

BEST PRACTICES: LEGAL CHECKLIST FOR CONGREGATIONS

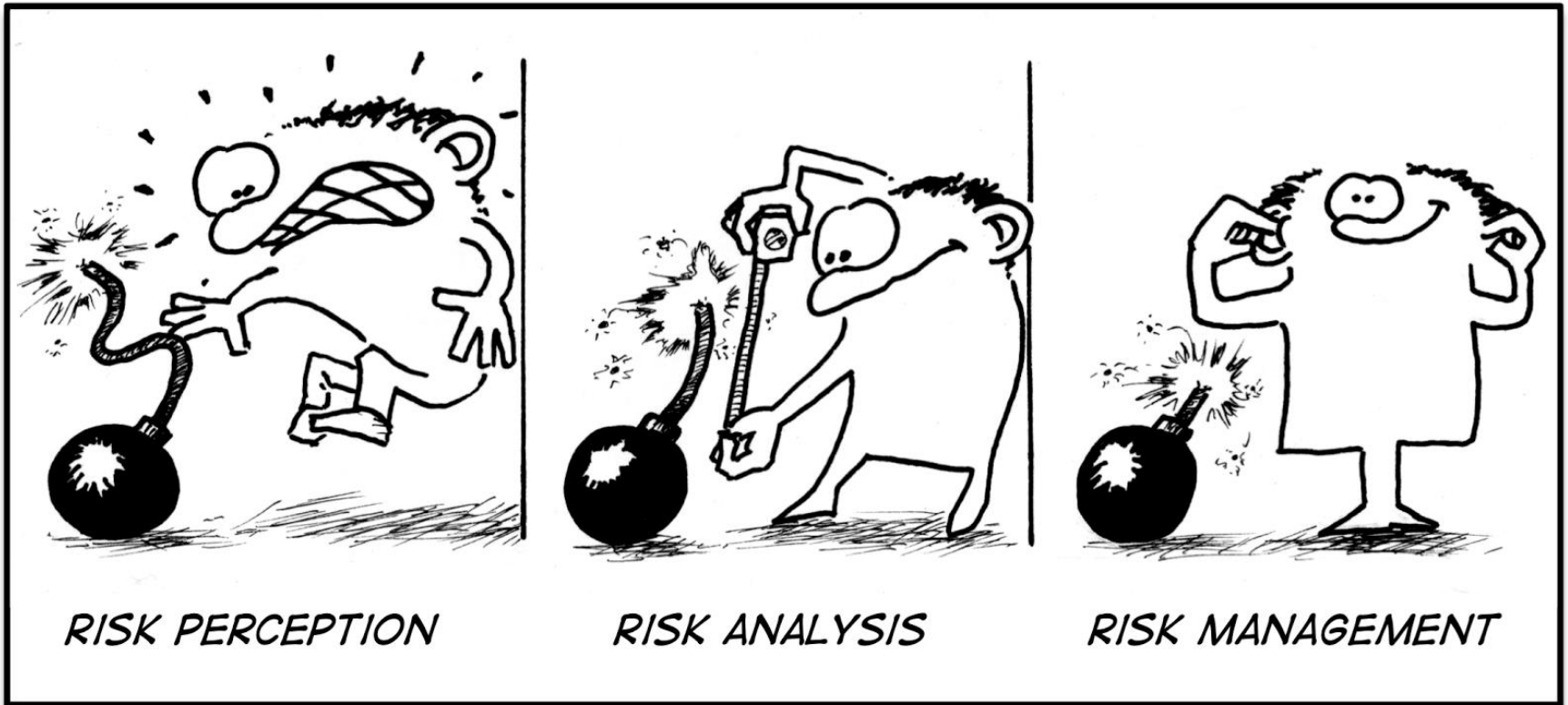
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**Bishop Terry Brandt
Eastern ND Synod of the ELCA
(701)232-3381**

**Kristy L. Albrecht, Esq.
Counsel for the Synod
(701) 237-8201**

* The material contained herein is intended to be educational. It does not constitute legal advice.

WHAT WE WANT TO AVOID



Goals of this Session

- Identify the areas of risk (ELCA Legal Checklist of Congregations)
- Discuss some general best practices
- Provide resources to you to help you consider and manage the risks
 - Individual assessment
 - Your realities and circumstances

Leadership Responsibilities

- Maintain the corporate status of the congregation, in good standing
- Manage property issues, including leases/agreements for other groups to use the property
- Comply with the law regarding payroll and contributions
- Maintain insurance coverage for the various risks
- Protect the church's financial integrity/security
- Protect employees/members against abuse, harassment, discrimination, and/or violence
- Assure good record-keeping regarding all of the above.

Legal Checklist for Congregations

- General checklist provided by ELCA General Counsel
- Good starting point for our risk management analysis
- Each church must consider its own situation, and the specific risks at issue in that congregation or parish

Corporate/Governance/Tax

- Is the congregation incorporated?
- Are annual state filings up to date?
- Are the articles of incorporation correct?
 - Has the church changed its name?
 - Do the articles of incorporation contain language required by the IRS for 501(c)(3) organizations?

Corporate/Governance/Tax

- Eastern ND Synod Project Under Way
 - Checking on articles of incorporation for congregations
 - Checking that the articles of incorporation have the required language for 501(c)(3) status
 - Checking on status with the State of ND
 - Checking that all congregations are on the ELCA Group Exemption list

Corporate/Governance/Tax

- Eastern Synod Project Under Way
 - You may receive call or email inquiry from Lori Askew, who is working on the project
 - Volunteer worker – many thanks to her!
 - Please be responsive
 - Goal of the project is to assist you
 - Questions? Call Jakelle Hoffman at the Synod Office.

Corporate/Governance/Tax

- Registered Agent for the Church/Parish
 - Who is it?
 - Alive and competent?
- For congregations part of a larger parish, any issues of inconsistency between the Congregation/Church and the Parish?

Corporate/Governance/Tax

- Is your Constitution current as to the required provisions in the ELCA Model Constitution?
 - Temptation to put this on the back burner
 - When issues arise . . . Problem.
 - Easy to fix!
 - See Section C16.04

Corporate/Governance/Tax

- Are your discretionary provisions in your Constitution consistent with your practices and goals?
- Now is a good time to review for updates
 - Churchwide Assembly – August of 2019
 - Will receive any new model terms in fall of 2019
 - Can approach review to update both required and discretionary provisions

Corporate/Governance/Tax

- State sales tax exemption?
- Real estate tax exemption?
- Income Tax for Unrelated Business Taxable Income (UBTI)
 - Note changes in new federal tax code

Property

- Clear title?
- Title in the proper name?
- Maintenance done to avoid physical hazards in the building or on the property?
 - When was the last walk-around?
 - Should do periodically

Property

- Policy for other users of the property in place?
 - Consider whether you are consistent in practice
 - Consider risk analysis for each user and perhaps the relationship to your mission
 - Agreements/leases/permission documented
 - Proof of insurance for the users in your file

Insurance

- Sufficient coverage?
 - Property, including theft/crime (Does it cover all of your current assets?)
 - Liability, including sexual abuse
 - Non-owned auto
 - Directors and Owners (D&O)
 - Worker's compensation – non-rostered EEs
 - Employment practices

Money Handling

- Guidelines for Congregations Internal Control Best Practices
 - Highly recommend compliance with the recommended best practices
- Oversight of reimbursements
 - Travel/mileage reimbursements – IRS requires a mileage log.
 - Other reimbursements

Safety/Security Issues

- Emergency Response/Security plan in place
 - Consider a security ministry team to create or update emergency response/security plan
 - Hours of operation; lock-down procedures; who to contact, in which order; etc.
 - Train staff on plan
 - Consider how to communicate with members
- Controlled hours
- Keyed entrances

Employment Issues

- Who is responsible for supervision of the staff?
 - Personnel Committee?
 - Senior Pastor?
 - Council?
- Make sure your Constitution is consistent with what you're doing in terms of personnel management.

Employment Issues

- Employee Handbook current?
 - EEO/non-discrimination and non-harassment provisions
 - Do policies match actual practices?
 - Are they consistent with your Constitution?
 - The larger the organization, the more information tends to go into the handbook.

Employment Issues

- Are expectations of your employees clear?
 - Job descriptions in writing?
 - Routine written performance evaluations?
 - Constructive? Goal oriented? Tied to the overall mission?
- Are coaching sessions and other disciplinary measures documented?
 - Clear? Factual?

Abuse Prevention

- Do you have a policy regarding children and volunteers/staff?
 - Background checks on volunteers/staff? Compliant with FCRA?
 - “Never alone” rule
 - Waiting period to work with children/youth
- Do you do training on the policy?
- Do you enforce the policy?

Policies/Plans

- Policy on groups using the church property
- Emergency Response/Security Plan
- Financial and Money Handling Policy
- Employee Handbook
- Policy on Children and Volunteers/Staff
- Confidentiality Policy (for staff/volunteers)
- Anything else for your church?

Record Keeping

- Maintaining good records is important
- Corporate file: Articles of Incorporation, registered agent info, etc.
- Constitution/Bylaws records
- Agreements/leases/permissions regarding property users (and their proof of insurance)

Record Keeping

- Insurance files
 - Congregation's current and past insurance policies.
 - Summary page with chronology of coverage
 - Name/number of current insurance agent.

Record Keeping

- Personnel files
- Employee benefits files
- Separate, locked medical information files for personnel.

Eating the Elephant



One bite at a time....

Eating the Elephant

- The Synod Project will help you with any corporate and income tax status issues.
- You may have committees/teams in place that can address and report back on various issues.
 - Recommend specific delegation and deadlines.
- Risk Management Team for ongoing review?
Similar to an audit team.



Thank you!

Bishop Terry Brandt
Eastern North Dakota Synod
of the ELCA
(701)232-3381

Kristy L. Albrecht
Counsel for Synod
(701)237-8201