

**FACILITY USE POLICY
BACKGROUND
AND
CHECKLIST**

(March 26, 2015)

Legal Background

This material was prepared in response to comments received from church leaders who express the fear that the government may force them to allow use of their church buildings for ceremonies which violate their religious beliefs, such as same-sex weddings.

The Public Accommodation Issue

Although Arizona has not adopted the aggressive legislation which was adopted in Hawaii, for example, there still is a commonly held fear that the government may attempt to classify church facilities as places of "public accommodation." As such, they would be required to abide by nondiscrimination laws that broadly defined "protected classes" to include self-described sexual orientation and gender identity. These laws and the "same-sex" definition of marriage threaten to require conservative churches to participate in activities that violate their sincerely held religious beliefs regarding the definition of "marriage" as being only between one man and one woman.

Help From ADF

The Alliance Defending Freedom's *Protecting Your Ministry* is a legal guide for churches, Christian schools and Christian ministries published in 2014. (It is available as a free download at <https://www.AllianceDefendingFreedom.org/Issues/Church>). On page 13 of that publication the ADF notes that "A facility use policy is critical for any church, Christian school, or Christian ministry that owns the building and permits its facilities to be used outside of normal business operations."

Despite attempts to require churches to host same-sex ceremonies, church buildings are private property if primarily used for the exercise of religion throughout the week and not for commercial purposes.

Under current law the church may not be forced to open its buildings for uses that conflict with its religious teachings since church buildings are protected by the Free Exercise Clause and the Free Speech Clause of the United States Constitution. Groups attempting to redefine marriage have advanced arguments, which, if accepted by the Supreme Court, could undermine this protection.

Why a Facility Use Policy

In light of this potential threat, some legal commentators have suggested that Christian ministries will improve their legal position by adopting a facility use policy which outlines the religious nature of their buildings and which limits its use to those acting in accordance with the organization's Biblical beliefs. Such a policy should provide clear evidence of their belief and of their practice regarding use of the property. Hopefully, the policy would contain a clear, Scripturally based explanation of why certain practices and activities are never permitted on church property.

The Market Rent Issue

If the church rents its facilities to third parties, then it should seriously consider charging less than market rate rents. In this way, the church establishes a factual basis to counter the argument that the church is being operated as a commercial venture which, like other commercial ventures, should be subject to the public accommodation protections. If the rent is set substantially below market rates and if the church policies explain that third party use of church property furthers its religious purpose, then its legal position is strengthened.

One Size Does Not Fit All

The ADF warns "there is no 'one-size-fits-all' policy" which will adequately protect all religious groups from this gathering threat. It is important to create and faithfully follow a policy that covers your unique ministry and mission, buildings or facilities, and religious beliefs. Properly drafted and followed, this policy should allow churches to determine which uses are consistent with its Biblical beliefs and to deny all other requests to use church buildings. We encourage your church to take the time and make the effort to draft a specific policy addressing these concerns for your church.

Sample Forms

Alliance Defending Freedom prepared a sample Facilities Usage Policy for churches which appears in Appendix B in the ADF *Protecting Your Ministry* publication. See especially pages 28 through 32.

The following checklist and the attached suggested forms incorporate much of the ADF material as well as other original material from the Nonprofit Practice Group at Ridenour Hinton, PLLC.



Overview

Here are some of the legal concerns which should be considered in formulating, adopting, implementing and monitoring the documents which allow nonmembers to use church property in light of the legal threats described above.

A Facility Use Policy Should Consider These Legal "Elements":

- 📎 A contract, (a lease or conditional license) authorizing the party seeking to use the property or facility (the "User"), with Exhibits:
 - Application to be completed by the User
 - Contains an affirmation from the proposed User
 - Can be included as part of the Contract
- 📎 Usage Guidelines
 - Be Specific for your Building
- 📎 Attach Certificate of Insurance
- 📎 Overall "policy" adopted by the Church board of directors
- 📎 Attach Statement of Faith of the Church
- 📎 Optional:
 - Floorplan of Building
 - Map of Grounds showing parking
 - Designate Restricted Areas in red.

Your Notes, questions, concerns:

First Step: Prepare a form "application" to be completed by the party seeking to use the facility including various types of information about the applicant such as:

- name and type of organization (i.e., nonprofit?)
- purpose statement of the organization and affiliations
- copy of Statement of Faith if an organization
- website verification and review
- list of authorized agents and organization officeholders and leaders
- specific facilities being requested
- the specific uses to be made of the facility including specific times and dates
- number and ages of the Users of the property
 - Any “special needs” Users?
- if the uses for a wedding, then the church may have an additional checklist of items including:
 - the officiate,
 - the qualifications of the officiate,
 - the marriage preparation counseling or training undertaken by the bride and groom, etc.
 - a copy of the script for the ceremony, if available
 - music selections
 -
- Hours,
 - Set up begins:
 - Rehearsal
 - Event begins:
 - Event ends
 - Tear down
 - Clean up
- Equipment requested:
 - Sound
 - Lighting
 - Projector
 - Tables
 - Chairs
 - Lamp heaters
 - Other

Your Notes, questions, concerns:



Second Step: Be Practical & Specific in Specifying Usage Rules:



Put on your property manager hat!



Think “Rules and Regulations” form from an office building lease, such as:

- **Prohibited Items.**
 - No smoking allowed inside the building or within fifty feet of building entrances.
 - No alcoholic beverages allowed in the building, grounds or parking areas (the “Property”).
 - No weapons allowed on the Property.
 - No dangerous, flammable or explosive substances.
 - Noise and/or odor control.
 - Signage/advertising restrictions.
 - Others?

- **Insurance**
 - Liability insurance limits
 - Coordinate with insurance certificate
 - Church is not responsible for personal belongings
- **See Exhibit 1 Usage Guidelines for Sample Language**
 - Sample is only a starting point.
 - Think through your specific situation!

Your Notes, Questions, Concerns:



Third Step: Draft an overall "Facility Use Policy" to be adopted by the church board of directors outlining:



See Exhibit 3 attached & see *ADF Protecting Your Ministry Legal Guide*, pages 28 - 29.



Draft a purpose statement defining:

- what types of organizations / people may use the facility
- the process for application
- the approval process identifying decision-maker and standards for approval
- discuss with your insurance advisers, auditors and attorney
- the terms and conditions upon which property may be used including definitions of:

✓ Hours:

- Set up begins
- Rehearsal
- Event begins
- Event ends
- Tear down
- Clean up

✓ Rooms requested

✓ Equipment requested

- Sound
- Lighting
- Projector
- Tables
- Chairs
- Lamp heaters
- Other

✓ Permitted uses

✓ Scheduling

✓ Fees

✓ Use and use restrictions

✓ Insurance

✓ Special needs/requests







- ☒ Statement Of Faith of the Church should be attached
- ☒ Include Scripture
- ☒ Adoption by Board with formal resolution and commentary

Your Notes, Questions, Concerns:



Fourth Step: Review your Church Statement of Faith :

-  See ADF Protecting Your Ministry Legal Guide, pages 3 – 6 and page 26.
-  See Exhibit 4 to Handout
-  See Sample Contract, page 1
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Your Notes, Questions, Concerns:


Fifth Step: Prepare an “affirmation” to be signed by the proposed User indicating that:


- the requested use will not contradict the faith, sanctity, etc. of the Church
- the requested Users are not hostile towards the faith and beliefs of the Church
- the beliefs, mission and purposes of the User do not contradict those of the Church
- acknowledge that the facilities are “Holy” grounds
- See Sample Contract, page 1
- Compare to your policy
- Check against your Statement of Faith


Your Notes, Questions, Concerns:





Sixth Step: Review Insurance Issues and Prepare Checklist for Exhibit 2 to the Contract:

-  Set an appointment with insurance agent to review entire arrangement and to confirm:
 - the requested use will not violate insurance policy
 - if agent will review certificates from Users from time to time
 - types of coverage to be required from Users
 - minimum coverage requirements
 - **Minimum liability occurrence limit of \$1,000,000, with \$2,000,000 aggregate?**
 - personal property issues/coverage
 - how to refer to the Church in the certificate
 - “additional insured”?
 - how to check effective coverage dates
 - type of certificate to request
 - Other Special Concerns

-  Establish a procedure for reviewing insurance certificates from Users before final approval of request

-  Confirm who in Church is responsible for this review

-  Confirm filing and record retention policy for keeping insurance certificate

-  Other concerns?

Your Notes, Questions, Concerns:



Seventh Step: Prepare a “contract” (a lease or conditional license) authorizing the User to use the property and including such details as:

- security deposit
- indemnity and hold harmless clause
- an insurance clause requiring insurance coverage paid for by the User for the benefit of the Church
- Others?


Note that the attached “Short Form” Sample does NOT contain:


- notice clause
- dispute resolution agreement including Christian mediation and/or arbitration and mandatory attorney’s fees clause if there is a dispute
- property, liability, counseling exclusions
- breach and remedies clauses


Your Notes, Questions, Concerns:





Eighth Step: Assemble & Attach Exhibits for the Contract, including:

-  Exhibit 1: Usage Guidelines

-  Exhibit 2: Insurance certificate





-  Exhibit 3: Facility Use Policy as adopted by Church Board

-  Exhibit 4: Statement of Faith





-  Optional Exhibit 5: Floor plan of the facility
 - Clearly show leased area
 - Parking area
 - Off limits area
 - Other?

Your Notes, questions, concerns:

Ninth Step: Forward Complete Contract and all Exhibits for final review and approval to all “Stakeholders” and professional advisers, including:

-  Church Attorney
-  Church Auditor
-  Church’s Insurance Agent or Broker
-  Church Board

Tenth Step: Implement use of form and schedule review/feedback:

-  Train Staff
-  Establish Document Retention and Destruction Cycle
-  Schedule Review and Analysis in 6 months & again at one year
-  Note on calendar in six months to share suggestions for improving policies, form & procedures with Bob Brown at 602-740-1032 !

Your Notes, questions, concerns:

