



BROTHERHOOD
MUTUAL®

10 Things

CHURCH LEADERS ARE ASKING ABOUT
BOARDS AND BYLAWS

1. Should Our Board Incorporate the Ministry?

Incorporating a ministry can make it easier to do business and can provide personal liability protection for leaders and members. Also, corporations are eligible to receive certain benefits, such as special mailing rates and other discounts from vendors. Consider these tips to receive and maintain corporate status:

- **Ask for help.** Work with a locally licensed attorney who is familiar with the not-for-profit laws in your state. An attorney can prepare Articles of Incorporation, a document that includes information such as the ministry's corporate name, the length of its corporate status, the names of the ministry's first directors, a statement of the ministry's purpose, the process for dissolving the organization, and more. Include only the information absolutely required by your state's laws and the IRS. File the Articles of Incorporation with the Secretary of State, or other appropriate government office, for your state.
- **Obtain an Employer Identification Number (EIN).** Once the Articles of Incorporation are accepted by your Secretary of State, you are eligible to obtain an EIN. This number is used when opening a bank account and filing taxes. You can apply online at [IRS.gov](https://www.irs.gov).
- **Create bylaws.** Bylaws are the rules that govern your ministry's internal operations. A locally licensed attorney can help ensure that your bylaws comply with your state's laws.
- **Hold an initial board meeting.** Confirm the initial members of the board. Approve the bylaws, if ready. As at all board meetings, take detailed notes for ministry records.
- **Submit annual paperwork.** Many states require corporations to submit annual reports to maintain their corporate status. If unsure of your ministry's status, it's a good idea to contact your Secretary of State's office to make sure there is a current record of the ministry's incorporation.

The incorporation process is an important step in the formation of a ministry. Done correctly, incorporating can help protect your people, allowing them to focus on ministry.

Want more information?

Brotherhood Mutual's complimentary [Legal Assist program](#) can help ministries with their risk management needs. It also offers a referral service, so you can find an attorney near you.

2. Do We Follow Our Bylaws?

Bylaws serve as the rules for how a ministry will look and act. Ministries can customize their bylaws to reflect their sincerely held religious beliefs, the organizational structure that ministry founders choose, and the policies that will govern the ministry. As you create or review your bylaws, pay attention to:

- **Leadership structure.** Outline the chain of command, as well as the checks and balances, for the ministry's leaders. This may include the number of board members and the relationship between the board and the congregation.
- **Decision-making power.** Bylaws should describe who is authorized to make major financial decisions, enter into contractual agreements on behalf of the church, make staff hiring and firing decisions, and more.
- **Membership policies.** Describe how to gain and maintain membership in the church.
- **Processes for reviews and updates.** It's a good idea to review ministry bylaws at least every three to five years. If an adjustment or amendment to the bylaws is necessary, follow the procedures outlined in the bylaws to make the change. Consult with a locally licensed attorney when modifying bylaws—this helps ensure that the policies comply with all applicable laws.
- **Indemnification and insurance.** Board members could be sued for damages that result from their ministry-related decisions. By indemnifying and insuring board members, the ministry can help protect leaders against out-of-pocket expenses that may be incurred for actions taken on behalf of the ministry.

Ministry leaders should always act in accordance with the organization's bylaws. Doing so can help ensure that the proper procedures are being followed. Be sure all ministry leaders have a copy of the organization's bylaws, so they can become familiar with the rules and use the document for quick reference.

Want more information?

Read [*Bylaws as They Relate to Incorporating Churches*](#), a free article on BrotherhoodMutual.com

3. What are the Responsibilities of a Church Board Member?

Church board members are placed in positions of trust and responsibility—their decisions can affect the entire ministry. If board members don't act in good faith, they could be sued as individuals, putting their personal assets at risk. To protect themselves and their ministries, all board members should follow two principles:

- **The “Prudent Person” Rule.** This rule protects board members from personal liability for board actions or decisions unless a “reasonably prudent person” would have avoided such actions or decisions under the circumstances. Some degree of risk taking is acceptable, so long as the risk taken is “reasonably prudent” under the circumstances. Talking things through and working to reach a consensus rather than quickly moving to a vote can help ensure that important decisions are truly “prudent” under the circumstances. Be sure to document in board minutes that key decisions were discussed and carefully considered before the board came to a final decision.
- **The Duty of Loyalty.** This rule says that a board member's actions and decisions must be free of personal motives. This duty would be breached, for example, if a board member were to approve a church contract that unreasonably benefited a company owned by him or a family member. As a safeguard, consider adding provisions to ministry bylaws that prohibit board members from obtaining any personal gain at the church's expense and bar the church from doing business with companies that will benefit board members or members of their immediate family.

Board members are held to a higher standard of accountability than others in the congregation. By staying aware of their legal duties and putting the ministry first, board members will better serve the church and protect themselves from personal legal trouble.

Need a checklist?

See the [Church Board Administration checklist](#) at [BrotherhoodMutual.com](#).

4. Do Charitable Immunity Laws Protect Our Board Members?

Many states have enacted charitable immunity laws to help protect volunteers from being sued in connection with their volunteer service. These laws may affect board members, since they serve on a volunteer basis. Here's what to remember about charitable immunity:

- **Laws vary significantly by state.** A few states have broad charitable immunity laws, while others have limited protections and others have none beyond the federal Volunteer Protection Act of 1997. In many states, only individuals who are considered "beneficiaries" of the ministry are prevented from filing suit. Check with a locally licensed attorney to learn about the laws that apply to volunteers at your ministry.
- **Charitable immunity doesn't apply to the ministry itself.** Only individual volunteers are covered. Even if an individual avoids involvement in a lawsuit, the ministry could still be sued.
- **Not all wrongdoing is covered by charitable immunity laws.** Charitable immunity laws do protect against claims of negligence (but not gross negligence). If a volunteer is accused of intentional or criminal conduct, immunity laws likely will not apply. Employment-related claims, automobile accidents, and sexual misconduct allegations also generally fall outside the limits of charitable immunity.
- **Legal costs could still be incurred.** Even if volunteers are protected by charitable immunity laws, they could still be named in a lawsuit. Responding in court to be removed from the lawsuit will likely require an attorney's help, resulting in legal fees. In addition, charitable immunity laws only apply to certain types of damages. Volunteers could be required to pay non-compensatory fines or penalties assessed by a court.

Charitable immunity can help protect against certain lawsuits, but the best practice is to avoid unnecessary risks that could lead to lawsuits. Ministry-specific liability insurance coverage can provide another layer of protection—ask your insurance agent to review your insurance policy and address any coverage gaps.

Want more information?

Read *How Helpful Are Charitable Immunity Laws?* This free article from our Legal Assist program is available on BrotherhoodMutual.com.

5. Do Good Samaritan Laws Protect Volunteers From Lawsuits?

Medical emergencies can occur anytime, anywhere—even at church. Good Samaritan laws may offer protection for those who volunteer to help. If your church board is considering forming a medical response team, here's what to remember about Good Samaritan laws:

- **Different states, different laws.** There are no federal Good Samaritan laws, so states are free to develop their own. Some states treat medical professionals differently from laymen. Some Good Samaritan laws only apply in life-threatening scenarios. Work with a locally licensed attorney to learn the laws that apply to your situation.
- **Medical response teams may have higher expectations.** If the ministry forms a trained medical response team, the ministry could be exposed to a higher level of liability than a medical professional who happens to be on the scene. This does not mean that a ministry should not create a team of first responders, but it does mean that when a ministry forms such a team, it should take care to ensure that medical professionals are involved in developing a well-run program. Equip the team with fully stocked first-aid kits and other helpful tools, and require team members to undergo CPR and first-aid training.

Board members are generally the ones who must weigh the pros and cons of forming a medical response team. Before making a decision, leaders should understand all aspects of the topic, from insurance issues to the Good Samaritan laws that may apply.

Want more information?

Watch *Church Safety & Security: Medical Response*, a free webinar that's available for on-demand viewing at [BrotherhoodMutual.com](https://www.brotherhoodmutual.com).

6. Should Our Bylaws Include an Indemnity Clause to Protect the Board?

Board members, ministry employees, and even volunteers can be individually sued in connection with their ministry work. By indemnifying someone, the ministry assumes legal responsibility for his or her actions. This may include paying legal fees to defend against allegations of wrongdoing. Here are a few tips for drafting indemnification provisions to be included in ministry bylaws:

- **Work with a locally licensed attorney.** Always include an attorney in the conversation when editing ministry bylaws. A locally licensed attorney can help ensure that bylaws comply with all applicable laws.
- **Decide whom and what to cover (and not cover).** Wording can be customized to define exactly which people and activities the ministry will indemnify. For example, the ministry will likely only want to indemnify employees and volunteers who are working within the authority of their positions and furthering the purpose of the ministry—not someone who admits to engaging in illegal activity while working for the ministry.
- **Coordinate with insurance coverage.** Certain defense costs may be covered by the ministry's insurance coverage. It's only when insurance coverage doesn't apply, or when costs exceed coverage limits, that out-of-pocket legal costs are incurred. For this reason, it's a good idea to reference insurance coverage within the indemnification provision.
- **Devise a process for granting indemnification.** Bylaws should specify the method for deciding whether to indemnify someone for out-of-pocket costs. It's recommended that the bylaws give the organization's governing board the right to decide when and if such individual will be indemnified. By incorporating this type of provision, ministry leaders are given the discretion to assess whether the individual being sued was truly acting on behalf of the ministry and furthering the ministry's purposes when the actions occurred.

If your organization's bylaws already include indemnification language, it's a good idea to review the bylaws with a locally licensed attorney. Having a policy in place before a lawsuit is filed can help ease a difficult time for the ministry.

Need a form?

See our [Sample Indemnification Provisions](#) for help in writing your own.

7. How Can We Make Our Ministry Safer?

Church board members can help protect their ministry and its people by promoting safety and security. Consider the following steps to get started:

- **Perform a risk assessment.** Walk around the church building and its grounds, looking for any situations that could lead to injuries, theft, or property damage. Consider a variety of “what if” scenarios. For example, you might ask what would happen if a non-custodial parent attempted to take a child from the nursery, or if the children’s wing caught fire.
- **Document incidents.** Use a [Notice of Injury form](#) to record the details of incidents that occur on ministry property. Evaluate the reports and look for potential repairs and upgrades that could help prevent future incidents.
- **Take action to protect property and people.** Make repairs and upgrades to alleviate hazards that could lead to injuries. Some problems can be fixed easily and inexpensively; others may require time and fundraising efforts.
- **Implement and update policies.** Creating well-written policies is only the start to managing risk. Train (and re-train) employees and volunteers on the policies that affect them, and encourage everyone to follow policies consistently. Ask a locally licensed attorney to occasionally review ministry policies to help ensure they still comply with applicable laws.
- **Insure against losses.** Even after taking action to keep the ministry safe, incidents may occur. Insurance coverage can provide an extra layer of protection against out-of-pocket expenses. Ask your insurance agent to evaluate your policy and recommend ways to patch any coverage gaps.

By taking steps to eliminate obvious hazards, church leaders can protect their ministries’ people, property, and reputation.

Need a checklist?

See the [Property Assessment Checklist](#), an excerpt from *The Church Safety & Security Guidebook*.

8. Is Our Ministry Tax Exempt?

Many ministry organizations are eligible to receive the benefits of being a tax-exempt organization. To obtain and keep this status, the ministry must follow certain requirements, depending on the organization's type and location:

- **Apply for 501(c)(3) status.** Tax law automatically recognizes churches as tax-exempt organizations. Other religious and charitable organizations must apply for recognition by filing Form 1023 with the Internal Revenue Service. Although not required to, some churches apply for tax-exempt status to assure church leaders, members, and contributors that the church qualifies for related tax benefits.
- **File annual paperwork, if necessary.** Churches are exempt from filing annual reports with the IRS, but other religious organizations are required to file [Form 990](#) each year by the applicable due date. States may require additional paperwork each year—work with a locally licensed attorney or certified public accountant to learn your ministry's requirements.
- **Know your exemptions.** Note that 501(c)(3) status refers only to the ministry's income tax. Churches and other not-for-profit organizations, like all employers, are required to carry out payroll withholding and pay the employer's share of payroll taxes for non-clergy employees. Many states offer sales tax exemption for not-for-profit organizations which must be secured by applying for a tax exemption letter from the appropriate state revenue office. Depending on local law and custom, religious organizations may also be required to pay property taxes and other use taxes.
- **Avoid prohibited political activities.** As part of their tax-exempt status, 501(c)(3) organizations are prohibited from intervening in any political campaign. A general best practice is to avoid referring to any candidate or specific legislation by name. Instead, address current issues as issues that the Bible addresses or are addressed in your ministry's doctrines or practices.

Maintaining 501(c)(3) status not only helps to protect the ministry's assets, but it also ensures that donors' contributions remain tax-exempt on their personal tax filings. Board members can help guide the ministry to meet its obligations for maintaining this status.

Want more information?

Read [Can a Ministry or Charity Lose its Tax-Exempt Status?](#), a free article at BrotherhoodMutual.com

9. Is All Ministry Income Exempt From Taxes?

While nonprofit ministries generally pay no taxes on donations and other forms of unearned income, a church that generates business income may have to pay a special tax. For example, your ministry may operate a coffee shop or rent residential property to members of the community. Income raised in ways that don't directly relate to the ministry of the church may be classified as "unrelated business income" and be subject to income taxes.

Three questions can help you discern whether or not income is subject to unrelated business income tax (UBIT):

- **Was the income derived from a trade or business?** "Trade or business" is broadly defined as "any activity that generates income from the sale of goods or providing of services." Nearly any income a ministry might collect (other than true donations) could qualify as "trade or business" income, even the sale of hot coffee.
- **Is the organization regularly engaged in the trade or business?** A court would compare a ministry's involvement to the amount of time commercial businesses spend in the same type of activity. For example, a church that leases spaces in its parking lot—even one day per week all year long—is considered to "regularly engage in" the trade or business of commercial parking. Weekly coffeehouses also might meet this requirement.
- **Is the activity unrelated to the organization's exempt purpose?** To be tax-free, an activity must be "substantially related" to the church's exempt purpose. Just because money earned from business activities supports an exempt purpose doesn't make the activities tax-exempt. A ministry must demonstrate that the activities further a purpose for which the organization is exempt, such as evangelism. While a ministry might see a coffee shop or fitness center as promoting fellowship or outreach, the IRS may see those activities as unrelated business operations. This would probably be even more likely if the church displays large signs throughout town to promote its bookstore or coffee shop.

It may not immediately be clear whether income is subject to UBIT. Ask a locally-licensed attorney or certified public accountant to clarify. If you discover that your ministry generates unrelated business income, file [Form 990-T](#) with the IRS to report it and pay the necessary taxes. Failing to pay taxes can result in costly back taxes and penalties. Church leaders should understand that earning too much unrelated business income could cost the ministry its tax-exempt status. As a general rule, if more than 15 percent of your ministry's total earnings come from unrelated business income, your ministry should consider the risk of losing its tax-exempt status and discuss this concern with a tax professional.

Want more information?

Learn the answer to another common tax question by reading [Monetary Gifts from the Congregation to Church Staff—Taxable or Tax-Free?](#) This free article is available from MinistryWorks, a payroll service offered by Brotherhood Mutual.

10. Does Our Ministry's Insurance Policy Protect Our Board Members?

The short answer is: yes and no. Standard liability insurance typically covers board members if they're sued in connection with claims that an activity injured someone or caused property damage. However, it doesn't usually address financial damage claims that allege board members failed to carry out their duties properly.

Board members may be asked to make difficult or controversial decisions. It's possible that these decisions could become the source of disagreements, a church split, or even a lawsuit against the ministry. If board members are named in a lawsuit, insurance coverage can help protect them from out-of-pocket expenses. Here's what to keep in mind when it comes to insurance:

- **Some risks may be covered.** Standard liability policies typically cover church leaders if they are sued in connection with injuries to people or damage to property.
- **Financial damages may require special coverage.** Look for special Directors & Officers coverage to fill this coverage gap. This insurance provides defense funds to refute a claim or to prove immunity under state law. Defense costs can run many thousands of dollars, regardless of how groundless a claim for damage might be.
- **Contact your agent.** Your insurance agent can review your policy and recommend solutions. Ask your agent specifically about Directors & Officers liability coverage to protect your ministry's leaders.

Disagreements within churches rarely escalate into lawsuits. Just in case, insurance can provide an extra layer of security for ministry leaders. This coverage can help provide peace of mind for the people who step up to serve as stewards of your ministry.

Want more information?

Read [Protect Your Church's Directors and Officers](#), a free article at BrotherhoodMutual.com.