contain a specific provision making gift designation: "advisory only."



Designated Giving



Background "Designated contributions" are contributions made to a church for a specified purpose. In most cases, a donor either designates a specific project (such as the church building fund or missions fund) or a specific individual (such as a missionary, student, minister, or needy person). If the designated purpose is an approved project or program of the church, the designation ordinarily will not affect the deductibility of the contribution. An example is a contribution to a church building fund.

Example. A church establishes a "new building" fund. Bob donates \$500 to the church, with the stipulation that the money be placed in the "new building" fund. This is a valid charitable contribution and may be treated as such by the church treasurer.

If a donor stipulates that a contribution be spent on a designated individual, no deduction ordinarily is allowed unless the church exercises full administrative control over the donated funds to ensure that they are being spent in furtherance of the church's exempt purposes. The problem with a contribution that designates a specific individual is that it is not clear whether the donor intended to benefit the individual or the church.

The tax code specifies that only contributions made "to or for the use of" qualified charitable organizations, including churches, are deductible by donors. Gifts made directly to individuals are not deductible and it is a bad practice as a church to allow it.



Policies and Procedures



Bylaws are not intended to govern ever facet of an organization; rather they are meant to lay out the basic governance for an organization. Policies and procedures are necessary for creating order and setting up protocols for the practicalities which come with the daily operation of any organization.

- · Child abuse prevention
- Facility use
- Wedding
- Benevolence
- Key Control =
- Social Media
- · Pastor Search
- -3Other

NOTE: The types of policies and procedures that can be adopted are as endless as the ideas of leadership.



Reversions of Church Property

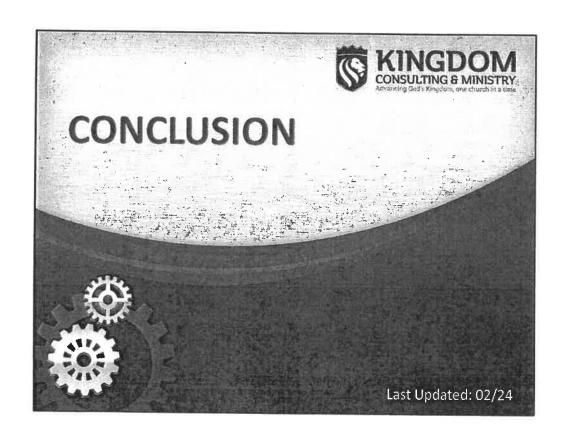


Vollmann v. Rosenburg, 972 S.W.2d 490 (Mo. App. 1998)

Background. It can happen to any church. <u>Someone donates or sells real estate to a church. The deed contains a clause stating that title will revert back to the previous owner if a specified condition occurs. Years go by, and the condition is forgotten. The church inadvertently violates the condition, and the previous owner (or his or her heirs) claim title to the property! A similar scenario occurred in a recent case. A woman died in 1977, leaving a will that contained the following provision: "I give, bequeath and devise ... my real estate property consisting of 10 acres ... to the Salvation Army to be used, in perpetuity as a children's camp, the aforesaid property never to be sold."</u>

After a number of years, the Salvation Army concluded that it was no longer feasible to use the property as a children's camp because of unanticipated changes in the surrounding area, and it sold the property to a third party. The previous owner's heirs immediately filed a lawsuit asking the court to award them title to the 10 acres because of the Salvation Army's sale of the property in violation of the provision in the previous owner's will. A court agreed that the Salvation Army forfeited all of its ownership in the property as a result of the attempted sale.

Application. Church leaders should not even consider selling church property without first examining the deed to see if there are any restrictions on the sale of the property. The last thing you want to do is trigger a reversion of the property to the previous owner. Further, carefully review any proposed deed when acquiring property through purchase or gift. Has the owner inserted a provision in the deed restricting the church's use or disposition of the property? If so, you will need to determine if the restriction is acceptable. You should also try to persuade the owner either to eliminate the restriction or make it as flexible as possible. Ask yourself this question, "How will future generations of church leaders view this restriction."





7 Essential Bylaw Tips All Churches Should Follow



Mapping your structure, leadership, decision-making, and other governance procedures helps your church properly use its property, finances, and structure to accomplish its mission.

In addition to remaining consistent with internal governance, your church bylaws help you comply with state and federal laws. Orderly bylaws, therefore, divert potential legal claims and conflicts from striking your church's assets, mission, and reputation.

If you're in the process of drafting new church bylaws or revising existing ones, the following seven tips will give you a head start on legally protecting your church — while promoting transparency and accountability among members.

- 1. Be attentive to the unique needs of your church, but don't reinvent the wheel. Look to other churches that have a similar ecclesiology or polity to yours and use their bylaws as a starting point to draft your own. DO NOT be lazy in failing to adapt the governance glove where it doesn't fit your church. Your bylaws should suit your vision, mission, and operations.
- 2. Keep your bylaws direct and short. The language should be concise, making them easier for members to read, remember, and follow. (This will also help you follow the best practices noted in tip No. 5).



7 Essential Bylaw Tips All Churches Should Follow



- 3. Seek professional counsel. "Where there is no guidance, a people falls, but in an abundance of counselors there is safety" (Prov. 11:14). A professional can identify pitfalls you might not be aware of. Ask a qualified church lawyer to review and tailor your bylaw template to align with your procedures and mission, if needed.
- 4. Require all new staff to read, understand, and pledge to operate according to church bylaws. Make them accessible by keeping a board notebook with all essential documents, including articles, bylaws, resolutions, statements of faith and meeting minutes from the last two years (at least).
- 5. Review your bylaws regularly. All staff and lay leaders should review church bylaws (and other vital documents) annually or bi-annually, it's easy to forget procedural nuances, if your leaders begin wandering outside the scope of your church's governing documents, it could tempt a dissident member to challenge important decisions (in some cases years down the road).



7 Essential Bylaw Tips All Churches Should Follow



6. Keep Accountability Clean and Clear

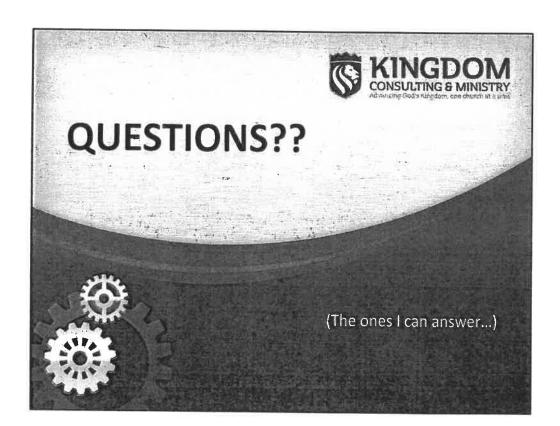
Checks and balances are based on *quality of people*, not quantity of people. There's a misguided school of thought out there that says, "the more people you are accountable to, the more accountable you are." The reality is that if you are accountable to 100 people, you aren't really accountable to anyone. Keep the organizational accountability group (board or team) small and focus on making sure the circle includes high-quality leaders who get your vision and mission at their very core.

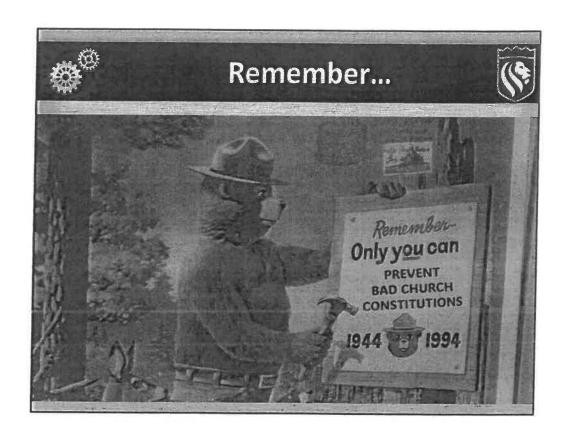
Without thoughtful, appropriately tailored, state-compliant bylaws that are visibly in place and connected, your church governance could veer off course and wander from its mission and values. It could also become tempted by spontaneous decision-making, inconsistencies, and conflict. This unprotected state can significantly increase your church's vulnerability to internal disputes and legal challenges.

7. Congregational involvement must be Considered

Involving everyone in leadership decisions, if we are being honest, is trresponsible.

Large-scale decisions (building purchases, major hires, etc.) can be emotional rollercoasters. People change their minds, finances fall through, and a "sure thing" can become a "mirage" very quickly. Always be transparent with finances and inquiries from people, but to take your entire congregation on every twist and turn along the way is irresponsible. You want-to keep your congregation informed but keep it to a minimum until plans are film. Don't take them on the rollercoaster along the way. If your structure demands that you have to over-inform your people, change it.





		A, F