

PROTECTING YOUR CHURCH:

Liability Exposure from Third Parties



INSURANCE BOARD
Partners in Protection

Open Your Doors, But Not Your Risk

A church is not only a place of worship, but also a “public accommodation” or a “workplace” for many. Opening your doors means opening your church to liability risk. When a third party (such as a congregant, guest, tenant or vendor) enters onto your property the standard of care is higher for your church than it is for your home. Some of these standards are prescribed by building codes and the law. We may be less attentive to hazards around our homes, but much greater attention to detail is required at your church.

Any individual that comes on church property can be injured or have their property damaged. Your church may not be directly responsible for the incident, but the injured party may still submit a claim against the church’s insurance. If a well drafted contract is not in place between the church and the third party, the church may be responsible for paying some or all of the damages incurred by the injured party. Church leadership can take steps to insulate itself from liability by requiring well drafted, formal contracts with the third parties that utilize church space.

This pamphlet will walk you through lessening the liability risk from third parties using contractual risk management techniques. The information provided is intended to demonstrate relationships with respect to insurance contracts and contracts of indemnity, and not for the purpose of providing legal advice. You should contact your attorney to obtain advice with respect to any particular contractual or legal matter as may apply in your state.

Third Parties Using Church Space

While offering church facilities to the community is a part of ministry, all users, whether a member hosting a one-time event or long-term tenant, need to be treated at arm’s length. While their respective missions may be compatible with those of your church, their guests, clients and employees may view your church as any other landlord.

Covenantal” relationships are commonly referenced in the church environment, often referring to a personal or handshake agreement. This level of trust is valuable in personal relationships. But in matters of your church operations, informal agreements may have unintended, unanticipated, and financially disastrous consequences. For individual Trustees, acceptance of such agreements may constitute a breach of fiduciary duty. Even when one church is either borrowing or renting the facilities of another church, a lease is needed because of things that may occur while the property is in the custody of the visiting congregation which are not strictly the responsibility of the host congregation. Whether or not rent is paid, churches need to utilize formal lease or use agreements with all non-church user groups. Written agreements define responsibilities to: maintain and secure premises; supervise invitees; and provide appropriate insurance coverage. Lease/use agreements must:

- provide a release and indemnification to your church for accidents that result from their operations;
- outline insurance requirements for the tenant;
- require “additional insured” status on the tenants’ policies; and
- require the user/tenant will provide a Certificates of insurance (COI). Certificates of Insurance are documentation that the tenant’s insurance fulfills the contracts requirements and demonstrate financial means to defend a claim under the lease.

What if the third party does not have insurance? Through a product called TULIP (Tenants and Users Liability Insurance Pro-gram), a third party can obtain liability insurance specifically for use of your church. TULIP allows the Tenant or User to purchase a low cost general liability product to cover their liability related to the utilization of the church premises, protecting the entity as well as protecting the church by providing an extra layer of insurance and including the church as an additional insured. Upon approval of a short application, and premium payment from the third party user, Insurance Board is able to provide TULIP coverage. If your church has interest or a need for TULIP, please contact your agent for more details.



For permanent tenants, agreements define responsibilities to provide liability, property and workers compensation insurance. For one-time events, it is a good idea to have a member of the church staff or volunteer walk the property and the area where the event will be held both before and after the event. Prior to the event, the staff member/volunteer should look for any hazards that may lead to an injury and make note of any preexisting damage. After the event, the staff member/volunteer should look for any damage caused by the third party's use.

Third Party Vendors and Service Providers

Your church may find it necessary to hire third parties to help maintain church property or provide business services that free church leaders to devote more of their time to their ministry. You may decide to hire a third party to perform everything from occasional tasks to urgent repairs. Third parties may also be used to provide on-going services such as cleaning or maintenance. When your church selects a third party you should carefully vet the individual or company before hiring them.

Engage contractors or other service providers only with a written contract which contains a "hold harmless and indemnity agreement" and insurance requirements, and which requires that your church be provided "additional insured" status on insurance policies. The contract should also require the third party to provide a valid Certificate of Insurance that provides evidence of compliant coverage and additional insured status. It is recommended that your church have a purchase order form that includes payment terms and the hold harmless and indemnity agreement. When dealing with a contractor, there are several kinds of insurance that apply and should be checked carefully:

- General liability – applying to injury to others and to your property unrelated to the actual work (as in this case)
- Completed operations – "Product liability" for contractors. For example, the contractor builds a deck which collapses and injures parishioners, or plumbing just installed bursts due to poor workmanship.
- Workers' compensation – applying to injury to the contractor's employees.
- Automobile liability – applying to accidents by their licensed vehicles which may be on your property, including collision with your buildings.
- Property in transit (inland marine) – Coverage on building materials in transit and in storage until installed. It is important to have a contractual understanding of who insures materials that you may have purchased but is not yet installed.
- Performance Bond – A "performance and payment bond" is important for large projects to assure that sub-contracted labor and all materials are paid.
- Consultation with an attorney in your state is encouraged to get the terms right.

Consider developing a contractor selection procedure. The process should include screening of vendor/service provider, reference checks, licensure verification, and an evaluation of the contractor's insurance. Church board members or senior staff should review all selections and approve/disapprove of any deviation from the procedure.

Many churches may choose to hire someone from within their own congregation who can perform the necessary services. This might seem like an easy way to identify a service provider that is someone you know and trust. However, this can lead to issues if there are quality of work issues or other concerns. If your church wishes to hire vendors who are members, they should be subject to the same hiring and contracting process as a non-member firm.

Contract Management Considerations

As has been mentioned earlier, always have legal counsel review any contracts prior to signing. Not all risks are easily understandable. Many organizations enter into business relationships with third parties without a full understanding of their exposure to risk. A qualified attorney will help identify any gaps in the contract that may give rise to concern.



Your church should conduct yearly contract audits where 2 or more members of the board (or other senior personnel) review each of the contracts to determine whether:

- they are still valid (is the term expired);
- there is indemnity language in the contract that protects the church from liability from someone else's negligence;
- the insurance requirements listed are still appropriate given the scope of the services; and
- the Certificate of Insurance provided by the third party is compliant with the requirements of the contract and the policies are not expired.

Your church should gather and maintain a list of all vendors with which it conducts business. This list should include every third party, contractor, or individual with which your organization does business. Once the list is compiled, church board members or staff should look at every third party and determine whether a contract is in place. If not, one should be negotiated prior to the continuation of any work.

Because of the way the Insurance Board program is structured, reducing the claims and the related cost implications helps manage the program and keep coverage high and costs low. As a participant, we hope all of our churches understand the need to do their part. Contracts can go a long way to that end.

Conclusion

Contracts are one of the risk management tools that church leaders can use to shield the church from liability. They are meant to shift the risk of financing a claim to those actually responsible for the liability. Contracts are not meant to replace other risk management techniques including proper maintenance safety precautions. We encourage appropriate annual church maintenance performed by licensed/certified businesses with proper contracts in place to protect the church!

Lessons From A Loss

Late in 2011 a program participant experienced a catastrophic fire at the end of the day after an HVAC contractor was working above the sanctuary. It is known they were doing "hot work." The fire was discovered in the early stages by a church employee. Serious damage was done to the sanctuary, though it would have been far worse had the fire gone undiscovered for some time. Damage is in the millions of dollars, nevertheless. Fortunately, the church had employed a well-established contractor to work in their building, one which had adequate liability insurance limits. It is likely that most, if not all, of the ultimate loss will be paid by the contractor's insurers.

A program participant informally rented space, including use of the kitchen, to a local club. There was no written lease or use agreement, nor any kind of hold harmless and indemnity agreement with supporting insurance. The church was having repair work done at the church by a local contractor at that time, but with no contract or purchase order. Again, there was no hold harmless and indemnity agreement with the contractor for injuries incurred by the contractor's employees on the church site. An employee of the contractor had reason to enter the kitchen area. The floor had just been mopped by a member of the club. The worker claims to have fallen on a wet floor. Serious injuries resulted with expenses. The worker has retained an attorney and made a demand for the injuries, loss of income and pain and suffering. As a result of activities that had nothing to do with the church or its ministry, the church will now have to defend claims from both the injured worker and the contractor's workers' compensation insurance company. While insurance will address the financial burden, the incident will be a distraction to the church for years. A well written lease (or use agreement) and a standard purchase order form are essential tools to manage the risk. With these documents, the church could have presented the claim to the club and the contractor to defend and pay. Consult with your attorney and get your documents in order.