

# A Guide for Church Trustees

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# Contents

I. General Corporate Information . . . . .	1
<i>The Board of Trustees . . . Duties and Responsibility of Trustees . . . Liability of a Trustee . . . Sale/Lease of Property . . . Religious Corporation Tax Status . . . Sales Tax Exemption</i>	
II. Real Estate . . . . .	4
<i>Real Estate Taxes . . . Water Bills . . . Sidewalk Repairs</i>	
III. Land Use . . . . .	6
<i>Zoning . . . Landmarking</i>	
IV. Governmental Agencies . . . . .	7
<i>Environmental Control Board . . . NYC Fire Department . . . NYC Buildings Department . . . NYC Sanitation Department . . . NYC Department of Environmental Protection . . . New York State Human Rights Commission . . . Equal Employment Opportunity Commission . . . NYC Human Rights Commission . . . NYC Department of Health</i>	
V. Personal Injury/Insurance Claims . . . . .	9
<i>Insurance Coverage . . . Steps to be Taken When an Accident Occurs . . . Practical Considerations</i>	
VI. Estate Matters . . . . .	11
VII. Political Activity of Churches . . . . .	12
<i>Lobbying . . . Political Activity</i>	

*This material is intended to serve merely as a tool for reference and to encourage further discussion and attention. It is not intended to provide legal counsel to any individual or organization. Any such counsel should be obtained from an attorney engaged by the religious Congregation.*

*This Guide has been edited and adapted from material prepared originally for the Roman Catholic Diocese of Brooklyn.*

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## **I. General Corporate Information**

Most religious congregations in New York are individually incorporated as religious corporations pursuant to the Religious Corporations Law (“RCL”) of the State of New York. Within the Religious Corporations Law are general provisions and separate sections which apply to the congregations of many of most specific Christian denominations and to independent and other churches. The denomination-specific portions of the RCL essentially acknowledges the pre-eminence of the particular polity of the various religious groups with respect to the corporate acts including the purchase, sale, mortgage, lease or any renovation of real property.

### **The Board of Trustees**

The governing board of trustees (“Trustees”) of every religious corporation (“Congregation”) is defined in the RCL. In different denominations and polities, this board may have different names (e.g., Vestry, Session, Consistory, Elders, Deacons, etc.) We are referring here specifically to the body of the Congregation which is charged with the overall corporate oversight of the Congregation’s real and personal property. Individual Trustees are elected annually as provided in the RCL and the Not-For-Profit Corporation Law (“NPL”).

### **Duties and Responsibilities of Trustees**

By definition, a trustee acts for the benefit of another. Therefore, the trustees of a Congregation are to exercise their authority and responsibilities for the benefit of the Congregation in accordance with its governing documents (Canon Law, Constitution, By-Laws, etc.). The Trustees are to act in the best interest of the Congregation, not necessarily in the best interests of the individual parishioners. The duties and powers of a trustee are considered by the RCL.

The Trustees of a Congregation have custody and control of all the temporalities and property, both real and personal, belonging to the Congregation. The Trustees also have custody and control of the revenue produced by the Congregation’s holdings and/or property. The Trustees are to administer the property and revenue for the support and maintenance of the Congregation, or for other religious, charitable, benevolent or educational purposes. The administration of the property shall be in accordance with the governing documents of the Congregation and its teachings.

Trustees may transfer Congregation property to a custodian (bank, trust company or holding company) to be held in trust with the income paid to the Congregation. Trustees may also delegate any of their powers, responsibilities, and/or discretionary authority to the custodian with respect to the investment or reinvestment of Congregation property. The Trustees are free to modify the power or authority delegated, or designate another, or successor, custodian. However, Trustees do not have any authority over the removal or dismissal of the pastor, or the fixing of his salary. The Trustees do not have any authority to regulate or modify the nature or order of worship of the Church.

Notwithstanding the above powers, any action taken by the Trustees of a Roman Catholic Church must be sanctioned or authorized by the Bishop, or in case of his inability to act, the Vicar General of the Diocese. Any delegations, investments, all require the approval of the Bishop. This

is a mandatory requirement, particular to Roman Catholic Churches, found in the RCL. Requirements applicable to Congregations of other denominations may be similarly subject to oversight by the Bishop or some other body representing the diocese, synod, conference or district of the Church.

### **Liability of a Trustee**

The Not-For-Profit Corporation Law is applicable to any organization incorporated under RCL. The NPL considers the liability of directors, officers, and trustees of a religious, not-for-profit corporation. Regarding liability of the aforementioned fiduciaries, there is no conflict between the statutes. Under the NPL the liability of a Trustee of a religious, not-for-profit corporation is limited. A Trustee of such a corporation or Congregation will not be liable except for grossly negligent conduct, intentional torts, or acts specifically delineated by statute.

Any questions concerning specific actions contemplated by the Trustees, or citations to the applicable law described herein, should be directed to your Congregation's Attorney or legal advisors.

### **Sale/Lease of Property**

In the event the Congregation wishes to sell any of its property or lease a portion of its property for a period of more than five years, then the Religious Corporation Law requires the approval of the State of New York. In order to submit a petition for such approval it is necessary to obtain the permission of the Bishop or other appropriate official or denominational body, conduct a meeting of the Board of Trustees and the signing of a petition to the Court (prepared by Legal Counsel) and obtain an appraisal of the property being considered for sale.

### **Religious Corporation Tax Status**

Congregations are religious corporations, which are exempt from Federal Income Tax as "501(c)(3)" corporations. This number refers to the section of the Internal Revenue Code, which grants the exemptions. The exemption is evidenced by a letter of determination, or a "group ruling" which is issued annually, by the Internal Revenue Service. These documents are very often requested from entities who wish to be assured of tax exemption for purposes of making donations or other tax related reasons. Congregations are also exempt from New York State and New York City Income Tax by reason of the 501(c)(3) exemption.

### **Sales Tax Exemption**

Congregations may obtain from the New York State Department of Finance and Taxation an exemption from New York City and State Sales Tax, which is evidenced by a "Sales Tax Exemption Certificate." The State of New York permits exemption from its Sales Tax *only* for items purchased for the use of the Congregation. Items purchased for personal use, whether by laypersons or clergy, are not entitled lawfully to the tax exemption.

*It should be noted that only entities with the exact title as that which exists on the Certificate may claim exemption pursuant to the Certificate. In the event the organization seeking to make use of the exemption is connected with the Congregation all purchases should be made in the name of the congregation with a sub-heading that contains the specific name of the organization. Failure to consider this might result in the*

*denial of the exemption and levy of sales tax upon the vendor who sold the goods as well as the purchaser of the goods.*

## **II. Real Estate**

All real property in the City of New York is identified by a “Block” and “Lot” number. The Trustees should maintain records on each separate property owned by the Congregation, including such documents as the deed, the New York City Tax Assessment Information and any leases or use of property by other entities with specific information regarding each usage.

### **Real Estate Taxes**

Generally speaking, property which is owned by a religious organization and used by a religious organization for religious or charitable purposes is exempt from real estate tax.

An exemption application must be made to the New York City Department of Finance in order to qualify for exemption from real property taxes. Annual renewal applications must be filed before January 5th each year. Whenever there is a change in use of a property, you are required to notify the City of the change in use and it will determine whether or not the exemption should be maintained.

When property becomes surplus or is used by outside or other entities, it is likely to become subject to real estate taxation, as an example when the rent received by the Congregation is greater than its expense in connection with that specific property. Prior to considering any proposal for lease or use of congregation property, the real estate tax questions should be seriously considered. The information which is supplied regarding assessed valuation of property herein, we hope can provide a guideline for an analysis of potential real estate tax.

### **Water Bills**

As a rule, Congregations and Schools are exempt from Water and Sewer charges. Rectories, manses, and parsonages, as residences, are not exempt from charges nor are most leased premises.

The exemption applications for the Department of Environmental Protection (“DEP”) are different from Real Estate Tax exemption applications and once again your Congregation’s Attorney or legal advisor should file all necessary documents for the obtaining of the exemption.

The most common problems with water bills are overcharges and incorrect billing information. The best way to address these problems is with patience and the proper information. In the property description section contained herein, we have included information in regard to each property’s status as exempt or not as well as your water meter numbers. You should verify the accuracy of this information by having your maintenance person inspect your water meters for correct numbers, etc.

### **Sidewalk Repairs**

The general rule is, “No one is exempt from paying for services actually rendered,” therefore if the work is done the charges should be paid. However, unnecessary work and substandard work may be challenged to the Comptroller’s Office but this must be done in a timely manner and only after

all other remedies have been exhausted.

A common practice of the City of New York occurs when construction is about to begin on a street that may affect the sidewalk, such as street widening or installing new water mains. An inspector will come to issue violations on the sidewalk. The owner will be responsible then to pay for any repair work which is done to its sidewalk which had a violation on it. This practice can be challenged if no violation exists, however, it requires quick and early intervention and your Congregation's Attorney or legal advisor is equipped to guide you in this matter. We recommend such practices as taking pictures of your sidewalks at the time the violations are issued.

There has been a recent change in the law effectively transferring liability for injuries which occur on sidewalks from the City of New York to the abutting property owner.

## **III. Land Use**

### **Zoning**

Zoning represents a municipal plan on how land should be used in different parts of the City – for residence, commerce, manufacturing, and recreation, among other uses. Uses of property must be consistent with the zoning law for that area.

Before purchasing or leasing property for use in the ministry, the Trustees should be sure that the property carries the proper zoning classification for its intended use and that the building meets applicable buildings code requirements for the same. This is particularly important, for example, in attempting to use a residence as a place of worship. Fire prevention considerations in the Buildings Code will not permit the issuance of a new Certificate of Occupancy as a place of assembly for a wood-framed building which may be legal as a residence. Churches may lawfully be located as-of-right in all residential areas and most commercial areas in New York. Special permission is required to locate a place of worship in any manufacturing zone.

### **Landmarking**

The issue of local landmark regulation of church property has been identified as a serious intrusion of the government into the affairs of the Church. The designation of church property as a public “landmark” encumbers a significant asset of the Congregation’s ministry to the caprice of a government agency. No alteration or repair which affects the exterior of the building may be made without the approval of the Landmarks Preservation Commission which operates without clear standards for its judgments. The expense of complying with the Commission’s edicts, even if permission is granted, are considerably greater than with customary construction and repair costs.

The General Counsel of many denominational in the nation have long seen this as a threat to the Church’s ability to determine the course of its own ministry and have advised that Trustees who fail to oppose vigorously any attempt to impose a “landmark” designation on property of the Congregation may be in breach of their fiduciary duty. You should be forewarned that grants promised by preservationists are generally very small if they would become available at all.

The Religious Land Use and Institutionalized Persons Act of 2000 provides some protection. In zoning and landmarking cases, it requires that the government justify a breach of the Congregation’s First Amendment right to the “free exercise” of religion by showing that the regulation at issue serves a “compelling State interest” (such as public health and safety) and that there is no less restrictive means of achieving that interest. Consult with your Congregation’s Attorney or legal advisor if any suggestion of imposing a “landmark” designation of your property is proposed.



## IV. Governmental Agencies

As the owner and operator of the congregation plant, there are innumerable statutes and regulations with which you must comply. This section attempts to outline some of the more common areas of concern and pitfalls which might be anticipated.

As an organizational tool, we have set forth the five (5) governmental agencies which represent the majority of contacts which confront the congregations. They are:

- The Environmental Control Board
- The New York State Human Rights Commission
- The Equal Employment Opportunity Commission
- The New York City Human Rights Commission
- New York City Department of Health

### **The Environmental Control Board:**

This is an agency of New York City that hears and determines violations given by the following departments:

- New York City Fire Department
- New York City Buildings Department.
- New York City Sanitation Department.
- New York City Department of Environmental Protection.

**The New York City Fire Department** – The most common violations issued by the Fire Department include a failure to have a public assembly permit, failure to have an emergency exit, failure to have flame proof curtains. Fines in this area can be as high as \$2,500 or more.

**The New York City Buildings Department** – The most common violations issued by the Buildings Department include failure to have a certificate of occupancy for a building, failure to have a certificate of operation for an elevator and failure to have a work permit for any work being done to a building or sidewalk. The fines can be as high as \$2,500 or more.

**The New York City Sanitation Department** – Violations issued by this Department are for trash, garbage and other debris which accumulate in front of or on congregation owned property and sidewalks adjoining congregation property. The maximum penalty for fines issued by the Sanitation Department is \$250.

**The New York City Department of Environmental Protection** – Violations issued by this Department are generally for the failure to have a certificate of operation and/or inspection for a boiler or hot water heater. The maximum penalty for these violations are dependent on the size of the boiler or hot water heater, and can be as high as \$1,800 or more.

Upon receipt of any of the above violations you should contact your Congregation's Attorney or legal advisor immediately and mail copies of the violations to your Congregation's Attorney or legal advisor. The violations issued by the Fire Department and Buildings Department will generally

list two dates. The first date is a compliance date. The second date is a hearing date.

The compliance date allows the congregation to submit whatever documentation is required in order to cure the violation. If the violation is not marked cured by the complaint date, then an appearance is required before the ECB.

Contact your Congregation's Attorney or legal advisor for assistance with appearances on behalf of the congregation and in obtaining the documentation necessary in order to cure the violation.

### **The New York State Human Rights Commission**

This is an agency of New York State. It handles various civil rights claims, including various types of discrimination.

A congregation will generally become involved with this agency as a result of a claim filed with the agency by a congregation employee, (i.e. teacher, principal, custodian). Upon receipt of such a claim a copy should be sent to your Congregation's Attorney or legal advisor immediately. The claim will generally have a due date within which a response must be given.

### **Equal Employment Opportunity Commission**

This is an agency of the U.S. federal government. It also handles various civil rights claims, including various types of discrimination suits. Upon receipt of such a claim a copy should be sent to Congregation's Attorney or legal advisor immediately. The claim will generally have a due date within which a response must be given.

### **The New York City Human Rights Commission**

This is an agency of New York City. It also handles various civil rights claims including discrimination. Upon receipt of such a claim a copy should be sent to your Congregation's Attorney or legal advisor immediately. The claim will generally have a due date within which a response must be given.

### **New York City Department of Health**

This agency is responsible for monitoring Health Laws passed by NYC. The most common violation issued is one for smoking in a non-smoking area (i.e. school) or a congregation's failure to have no smoking sign present in a designated non-smoking area. Upon receipt of a violation, your Congregation's Attorney or legal advisor should be contacted immediately. The violation will contain a date for a hearing before an Administrative Law Judge.

## V. Personal Injury/Insurance Claims

There are usually considered to be two certainties of our existence, namely: death and taxes. I submit that for congregations, there is a third, namely: personal injury and subsequent law suits arising out of claimed negligence on the part of the Congregation. In this regard, while not attempting to present the total picture of what is involved in such cases, two aspects of this area of concern are important to be considered.

### Insurance Coverage

The Trustees should secure adequate and appropriate insurance coverage. Some denominations have made special arrangements for a national or regional insurance program that has been designed for their congregations. You should discuss your coverage periodically with your insurance broker to be sure that coverage reflects, among other things, the replacement cost of the building and personal property, including attention to special items such as stained glass, organ, etc.

Liability coverage is necessary for negligence of the Congregation or any individuals who may be considered agents or employees of the Congregation. It should be noted that this insurance, as indicated above, covers the liability of the Congregation and does not provide no-fault medical insurance to an injured party, which may be obtained separately. Insurance coverage is afforded only if the Congregation or its agents were negligent.

### Steps to be Taken when an accident occurs

Immediately upon notification of any accident, a report should be transmitted to your insurance agent and your Attorney or legal advisor. Upon notification, the claim will be assigned to an investigator or adjuster for purposes of investigating the claim. Someone will contact the Congregation regarding specifics of the incident.

*This notification takes place regardless of any belief on the part of the Congregation that there is any liability or even in the event that no one in the Congregation seems to have any knowledge of the incident. Issues such as this will be resolved during the process of the claim being adjusted or through litigation.*

In the event that a law suit is commenced, you will need trial counsel for defense purposes. As the litigation proceeds, it will become necessary to appear at depositions in court (Examination Before Trial) or give actual testimony required at a trial. Your Congregation's Attorney or legal advisor should work with the Trustees and serves as a liaison between the Congregation and trial counsel.

## Practical Considerations

1) After an accident, many different individuals may contact the Congregation seeking information regarding the accident. Care should be taken that only those representatives of the Congregation, its insurance company, investigators designated by the insurance company, trial counsel or your Congregation's Attorney or legal advisor should be provided with information. In the event there is any doubt about the request or the person making the request for information, your Congregation's Attorney or legal advisor will determine the validity of the request.

2) Any legal documents served or left with the Congregation should be immediately referred to your Congregation's Attorney or legal advisor.

3) For purposes of the service of legal documents, Congregation employees should be instructed that only the Pastor or the Congregation Secretary is authorized to receive any service of legal papers.

*Service of papers, however, should not be avoided – and in the event any documents are just left at the Congregation door, steps or with an unauthorized individual, DO NOT ignore same but forward them immediately to your Congregation's Attorney or legal advisor.*

## VI. Estates Matters

Often times Congregations are named in Wills, or Trusts of parishioners or benefactors. More often than not the type of gift takes one of three forms.

1) A specific monetary amount (example: I leave \$5,000 to First Church) or property (I leave my house or furniture, to Trinity Church).

2) A percentage amount (example: I leave fifty percent of my estate to St. Luke's Church).

3) A designated gift for particular purpose such as Masses (example: I leave \$500 to St. Patrick's Church for Masses). It should be noted that a receipt of a gift such as this is limited by all of the Canonical and Diocesan practices regarding Masses and the stipends attached thereto.

Ordinarily, when a Congregation is named in a Will, it will receive either a "Notice of Probate" or "Citation" which sets forth the interest of the Congregation in the estate. It is most important that these legal documents not be misplaced or ignored as the rights of the Congregation can be adversely affected if the Congregation does not appear in the proceeding to protect its interest.

All such documents should be referred to your Congregation's Attorney or legal advisor. Upon receipt of such documents, your Congregation's Attorney or legal advisor should obtain a copy of the Will or Trust Agreement, appear on behalf of the Congregation, monitor the administration of the estate, represent the Congregation in any contest to the Will or other proceedings, demand and review accountings of the estate and obtain all bequests in a timely fashion.

## **VII. Political Activity of Churches**

As indicated in Section I, Congregations are considered exempt from Federal Income Tax pursuant to Section 501(c)(3) of the Internal Revenue Code. In order to maintain that exemption, an organization must be operated “exclusively for exempt purposes.” Pursuant to the Internal Revenue Code, an organization does not operate for exempt purposes if it conducts any “substantial” lobbying or engages in any political campaign activity.

### **Lobbying**

The Internal Revenue Code permits “Lobbying” which does not rise to “a substantial” portion of the organization’s operation. Our experience is that no Congregation would ever find itself in a situation of expending “a substantial” portion of its operation on lobbying. So, therefore, we view lobbying to be a permissive activity.

“Lobbying” can best be described as an “issue oriented” activity. Such activities which fall into this description would include comments on legislation, advocacy for legislation, referenda, ballot incentives, constitutional amendments, bond measures, etc. Such activities are permitted but care should be taken that any permissive act of lobbying or advocacy is not directed at particular individuals during a political campaign for election.

### **Political Activity**

The prohibition against involvement in political activity is addressed to cases of a candidate seeking public office. A Candidate can be described as a person who offers him or herself, or who is proposed by others, to run for public office. Even without a formal announcement, however, one can be considered a candidate if nominated by others. The positions for which a candidate seeks election have been determined to extend to elective public office including school board positions and elective political party positions.

The prohibition does not extend to comments regarding individuals seeking an appointed position, such as a judge; such activity is considered lobbying and not political campaign activity.

The activities which are prohibited include, but may not be limited to, making of statements, either written or oral supporting or opposing candidates for elective office, or supporting or opposing slates of candidates, political parties, or political action committees. Potentially, this could include statements made in sermons, Congregation bulletins, Church newspapers and other publications. Congregations are also cautioned to avoid indirectly supporting or opposing candidates. Labeling candidates and thereby indicating approval or disapproval of the candidates must be avoided.

Additionally, Congregations may not provide financial or in-kind support which would include the use of Congregation volunteers, paid staff, facilities, equipment or mailing lists. Congregations may participate in voter education materials, however, care should be taken that any materials or statements made can not be considered partisan campaign materials including campaign literature or biased campaign materials. Extreme care should be taken in connection with the use of voter educational materials provided by outside organizations.

Clearly certain activities regarding voter and candidate education are not prohibited. Congregations can educate the candidates regarding important issues and the Congregation's position on those issues. Congregations can also educate the voters regarding the candidate's position on the issues by sponsoring candidate forums and distributing appropriate voter education materials. It is essential that these activities remain unbiased. They must not indicate or imply that the Congregation agrees or disagrees with the candidates' positions.

Also permitted are neutral, non-partisan forums for presentation of un-biased candidate debates. Such activity is very closely scrutinized and such a program should not be entered into without discussion with your Congregation's Attorney or legal advisor. Similarly, use of Congregation property for political speeches or rallies is prohibited.