

Record Keeping

By Richard Hammar,
adapted from
the Church Law Today training program
for treasurers and bookkeepers

Churches maintain many documents—some they must maintain permanently, others only briefly. Those responsible for their upkeep deserve accurate information regarding how to responsibly look after each document. With so much personal and organizational information in their care, record keeping is an opportunity to display stewardship and respect to church members.

The following four handouts will explain: 1) which documents compose a church's records; 2) how to maintain confidential documents; 3) how to determine when it is appropriate to grant access to sensitive information; 4) how to establish policies for discarding or retaining church records.

Use this material in one of your regularly scheduled meetings or as an introduction for someone new to church record keeping. Simply select a handout, print and photocopy it—you do not need to ask permission to copy as long as you are using the material in a church or educational setting and are not charging for it—and lead a discussion using the discussion questions provided.

We hope this material helps you build a ministry that honors God and your members by being a good steward of church records.



Church Law
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How to use "Church Record Keeping"

Welcome to *BUILDING CHURCH LEADERS: CHURCH LAW AND TAX*. You've purchased an innovative resource that will help you develop leaders and train staff members in administrative excellence. All of the material is authored by attorney Richard Hammar, J.D., LL.M., CPA.

Church Law and Tax handouts give a succinct and practical overview of the issues most relevant to your goals. You may use them at the beginning of a meeting to help launch a discussion, or you may hand them out as brief primers for new pastors, board members, or church administrators.

Select & Copy

This specific theme is designed to help equip anyone who maintains church records to do so accurately and fairly, and to give that person guidance when asked about a church's responsibility to maintain sensitive records. Simply print and photocopy the handouts and distribute them as needed. (You do not need to ask for permission as long as you are using the material in a church or educational setting and are not charging for it.)

Prepare & Lead

Allow five minutes for everyone to read through each handout. Then discuss the questions provided, or consider questions such as:

- Who does this information most affect? What other positions on the church staff are affected by it?
- How well does our church currently incorporate these principles?
- What one or two practical things could we do in the next year to improve in this area?

Pray

Ask God that he would improve your church's stewardship of the important information it controls.

We hope you enjoy this theme as you build a ministry that is an efficient steward of the personal and ecclesial information your church maintains.

Need more material, or something on a specific topic? See our websites at www.BuildingChurchLeaders.com and www.ChurchLawTodayStore.com.

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Church Records 101

Before you can maintain them, you have to know what they are.

Your church possesses the following documents that qualify as “church records.”

1) Articles of Incorporation. If your church is incorporated, the document that you submitted to the secretary of state to become incorporated is known as the Articles of Incorporation (also known as a charter). It is a short document that contains the church’s name, address, period of duration, initial board of directors, and statement of purposes. It is the most authoritative legal document that a church has. In the event of a conflict between the charter and any other church legal document, the charter will control.

2) Constitution or bylaws. This is the document that contains most of a church’s rules of internal administration. At a minimum, church bylaws should include: church business meetings; selection and expulsion of members; responsibilities of board members and pastors; methods of amending the bylaws; purchase and conveyance of property; and other matters of organization, discipline, and administration as necessary. Avoid ambiguous language in your bylaws; it can lead to legal trouble.

3) Financial records. Church board members owe various fiduciary duties to their church, and these include familiarity with the church’s financial records. It is the church’s responsibility to implement safeguards regarding the handling of contributions and the recording of expenses, as well as to ensure that the church is properly receipting donors for their contributions.

4) List of members. Because many churches grant their members the power to decide administrative actions, it is critical for a church to be able to identify those persons who are active voting members. Make sure your church has an up-to-date list and a method for periodically reviewing and updating the list.

5) Minutes of membership meetings. Most churches conduct annual business meetings, and occasional special meetings. Maintain records of all such meetings.

6) Minutes of board and committee meetings. Churches should maintain a complete set of the minutes of board and committee meetings.

7) Insurance policies. Be familiar with where your church’s insurance policies are maintained and what the terms of your policies are. In situations where coverage may be limited (e.g. sexual misconduct), seek additional coverage and work to reduce the risk.

8) Tax records. These include payroll tax forms, housing allowance designations, contribution records, and any other forms you have filed with a government tax agency.

9) Annual reports filed with the secretary of state. In many states, incorporated churches are required to file an annual report with the secretary of state. This is a simple form that takes only a few minutes to complete. Churches should maintain a full set of all corporate annual reports filed with the secretary of state’s office

10) Employment records. These include applications for employment, reference checks, information concerning disciplinary actions, the I-9 immigration form that all employers must maintain for each new employee, and any other document relating to employees.

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11) Deeds. Churches must be able to locate the deed to their church property. Church deeds often contain restrictions on the use of church property that are vital if your church ever seeks to relocate, expand, or conduct non-ministry operations on the premises.

The Model Nonprofit Corporation Act, under which many churches are incorporated, requires incorporated churches to maintain complete books and records of account, minutes of business meetings, minutes of board meetings, and a listing of current members.

Discuss

1. How often do we review our charter, bylaws, and financial records?
2. When does our church's charter expire? How long should we renew it for?
3. What restrictions on the use or sale of our property came with the deed to our location?

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Keeping Secrets

Your church must be careful with the confidential information it controls.

Some documents and records that churches maintain are private. Examples of confidential information include:

- Members' contributions records.
- Counseling notes taken by a pastor or church counselor.
- References you obtain when screening youth workers.
- Minutes of board meetings at which sensitive issues are discussed.

A church faces possible legal liability if it permits disclosure of any of these kinds of confidential records. As a result, it is important for church board members to take steps to insure that confidential information is not leaked or inadvertently disclosed. There are a number of ways this can be done, and to a great degree it is simply a matter of recognizing the problem and using common sense.

Precautions for keeping confidential information:

1. Keep confidential information in a locked, fireproof file, and give the keys to a designated person such as the treasurer or senior pastor, depending on the nature of the records involved.
2. Confidential information is often stored as files on church computers, and steps must be taken to restrict access to this data by unauthorized persons.
3. Confidential information should not be disclosed to persons without a legitimate need to know. For example, if the board dismisses a staff member due to a confession of misconduct, the pastor and board must recognize that public disclosure of this information can result in legal liability.
4. The church board should consider adopting a covenant of confidentiality each year. This means that board members sign a covenant agreeing not to disclose any confidential information shared during board meetings without the unanimous consent of the board. This kind of covenant serves a few important purposes. First, it helps to impress upon the board the highly confidential nature of some information, and second, it reduces the legal risk to the church in the event that a board member violates the covenant and leaks confidential information. Of course, it will not work unless everyone consents, so if one or more board members refuse to sign, they must be excused from any discussion of confidential information.
5. Pastors often maintain counseling notes or other highly confidential records, and steps must be taken to insure the proper disposition of this information in the event of the sudden death or incapacity of the pastor.

Discuss

1. Which boards and committees in our church would benefit from a covenant of confidentiality?
2. How can we educate our staff and board members on the risks of publicly disclosing private information?
3. What is our church's current method of storing confidential information? How can we improve upon this process?

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For Whose Eyes Only?

There are legitimate reasons for your church to reveal its private documents.

Church members have no inherent right to inspect church records. Such a right must be granted by some statute or legal document. Here are four ways that this can occur.

State Nonprofit Corporation Law

If a church is incorporated, then your state nonprofit corporation law may permit members to inspect records in some situations.

The Model Nonprofit Corporation Act, which has been adopted in most states, gives members of an incorporated church the right to inspect corporate records for any *proper purpose at any reasonable time*. The act defines records as books and records of account, minutes of business meetings, minutes of board meetings, and a listing of current members.

There are a number of things to note about this provision. First, it applies only to incorporated churches. Second, it applies only to members. Third, the right of inspection must be exercised at a reasonable time. And fourth, the right of inspection only applies if a member has a proper purpose in wanting to inspect church records.

As a general rule, if a member's request relates to some legitimate question of church administration or governance, as opposed to idle curiosity, then it should be viewed as proper.

Church Charter or Bylaws

A second legal basis for a right to inspect church records is the church's own charter or bylaws. Occasionally, these documents will contain a provision addressing the inspection of church records.

State Securities Law

If your church issues securities, such as bonds or notes, then state securities law will give investors, whether members or not, the right to inspect church financial records.

Subpoena

A fourth legal basis for a right to inspect church records is a subpoena. Members and nonmembers alike may compel the disclosure or inspection of church records as part of a lawsuit against a church if the materials to be disclosed or inspected are relevant and not privileged. Although all states consider confidential communications to be privileged when they are made to a minister acting as a spiritual adviser, several courts have held that this privilege does not apply to church records.

Two situations exist, however, in which a church may be able to avoid complying with a subpoena (although it still must submit a proper objection in court). First, churches should object to subpoenas that seek notes prepared in the course of spiritual counseling, since these materials would be viewed as privileged in most states.

Second, churches should not respond to attorney requests to turn over records unless presented with a subpoena, since this could expose the church to legal liability. It is better practice to inform the attorney that you will turn over the documents only in response to an enforceable subpoena, since this will reduce if not eliminate any liability to the church.

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FOIA and the First Amendment

Finally, there are two points church leaders should understand:

1. Privacy Act/Freedom of Information Act (FOIA). These laws apply to records maintained by the government, not churches, and are no basis for revealing records.
2. Most courts have ruled that the First Amendment does not insulate church records from inspection by members.

Discuss

1. What rights do our church charter and bylaws give to those who wish to see our records?
2. What are some good principles to have in place when we are suspicious of a person's motives for wanting access to church records?
3. How is maintaining and protecting records a form of stewardship?

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Which Records to Retain

Set rules for retaining or discarding church documents.

Church staff members need a records retention policy based on legal considerations and your church's needs. Making this policy systematic and rational will lighten your church administrator's workload.

Here are some guidelines for developing your church's records retention policy:

- Keep in mind that there are many reasons to keep church records. These include legal requirements under state or federal law, possible relevance in future litigation, the needs of the church, and historical importance.
- Make an inventory of existing records.
- Even when the period you have set for keeping a particular record has expired, do not automatically destroy it. You still may want to retain the document because of possible future litigation, or for historical purposes.
- Maintain permanent records in a secure location, such as a locked, fireproof cabinet. Retain additional copies of sensitive documents in multiple locations.
- Some churches maintain a "destruction of records journal." When the period of time for keeping a record has expired, the record is described in the journal before being destroyed.

Church leaders must recognize that some records should be kept permanently. Insurance policies should be kept permanently because you will need them to establish what insurance company has a legal obligation to defend you in the event of an injury or loss occurring during the term of the insurance contract. Screening forms and references are another category of record that should be kept permanently for the same reasons as insurance policies. This may be necessary many years, and in some cases decades, after you hired or selected the worker.

Many kinds of corporate records should also be kept permanently. These include your corporate charter, bylaws, minutes of congregational and board meetings, and any annual corporate reports that you file with the secretary of state. Some tax records should be kept permanently, and these include any forms relating to your exemption from federal or state taxes.

Most church records, however, you do not need to keep permanently. Federal law specifies that employers should retain a variety of payroll tax forms for at least four years, including forms W-2, W-4, 1099, and 941. The period for keeping other tax records generally corresponds to the period of time that the IRS can conduct an audit and assess back taxes—usually six years. Even so, there is no limit on how far back the IRS can assess taxes in cases of fraud, filing a false return, willfully attempting to evade tax, or failing to file a return. If there is any possibility that one of these "unlimited" assessment periods may apply, then you should keep relevant records permanently.

Discuss

1. What are the guidelines we currently use when deciding whether to retain or discard records?
2. Based on the article, which documents should our church plan to permanently retain?
3. What types of records are not mentioned above that we could begin to discard?

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Books and websites to help with your church's record keeping.

📖 BuildingChurchLeaders.com: Leadership training resources from Christianity Today International.

“Confidentiality” Training Theme and PowerPoint
“Finances” Training Theme and PowerPoint

📖 ChurchLawToday.com: A resources and training center for pastors, administrators, board members, and other church leaders with a wealth of information on legal, tax, and risk management issues.

📖 ChurchLawTodayStore.com: Reference and training material for legal and tax issues as they affect your church.

“The Four Hour Legal Training Program for Church Boards”
“Special Reports: Inspection of Church Records” (note: much of the information in this special report will overlap with this download)
“Special Report: Personal Liability of Church Members of an Unincorporated Church”
“Special Report: Personal Liability of Church Officers, Directors, and Trustees”

Accountable Leadership: A Resource Guide for Sustaining Legal, Financial, and Ethical Integrity in Today's Congregations by *Paul Chaffee*. A comprehensive guide to help leaders and pastors know how to manage the church and hold people accountable. (Jossey-Bass, 1997; 0787903647)

Church & Clergy Tax Guide by *Richard Hammar*. A complete and authoritative tax guide for ministers, clergy, and church administrators, published annually. (Church Law & Tax Report, 2005 ISBN 1880562626)

The Church Guide to Financial Reporting by *Richard Vargo*. How to prepare financial reports for your church. (Church Law & Tax Report, 2006; 1880562162)

Pastor, Church & Law by *Richard Hammer*. A comprehensive resource for anyone interested in church law. (Christian Ministry Resources, 2000; ISBN 1880562421)

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