

A golden scale of justice stands on a dark surface. Below it is a stack of two old, thick books with worn, yellowed pages. A wooden gavel with a brass band lies across the books. The background is a warm, gradient brown.

# Legal Resources for *Churches*

**IN THE CURRENT LEGAL CLIMATE**

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2016 Faulkner Lectureship

# The Current Legal Climate

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- Attacks on freedom of religion
- Government intervention of preacher's sermons
- Post *Obergefell v. Hodges* concerns
- Other legal concerns...

# *Informational* Resources

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You must stay informed to gain the knowledge required to make decisions!

*Pro. 10:14*

*Pro. 13:16*

*Eccl. 7:10-12*

- [www.dailysignal.com](http://www.dailysignal.com)  
*(The Heritage Foundation)*
- [www.adflegal.org](http://www.adflegal.org)  
*(Alliance Defending Freedom)*
- [www.firstliberty.org](http://www.firstliberty.org)  
*(formerly Liberty Institute)*
- [www.churchlawinstitute.com](http://www.churchlawinstitute.com)
- [www.churchlawandtax.com](http://www.churchlawandtax.com)\*

\* requires subscription

# *Organizational* **Resources**

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## **Bylaws**

Contain *rules and procedures* your congregation will follow; your *internal* operating manual.

- **May include statements about:**
  - Authority of Bible
  - Governance of Elders
  - Membership
  - Marriage/Sex
  - Gender identity
  - Weddings/Property Use
  - Member discipline

# Statement About *Marriage*

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- Protect the church when it refuses to host a same-sex wedding, disciplines a member, or terminates an employee for engaging in homosexual behavior.
- Set forth the Biblical, biologically rooted definition of marriage.
- Affirm God's creation of man and woman (gender-based).
- Give concrete examples of sinful sexual relations.

# *Sample Language* on Marriage

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“According to the Bible, ‘marriage’ has only one meaning: the uniting of one man and one woman in an exclusive, lifelong covenant, as delineated in Scripture and sanctioned by God (Gen 2:18-25). This union involves the joining of one member of each distinct gender into one flesh (Matt. 19:4-6). Divorce and remarriage is prohibited except in the event of adultery by or the death of one of the spouses then the other may remarry (Matt. 19:9; 1 Cor. 7:39). The Bible teaches that sexual intimacy is only sanctioned by God when it occurs between a man and a woman who are married according to Scripture (1 Cor. 6:18, 7:2-5). Any sexual activity outside of marriage, generally called fornication in Scripture, is sinful and will be judged by God (Heb. 13:4).

Outside of biblical marriage, God requires celibacy of us all (Matt. 5:27-30). Because homosexual activity necessarily occurs outside the confines of biblical marriage, it is sinful. The Bible teaches that such behavior as “unnatural” and calls practicing homosexuals to repent (Rom. 1:24-28; 1 Cor. 6:9-11).”

# *Sample Language* on Gender

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**“The Bible teaches that each person is ‘fearfully and wonderfully made’ in the image of God as either a male or a female (Ps. 139:14; Gen. 1:26-27). One’s gender, then, is determined by God prior to his or her birth and is immutable. In the Bible, gender identity is aligned exclusively with one’s physical characteristics at birth (Gen. 2:21-23). Any gender limitations placed on participation in any program or use of any church facility will be determined exclusively by the individual’s biological sex.”**

# *Sample Language* on **Sinful Relationships**

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“The Bible universally condemns all homosexual conduct – sexual contact [or intimate relations] between persons of the same gender.” (G. Massey)

“The Bible forbids marriage to any person who is ineligible to be married due to a preexisting marriage or due to an unscriptural divorce”



# *Sample Language* **on the Authority of the Bible**

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**“We believe that the Holy Bible is the inerrant and perfect Word of God. We are determined to follow its teachings to the fullest extent of our ability. We recognize no authority outside the Bible in matters of faith and intend to hold to its teachings no matter the cost. We subscribe to no creed, catechism, or statement of faith other than the Bible.**

**These bylaws are intended only as a statement to the world of our intent to practice the [precepts and] principles of the Bible. These bylaws are not intended as a comprehensive statement or summary of our beliefs, but a formal acknowledgement of the authority of the Bible to guide all of our decisions. These bylaws are intended to [constitute legal evidence in any legal proceeding] as to our commitment and as to our dispute resolution practices before any dispute arises.” (Gary Massey)**

# *Sample Language on* **the Role of Elders**

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“Decisions on permission to use church property shall be made in the [sole] discretion of our eldership, in accordance with their understanding of Biblical [precepts and] principles. Our elders shall [also] have discretion to refuse or revoke permission for other practical reasons, unrelated to the violation of Biblical [precepts and] principles.” (Gary Massey)

“Our elders shall have final authority to decide whether a person is eligible to place membership with this congregation and whether they are faithful based on the teachings of the Bible and their decisions shall not be subject to review by any other early authority.”  
(Gary Massey)

# *Organizational* **Resources**

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- **Policies:**

- Teacher/Childcare policy (screening)
- Employment/Administration
- Facility Use policy

## **Additional Resources:**

- [www.brotherhoodmutual.com/index.cfm/resources](http://www.brotherhoodmutual.com/index.cfm/resources)
- <https://www.convergemidamerica.org/sites/midam/files/resources/docs/church-facilities-use-policy.pdf> (ADF Facility Use Policy)
- [www.firstliberty.org/wp-content/uploads/2016/02/RLA\\_CHURCHES.pdf](http://www.firstliberty.org/wp-content/uploads/2016/02/RLA_CHURCHES.pdf)

# **Suggestions for Facility Use Policy**

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# *Facilities Usage* **Policy**

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## 1. Limited use of the building

- For *religious* and *ministry* purposes – do not use or allow others to use the building for non-religious purposes.

# *Sample Language*

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**“Our church facilities shall be used solely for religious and ministry purposes, regardless of the location of the facility. This shall include worship, church fellowship, religious teaching, weddings, and benevolence. No activities shall be permitted which are inconsistent with the church’s mission, message or viewpoint, as determined solely by the elders of this congregation.”**

# *Facilities Usage* **Policy**

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1. Limited use of the building

2. No fees

- Do not charge rent or clean-up fees so that it doesn't look like a business but an extension of your ministry.
- Alternatively, **if** your building is paid off, you may choose to charge less than fair market value.
- A minor “cleaning fee” should not be a problem if needed.

# *Sample Language*

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**“The church is a not-for-profit corporation. Because the facility is exclusively utilized for religious and ministry purposes, it may be reserved for the below-market rate of \$\_\_\_\_\_. The fee is intended to be used for general maintenance and cleaning of church facilities.”**

**(Liberty Institute)**



# *Facilities Usage* **Policy**

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1. Limited use of the building
2. No fees
3. Limit users of the building to members of the church in good standing
  - Alternatively, you may choose to allow limited use (for certain purposes) to non-members whose beliefs or conduct are not in conflict with the church's beliefs and teaching (must be clearly stated in writing).

# *Sample Language*

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**“Church facilities are not generally open to the public and may not be used by persons or groups holding, advancing, or advocating beliefs that conflict with the church’s beliefs or teachings – including but not limited to [list any and all written policies or guidelines], which are incorporated herein by reference, as if fully set forth herein  
(Liberty Institute)**

**“Any facilities that are made available to approved non-members for usage are meant to further the church’s ministry...For this reason, [these facilities] cannot be used for purposes that contradict the church’s beliefs [or teachings], which would constitute a grave violation of the church’s...religious [doctrine and] practices....”  
(Liberty Institute)**

# *Facilities Usage* **Policy**

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1. Limited use of the building
2. No fees
3. Limit users of the building to members of the church in good standing
4. Include restrictions that make clear that under no circumstances will anyone be allowed to use the building to facilitate conduct or relationships the Bible condemns.
  - Give concrete examples such as hosting a party with alcohol, a same-sex wedding, or marriage to a person ineligible due to an unscriptural divorce.

# Sample Language

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**“Each individual or group utilizing these facilities is required to sign this Facility Usage Agreement acknowledging they understand and agree to abide by the following use restrictions at all times:  
[List any and all guidelines or rules; below is just a sample]**

Use of any alcohol, tobacco, marijuana, or illicit drugs is strictly prohibited on church property.

Church facilities shall not be used to host the rehearsal dinner, wedding or reception of a same-sex couple or any persons ineligible to marry due to an unscriptural divorce.

Church facilities are to be used with care and left in good condition.

Invitees reserving church facilities must confine usage to the following approved areas: [insert description]

Any events involving children and youth requires adequate adult supervision, provided by the reserving invitees.

The church reserves the right to accept or deny any applicants who seek to utilize or reserve these facilities, at the sole discretion of the eldership.”

# *Facilities Usage* **Policy**

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1. Limited use of the building
2. No fees
3. Limit users of the building to members of the church in good standing
4. Include restrictions that make clear that under no circumstances will anyone be allowed to the use building to facilitate conduct or relationships the Bible condemns.
5. Specify any insurance and indemnity requirements.

# Sample Language

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[If non-member usage allowed]: Non-member facility users will be required to provide their own general liability insurance coverage with a combined single limit of not less than \$\_\_\_\_\_, naming [Church] as an additional insured Any and all damage occurring to these facilities as result of their use or reservation, shall be repaired and replaced by the invitees, at a cost determine by the eldership or their designee.

All who reserve these facilities for use agree to release, protect, defend, indemnify and hold harmless [Church] and its [elders, ministers,] trustees, officers, employees, members and other representatives from and against any and all claims, liabilities, losses, damages, actions, costs and expenses (including, without limitation, reasonable attorney's fees and other legal costs) directly or indirectly arising out of their use of any facilities [or equipment]. (Liberty Institute)

# **Suggested *Online Resources***

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- Christian Legal Forum\*  
[www.christianlegalforum.org](http://www.christianlegalforum.org)
- Alliance Defending Freedom  
[www.adflegal.org](http://www.adflegal.org)
- First Liberty Institute  
[www.firstliberty.org](http://www.firstliberty.org)
- Brotherhood Mutual  
[www.brotherhoodmutual.com](http://www.brotherhoodmutual.com)

# *Practical* **Resources**

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- Copyright Resources ([www.CCLI.com](http://www.CCLI.com))
- Safety Guidelines  
([www.brotherhoodmutual.com](http://www.brotherhoodmutual.com))
- Job Descriptions
- New Member Guidelines



# **Establish** *Guidelines For Ministers*

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- When you perform a wedding or sign the marriage certificate you do so as agents of the State
- Keep doing it as long as the law allows you to do so without requiring you to perform same-sex ceremonies also.
- But know there may come a time when you have to discontinue participation in the civil portion of marriage ceremonies.
- Elders should establish clear guidelines for the ministers of their congregation regarding performing wedding ceremonies anywhere

# Update Your *Job Descriptions*

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- Currently, federal law exempts religious organizations and allows them to consider an applicant's religious beliefs in hiring for all positions.
- In each job description:
- Indicate any ministerial duties or religious responsibilities.
- Describe how the position helps further the religious mission (why every staff members needs to believe and act in harmony with the beliefs and teachings of the congregation).
- Give scriptural reasons for limiting certain employment opportunities to Christian men (e.g, no women preachers, 1 Tim. 2:8, 12; 3:2)
- Be consistent when making employment decisions (e.g., treat a pregnant unmarried woman and the man involved the same)

# Meet With *All New Members*

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- Consistently use the same talking points (or written guidelines) regarding what church membership means
- Explain that when they join the church they consent to the authority of the elders over them and are “bound to submit to it” See *Guinn v. Church of Christ of Collinsville* (Okla. 1989) (“A person who joins a church covenants expressly or impliedly that in consideration of the benefits which result from such a union he will submit to its control and be governed by its laws, usages, and customs”)
- Make sure new members voluntarily and intentionally consent to member discipline and waive any right to withdraw from church membership in the midst of the church discipline process.

# Teach Consistently and Practice

## *Church Discipline*

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- Generally speaking, courts give churches a great deal of latitude when they impose discipline on member or former members.
- Explain the purpose of church discipline is both to make an erring child of God ashamed (2 Thess. 3:14) in hopes of restoring him or her (Gal. 6:1) and protect the church (1 Cor. 5:6)
- Be sure to teach every member that church discipline involves withholding of fellowship and ultimately requires revealing their unrepentant sin to the congregation.
- Follow the progressive steps outlined in Matthew 18:15-17; Rom. 16:17; Titus 3:10; 1 Corinthians 5.

# *Contact* **Information**

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