



Church safety solutions

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Special events for churches

Liability exposure from third parties on church property

A church is exposed to liability potential anytime a third party (service provider, guest, other organization) comes onto the church's grounds. This month's publication is intended to provide suggestions and points to consider regarding a church's interaction with different people and parties who agree to provide services on, or are given permission to use a church's facilities. In past Church Safety Solutions, we have examined how injuries or property loss might have been prevented through safety and risk reduction measures. This month, we consider how the resultant liability may be mitigated via standard risk management measures taken prior to the incident.

The information provided here is not intended to be used as a legal guide or to be inferred as a form of legal advice. The first step your church should take is to seek legal counsel for contracts or agreements when dealing with a third party who will be on your premises. There are common situations where your attorney may recommend a template-type risk management approach, such as weekly worship services, weddings or funerals. Zurich Services Corporation cannot direct you on specifics of these or other types of agreements. Instead, we will be discussing some common situations when third parties use church facilities and some discussion points to work through among church leaders.



Who are these third parties?

People and organizations that come onto church grounds can typically be grouped into three categories:

1) Third party vendors and service providers: they help maintain or facilitate the efficient running of church buildings and grounds. Examples include:

- landscaping services
- building inspection, maintenance, and repair services (e.g. organ tuning, furnace inspectors, elevator inspectors, electricians, snow removal services)
- caterers
- building construction contractors

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2) Organizations or individuals using space: these parties need space to hold meetings or events, such as:

- support groups – AA, grief/transition support, divorce support
- civic organizations – Boy Scouts, Junior League, reading advocacy
- member sponsored – weddings, funerals, music recitals/concerts, anniversaries
- tenants – other churches, preschools, non-profit organizations

3) Church attendees: people who attend church services and activities, including:

- church members
- volunteers organizing or involved in running the services/activities (typically are members)
- guests

What can go wrong?

Any of these third parties can be involved in events where people are injured or property is lost/damaged and restitution is requested.

Let's examine three examples:

Scenario 1: A bride and groom, who are members of the church, sign a usage agreement with the church business administrator, permitting them to hold their wedding and reception in the church's sanctuary and fellowship hall in exchange for a custodial and utilities fee.

Result: At the wedding reception, a guest spills soup onto the floor. The caterer's server slips on the soup, falls and injures his back. The caterer does not have workers compensation insurance; the wedding agreement between the church and the bride/groom did not specify that the caterer must have workers compensation insurance. The injured workers may demand workers compensation benefits from the church.

Scenario 2: The pastor of a church verbally agrees to share the church's playground with a daycare facility that just moved in next door. In exchange, the daycare agrees to name the church pastor onto their board of directors. This oral agreement has no written documentation.

Result: While the daycare uses the church playground, a child climbs the outside of a slide, loses his grip, and falls onto another child, breaking that child's collarbone. The daycare is short-staffed that day and the only teacher on the playground was not closely watching the slide, having been distracted by other playground duties. The pastor's oral agreement with the daycare did not state that the daycare was to indemnify the church for negligence on the part of the daycare. Also, the agreement did not require that the daycare assume responsibility for supervising their children while using the church's playground. The church could be named in a lawsuit by the injured child's parents.



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Scenario 3: A church member who has a groundskeeping business is awarded the job of clearing snow and ice from the church sidewalks and parking lot. The member is paid for this work, and then he donates the payment back to the church.

Result: Following a snowfall, an individual who lives in the neighborhood slips and falls on the church's sidewalk, breaking her wrist. The injured person may sue both the church and the groundskeeping business for her injuries. The church could claim that they are not responsible because they contracted with the church member to clear the sidewalks. However, the church could be held responsible for a duty to maintain the premises. One important factor may be whether or not the church had any procedures or standards for ensuring that their walking surfaces were safe.

In these scenarios, the church may not have directly created the conditions for the resultant injury. However, the church also did not take all prudent steps available to them in order to mitigate their role in the incident. Such steps are commonly found in the form of a sound, formal agreement with the third parties involved.

On at least an annual basis, it is recommended that the church's board(s) of trustees, finance, and/or administration review all contracts and agreements. This due diligence should provide an added level of protection to identify and address third party agreements that church staff may have entered into without prior review and approval. If during these reviews it is determined that the church does not have a formalized agreement where one is needed, or that a contract is unduly skewed in the favor of

the other party(s), the committee can then take action with the assistance of their legal counsel.

Common contractual relationships

Contracts can be one means of protecting your church against potential liabilities that may arise from entering into agreements with outside parties. Contracts should never be considered a substitute for taking appropriate safety and risk control steps. In the following dialogue, we will discuss the most common contractual relationships churches have and additional points for churches to consider with regards to these relationships.

Outside groups

For the purpose of this discussion, we use the term "outside group" to mean any third party who may use the church facilities, but are not directly affiliated with the church. As discussed previously, this can include: a pre-school tenant, Boy Scouts/Girl Scouts, start-up churches using the same facilities, 12-step programs, and support groups. Permitting use of church facilities can help promote the ministry of the church and may help defray some of the day-to-day operational costs. Churches should carefully enter into these arrangements to protect both parties from potential disagreements. Your church should have a review and approval process on requests from outside groups who wish to use your church facilities. Your church needs to be consistent with group selection, communicating common instructions and restrictions, and oversight of the activity.

Contractors and vendors

When a church decides to engage in a construction project, repair work, or maintenance, it is important to select the right contractor or vendor for the job. Churches

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should carefully screen contractors or vendors before signing any contract. Some churches rely heavily on members who run construction or vendor-services businesses. There are pros and cons to this. Working with someone your church feels comfortable with and can trust is important. However, if more than one member can offer that service, choosing between the two can create long-lasting, ill feelings. Also, should the construction or building service not meet the churches' expectations, this may also create a difficult situation for the member and the church. Often, the member may offer to provide the work at a discounted rate. Some churches choose to have contractor and service work performed by non-members to avoid potential conflicts. If your church wishes to consider vendors and service providers who are members, a vetting and decision-making process should be established and implemented consistently and fairly. Also, the church's agreements and contracts with service providers who are members should be no less formal or rigorous than with service providers who are not members.

Casual agreements

Many churches enter into informal or casual agreements for a variety reasons that range from having volunteers maintain the church lawn and garden areas to janitorial duties. It may seem impractical to require a formal contract with all work relationships; but, churches should weigh the cost/benefit of allowing these casual types of agreements. The question church leaders need to ask themselves is, "Are we prepared to assume the risk of liability in the event of injury or property damage?", as this could result from not having a formalized agreement.

As a general rule, written agreements that are soundly written should be in place when at all possible. The following are situations where casual, non-formal agreements may be in place and may be opportunities for your church to review your risk management practices:

- Winter sidewalk maintenance (snow blowing)
- Commuter use of the parking lot (Park and Ride)
- Lawn service
- Maintenance of church computers, electronics
- Janitorial services
- Pest control
- Heating, ventilating and air conditioning maintenance (HVAC)
- Organ/piano tuning

In all three relationship types, churches should adhere to common risk management practices, including the following steps. First, ask for certificates of insurance for general liability coverage (all third parties), and also for workers compensation and auto liability coverages (contractors/vendors). Ask your insurance agent to review these documents and confirm that the policies' insurance limits are adequate. If a third party group does not have liability insurance (such as a book club or community group), your church's board of directors or other responsible group needs to review and accept this exception if the church still wishes to allow that group entry.

In a related point, outside groups, vendors and contractors need to name your church as an additional insured. The intent of this step is for these third parties to extend insurance protection to the church with respect to negligence or damage caused by the third party while they are on the church's premises and engaged in their activity or work.

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Key points to consider for third parties who come onto church grounds

- Have a process for two or more church executive committee members to review all agreements before they are signed on behalf of the church.
- Always have your attorney review contracts and agreements.
- Consider a security deposit for building use by third parties not affiliated with your church.
- Building usage by third parties – make it clear what areas are to be used, times, dates, responsible individuals for that third party, scope of use, who is responsible for opening and locking up, any restrictions, emergency numbers, emergency actions to take, confirmation of any training or verbal instructions given, clean up fees that may apply, and circumstances under which the church will or will not accept responsibility.
- Third parties should agree to supervise and be responsible for children and youth that they bring onto church property.
- In your church's review and approval process for third party use of the building, be sure that the church space and usage is appropriate and can safely be used by the third party.
- For building use by outside groups, have a sound process for opening up and closing down the building and for monitoring the outside group's use of the facilities.
- Individuals who monitor building use by third parties must be trained on emergency response procedures and how to respond to an injury or property damage incident.
- Ensure that safety inspections for the facilities are up-to-date and that outstanding safety items have been addressed.
- Have a contractor/service provider selection process in place. Included in the process should be a review of references, consultation with the Better Business Bureau, contract wording, and understanding of safety measures the contractor/service provider will take.
- Make sure the contractor's license is current and legitimate. Consult with your agent to determine if a performance bond is necessary.
- If sub-contractors will perform some of the work, research the sub-contractor as you would the contractor. Determine which contractor will assume responsibility for any claims that may arise.
- Make sure all warranties for labor and materials are in writing.
- Review casual relationships and agreements between the church and third parties to determine if these can/should be formalized.
- The church executive committee, trustees, or finance committee should review and approve all deviations from the policies and procedures on building use and on the service provider selection process.



Lessons of Loss

The following “Lessons of Loss” are summarized from a recent claims review completed by Zurich. The details have been revised to preserve the anonymity of those involved.

1) A church located next to a community center allowed the community center to use the church playground and a portion of their parking lot during weekdays. The church had a golf cart that was used for various purposes to move about the church site. During a summer camp being run by the community center, a 10-year old child attending that summer camp snuck away from the playground area and got in the golf cart. A church member who was hired to do odd-jobs for the church was the last to use the cart and had left the keys in the cart ignition. This member was allowed to do work around the church through an informal agreement with the senior pastor, and this arrangement had never been reviewed by the church trustees. The 10-year old child took off in the cart and crashed it, causing a compound fracture to his left arm and a serious concussion. The church had certificates of insurance from the community center, but was not named as an additional insured and did not have a signed agreement or contract. The member hired by the church did not have insurance and also did not have a written or oral contract with the church. There were no rules regarding the safe use and protection of the golf cart. The church settled their portion of the claim with the child's family for \$150,000.

Lessons learned: The church should have signed an agreement or contract with the community center regarding the use of their facilities. In that agreement, the community center should have indemnified the church for acts of negligence by the community center while on the church's property. Also, the church should have requested to be named as

an additional insured by the community center. The church should have reviewed their employment relationship with the member who last used the golf cart. It is possible they would still choose to employ this member as an independent contractor and not require him to have liability insurance. However, it would then be vital for the church to ensure that their safety rules are tightly enforced, such as with the use of the golf cart.

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2) A church entered into an agreement with a bride and groom for their wedding ceremony and reception. The agreement stated expectations and restrictions as far as the wedding party's use of the church facilities. However, the agreement did not stipulate service providers for the wedding to have liability and workers compensation insurance, and did not require these service providers to name the church as an additional insured. Before the wedding, the caterer for the reception spilled water on a wooden dance floor that was set up in the fellowship hall. The dance floor was a parquet-type design, had been rented from a local company, and was installed by friends of the groom. The photographer slipped on the slippery dance floor and fell, injuring her back. She had a pre-existing back condition and ultimately had to have two vertebrae fused together, was off work for 3 months, and had to undergo physical rehab. The caterer operated as a part-time venture and did not have liability insurance. The agreement with the dance floor rental company was signed by the groom and stated that the rental company was not responsible for any accidents arising from the

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use of the floor. The photographer was an independent contractor and did not have disability or workers compensation insurance. Her medical coverage had a high deductible and minimal limits. Ultimately, the church settled with the photographer for \$95,000 in medical care and lost wages.

Lessons learned: Anytime a third party comes onto the church property, it is important for the church to think through the following: 1) do we have a written agreement that protects the church from negligence caused or created by this third party, 2) has the church been named as an additional insured on the third party's liability, workers compensation, or auto liability policies, and 3) does the church have certificates of insurance from the third party? Understandably, churches will be faced with situations where one or more of these controls cannot be obtained from a third party. At that point, church leadership needs to carefully weigh the risks of the situation and make a wise decision as to whether or not that third party will be allowed to use or provide services

within the church. All three of these controls should be sought out and obtained with few, if any, exceptions.

This information was compiled from sources believed to be reliable for informational purposes only, and should be regarded as a guideline which you can use to create your own policies and procedures. You are in the best position to understand your business and your organization and to take steps to minimize risk, and we wish to assist you by providing the information and tools to assess your changing risk environment. We trust that you will customize these points to reflect your own operations. Any and all information contained herein is not intended to constitute legal advice and accordingly, you should consult with your own attorneys when developing programs and policies. We do not guarantee the accuracy of this information or any results and further assume no liability in connection with it. Zurich Services Corporation is a member company of Zurich in North America.



References

United States Better Business Bureau

<http://us.bbb.org>

Nonprofit Risk Management Center

<http://www.nonprofitrisk.org/>

If you have any questions or would like to receive electronic copies of the materials referenced above, please send an e-mail to: churchsafety.solutions@zurichna.com

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