

Independent Ministries Best Practices



Many community serving ministries could be organized as an independent non-profit organization in order to more effectively accomplish the organization's mission. These best practice guidelines will help faith-based leaders understand risk management issues that should be carefully evaluated before forming an independent non-profit organization.

Independent Ministries Best Practices

Any organization that engages in local ministry or community service needs to carefully evaluate and understand the risks, local governing laws, ordinances and compliance regulations that will be required of the organization, its leaders, employees and volunteers. Independent ministry organizations need to carefully plan the proper organizational structure, operating policies and practices that will make for a successful and safe ministry that accomplishes its mission of serving the community. Employees and volunteers should be trained in proper work safety practices and agree to abide by them when serving on behalf of the organization.

Key Elements that Should Be Considered Prior to Establishing a Non-profit

- Prayerfully, develop a strategic plan outlining the organization's mission and purpose.
- Consider this question: "Whose interest is my first duty to protect from loss or harm?"
- Undertake a detailed review of legal structure alternatives, local regulatory requirements, business practices, financial obligations and operational requirements in order to make an informed decision. Carefully document findings and decisions throughout the process.
- Evaluate needs, resources and costs in various timeframes: Immediate (first 12 months) Short-Term (1-2 years) Intermediate (3-5 years) Long-Term (5 years or more).
- Seek professional guidance and legal counsel throughout the planning process.

Perform a Strengths, Weaknesses, Opportunities & Threats — SWOT Analysis

Carefully evaluate each aspect of the current ministry situation which is based under the umbrella or control of a local church, school or denominational working policies. Review and understand current operating practices, religious beliefs, insurance requirements, use of current facility space or equipment needs etc...

Key Considerations During the SWOT Analysis

- What type of Leadership/Board structure oversees the current ministry.
- Type of facility and amount of square footage needed to facilitate the current ministry.
- What level of insurance is provided to the ministry by the local organization.
- Does the ministry require hiring of employees or is it 100% volunteer based.
- What type of restrictions are placed on the current ministry by the local organization's leadership or denominational governing policies.
- Is there any type of specialized equipment or vehicle(s) required to perform the ministry.
- What type of opportunities are unavailable to the ministry under local church control.
- Identify what kind of restrictions are placed on the ministry by the local church, school or denominational working policies.
- Be Open, Honest and Look at the full spectrum of current ministry operations.

Five Critical Issues and Questions that Must Be Evaluated

1. If a separately incorporated nonprofit organization is formed outside of the church, whose legal interest is the number one priority to protect from liability or financial loss? This is normally the primary reason for resistance on the part of the church from allowing local ministries to separately incorporate outside of the denomination's 501c3 tax-exempt status.
2. Does the ministry seek funding or grants from non-denominational sources? What are the restrictions for receiving these funds? Are the source of funding in keeping with denominational working policies? Carefully, review the attestation terms and conditions for the use of the funds received; are the terms and conditions or limitations in keeping with denominational working policies or theological beliefs?
3. Employment liabilities must be carefully evaluated and understood. Will the independent organization have employees? If yes, will all employees be of your religious faith? Is the independent ministry prepared to handle the processing of payroll, withholding taxes, compliance with equal-opportunity, non-discrimination, ADA, OSHA and related employment laws or provide appropriate levels of employee benefits?
4. The use of the denominational name, logos, trademarks and other programs will be restricted. Remember, if the ministry receives separate independent status from the local church, you are stepping away and outside of the rights and privileges of being a local church ministry. You can no longer indicated a relationship as an affiliated organization. Just like the child who leaves home, the new independent ministry is on its own. The time to be an adult is now and to provide for oneself.
5. Remember, there is no restriction or prohibition for a group of individuals, church members or otherwise, from establishing and incorporating their own nonprofit independent ministry. This decision is outside the preview or control of local church or denominational governing boards.

Establishing an independent local ministry or community based nonprofit is controlled by Federal, state and local jurisdiction laws and regulations . However, it must be remembered in doing so, the local church and denomination have their primary legal duty and responsibility to protect the interest of the church from loss, liability or breach of working policies in keeping with theological beliefs and practices. This may and often does have a

direct impact on the relationship between the church and the new independent non-profit ministry.

Denominational Considerations that May Cause Restrictions

- **Ascending Liability** — The actions of local church employees and volunteers can create a liability exposure for the local church and higher denominational organizations. Church leaders and denominational administrators must be aware that accidents, misconduct or wrongful acts that occur during ministry activities at the local church or school may involve higher denominational organizations being named as a defendant in a liability lawsuit. For example, if an employee or volunteer at a local church ministry is negligent in the supervision of a church sponsored activity; an injured party(s) may bring a lawsuit against the local church and denomination's regional organization(s) naming both as defendants. Both defendants were named even though the regional organization was not responsible for the supervision of the activity where the accident happened. Several legal theories can be used as well as economic reality, e.g. negligent supervision — the regional organization had a duty to provide better safety training to denominational pastors and/or employees who were supervising the event when the accident occurred. The economic reality is known as “suing defendants with the deeper pockets”. Obviously, the regional denominational headquarters has significantly more financial assets or resources from which the plaintiff may recover as damages for their injuries. This scenario is constantly in play during all local church and school sponsored ministries or activities. It is for this reason and good risk management practice that denominational working policies and/or insurance requirements may restrict groups from separating their ministry outside of the denomination's control on a quasi-independent basis.
- **Employees Religious Affiliation and Membership** — The Civil Rights Act of 1964 (Title VII) prohibits discrimination in employment decisions on the basis of religion. However, “religious organizations” e.g. the local church or denomination is granted a statutory Title VII religious exemption and are permitted to hire and employ individuals “of a particular religion”. This exemption only applies to organizations whose purpose and “character are primarily religious”. This is why local church or denomination working policies may restrict the employment of individuals who are not of their organization's religious faith.
- **Use of Funding on a Non-discriminatory Basis** — The acceptance of funding sources from governmental, community organizations or other philanthropic foundations may have restrictive use covenants which forbid discrimination on how or for whom the monies received can be used. This can create potential conflicts with theological beliefs and/or

ethical issues held by the local church or denomination to grant acceptance of these types of funds. Examples of potential conflicts may include: sexual orientation, same sex marriage, right-to-life and giving over governmental control to religious practice etc...

- **Non-discrimination Clauses** — Even if the funding received is not used for a purpose that would conflict with theological beliefs or ethical issues, other restrictions may be placed on the organization who receives the funding. Attestation clauses can include non-discrimination clauses which may conflict with separation of church and state religious liberty considerations or impact the local church or school's tax-exempt status.
- **Separation between local church and independent non-profit organization** needs to be intentional and well defined. This does not mean the local church and independent non-profit cannot continue to have a close working relationship. Many times in fact it may be beneficial that they do cooperate and support each other. A key safety net is to create separation with well defined responsibilities for each organization. Tools of separation may include: contract for services, separate operating boards, separation of accounts and monies, separation of employment, lease/facility use agreements, separate licensing and specific insurance requirements.
 - **Contract for Services** — the local church or school should enter into a contract for services agreement provided by the independent non-profit organization. This contract should identify the type of services being provided to the local church or school, the terms and conditions or any required insurance and financial cost, etc.
 - **Separate Operating Boards** — Each organization should be governed by a separate operating board that provides governance to the organization. Board members should be elected or appointed in accordance with the governing bylaws of the organization. Ex officio board members should not cross over between organizations.
 - **Separation of Employment** — Each organization should employ its own staff members. Each organization should have its own Employers Identification Number (EIN) and/or tax exempt status. Hired staff should be directly supervised and report to the employing organization's management. Employees should not be shared or loaned and joint supervision should not be permitted between organizations.
 - **Separation of Accounts & Monies** — Each organization should have its own bank account(s) and financial accounting system. There should be no co-mingling of monies between organizations. Charitable donations should be made directly to the

independent non-profit for ministry projects. The independent non-profit is then responsible to issue the donor receipt.

- **Lease/Facility Use Agreements** — If the independent non-profit will continue to use facilities or equipment owned by the local church, school or denomination entity this relationship should be outlined in a lease or use agreement. This document should clearly outline and define the space or equipment being utilized, time of usage and when access to the property is authorized, terms and conditions for use of the facilities, identify any restrictions during use, insurance requirements, indemnification/hold harmless clause and the financial terms and duration of the agreement.
- **Separate Licensing** — If there are specific governmental or professional licenses required to conduct the operation of the independent non-profit said license should be secured by them or transferred from an existing license what may have previously been held by the local church or denominational organization. This means transferring the duty to maintain specific licensing standards to the responsible organization.
- **Insurance Requirements** — Operational and professional risk need to be evaluated from the point of view of both parties. The local church and denomination need to be sure the independent non-profit provides evidence of adequate limits of insurance to protect the local church or school from loss in compliance with denominational working policies. These policies need to address legal and professional liability exposures. The local church or school and higher denominational organization need to be named as an Insured by endorsement on the appropriate insurance policy(s).
- **Risk Analysis & Insurance** — The independent non-profit needs to focus on securing appropriate insurance coverage to protect its operational liability exposure to third party organizations served. It must evaluate risk to determine its exposures and insurance needs to protect facilities, personal business property, inventory, equipment and owned vehicles from loss. Board members, officers and professional liability exposures must be considered and workers' compensation insurance to cover employees or accident insurance to protect volunteers.

These type of considerations are essential for the local church or school and independent nonprofit to keep in clear focus as they make decisions on allowing local ministries to separately incorporate.

Communication & Social Media Considerations

The local church, school or denominational organization and the independent non-profit organization must be careful and consistent in how they communicate the relationship between organizations. Public statements, endorsements, written or electronic correspondence, marketing materials, web site or social media posts should not exaggerate or otherwise misstate the relationship between organizations. All forms of communication should avoid any implication of a direct relationship or affiliation with the independent non-profit organization. This can create a potential liability risk when used by third-parties to create the impression that a financial or operational relationship existed in the event of legal action against either organization.

Risk Management Considerations

Managing the risk of any local church ministry or an independent non-profit organization requires careful stewardship of all resources and assets. This means protecting people from bodily injury or harm including: employees, volunteers, clients, students, public guests and board members. It also includes the proper management and protection of financial and physical assets from loss: facilities, monies/securities, inventory, equipment, vehicles and damage to property of third-parties for which the organization may become liable for damage or loss. Professional liability must be considered: wrongful acts of board members, professional malpractice, errors and omissions, maintaining proper licensing requirements and legal compliance issues. Finally, you cannot overlook potential loss or damage to the organization's reputation and good will in the community served or the negative impact it can have on the achievement of the organization's mission.

Risk management considerations must include compliance with federal, state and local laws and ordinances. These may include ADA, OSHA health and safety regulations, local health/food preparation or fire safety ordinances. Compliance may required registration and/or licensing of the independent non-profit organization's operation or ministry. In most cases, non-profit and faith based organizations must comply with these regulations just like a commercial business. Failure to comply with these ordinances and regulations can result in fines, financial penalties, license suspension or cancelation of the authority to operate. It is important to check on these regulations as part of the due diligence process and incorporate them into the operational plan for your organization.

Insurance Considerations for Independent Non-profit Ministries

PROPERTY & CASUALTY INSURANCE

- **Commercial Property Insurance** — Insures physical assets against damage from, fire, loss of use, wind, hail and other covered perils. This insurance typically protects your buildings, business personal property (inventory and equipment), monies and securities, equipment breakdown, business interruption and extra expense. This insurance is normally provided on a replacement cost or actual cash value basis.
- **Commercial General Liability Insurance** — Insures the organization from legal liability due to negligent acts which cause harm to third-parties including: bodily injury, death, medical expenses, physical damage to property of others, personal injury and advertising, products/completed operations liability, and damage to rental property. The policy should be endorsed to include all employees and volunteers as an additional insured under the policy's insurance coverage. Nonprofit industry best practice standards recommend that all organizations should maintain this insurance with minimum policy limits of \$1,000,000 per occurrence with a general aggregate limit of \$2,000,000 or higher.
- **Commercial Auto Liability Insurance** — Insures the organization for legal liability and physical damage for owned, scheduled leased vehicles and the liability from the use of hired and non-owned vehicles by board members, employees and volunteers. All vehicles should be insured at statutory minimum limits with higher limits of liability recommended. Additional auto insurance coverage may be required to provide physical damage and comprehensive protection for the vehicle. This type of insurance should be considered based on the vehicle's age and condition. Financial institutions may require this type of additional auto insurance as a loss payee under a loan contract.
- **Umbrella or Excess Liability Insurance** — Provides the organization with additional limits of legal liability protection as scheduled beyond the underlying primary commercial general liability and auto liability insurance policy limits, terms and conditions.
- **Directors and Officers & Executive Risk Liability** — Insures officers, directors and board members of the organization from wrongful acts, errors or omissions, breach of duty, and may include other important coverage e.g. Workplace Violence, Employment Practices Liability, Fiduciary Liability, Outside Directorship Liability and Crime/Embezzlement coverage depending on the policy form.

- **Professional Liability Insurance** — Insures specified individuals from liability that may arise when providing professional services for others due to wrongful acts, malpractice, errors or omissions to third parties e.g. clients, patients, members of the public etc...
- **Workers' Compensation & Employers Liability Insurance** — Insures employees of the organization who are injured in the course of their employment by a work related accident or occupational illness covering medical expenses, indemnification of loss earnings and disability. Coverage is provided on a statutory, state specific basis. It also provides protection from lawsuits brought by injured employees due to a work-related accident or illness for which negligence is alleged on the part of the employer.

LIFE, HEALTH, ACCIDENT INSURANCE AND OTHER EMPLOYEE BENEFITS

- **Life Insurance** — Provides coverage to scheduled employees of the organization for a specific sum of benefits upon the death of the insured policyholder. Life insurance can be written in several different forms including: group life policy for covered employees, term life policy for a specific period of time or an individual life policy that meet the insured's specific financial and coverage requirements.
- **Health Insurance** — Employers may provide healthcare benefits for hospitalization, dental, optical and other related medical expenses. There are many different kinds of employer-provided and individual employee healthcare benefit plans in both the public and private insurance markets. Major forms of health insurance include: Preferred Provider Organizations (PPO), Health Maintenance Organizations (HMO), Exclusive Provider, Point-of-Service, Health Saving Accounts, Medicare and Medicaid programs.
- **Accident Insurance** — Employers may provide various forms of Accident Insurance for its employees, volunteers and participants. Coverage may include: Travel Accident Insurance, Accidental Death & Dismemberment, Volunteer Accident/Labor insurance, Disability insurance, Sponsored event coverage and other types of insurance policies that address specific needs or financial costs caused by an accident to insured individuals.
- **Retirement Plans** — Employers may provide financial benefit programs that allow employees to establish retirement saving opportunities. These retirement benefit plans may be on a contributory or non-contributory basis depending on the plan design.

Insurance policies and Employee Benefit plans can vary widely in design based on the limits of coverage, endorsements, exclusions and other terms and conditions. Using the services

of a risk management or licensed insurance professional who specializes in working with non-profit organizations is highly recommended.

FOOTNOTE: The Seventh-day Adventist Church provides the above listed types of Insurance & Employee Benefit programs for church sponsored ministries and to qualifying employees of local churches and schools in North America.

ADDITIONAL RESOURCES

Additional guidance on the role of independent supporting ministries and the governing policies required by the Seventh-day Adventist Church can be found in the North American Division of Seventh-day Adventists Working Policybook — Section K, Support Ministries.

Adventist Risk Management has published a web resource, “*Structuring Relationships Between Seventh-Day Adventist Church Organizations and Supporting Ministries*” visit www.adventistrisk.org for more information and guidance for denominational entities.

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