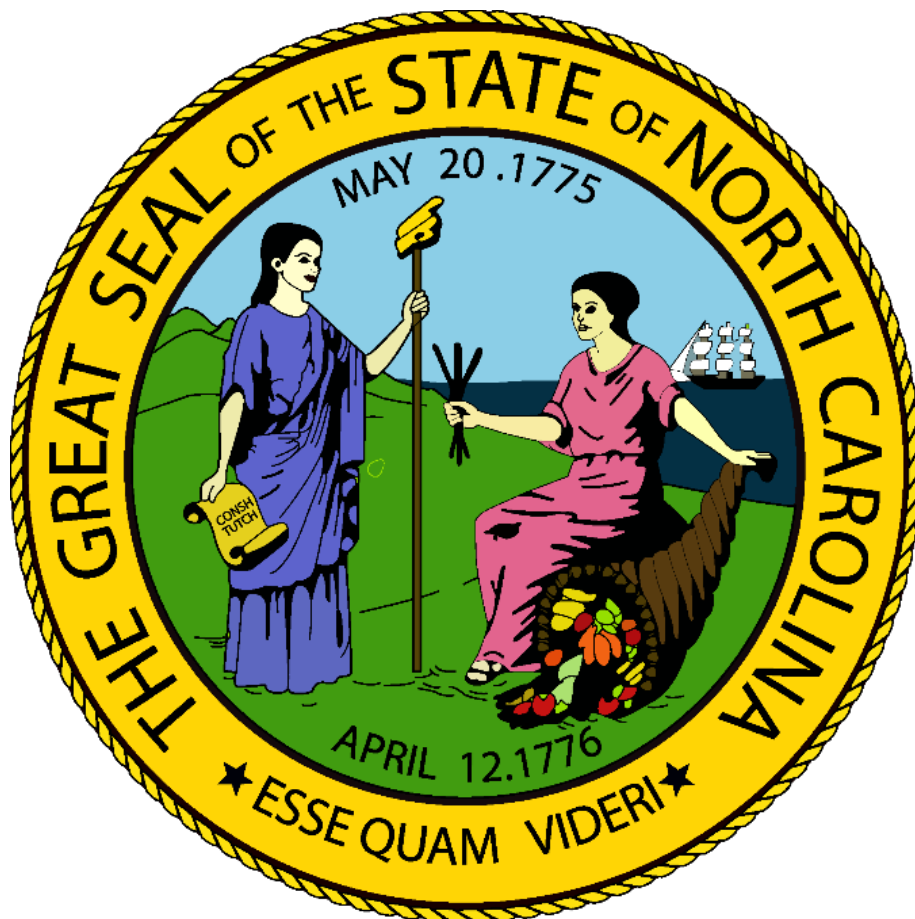




THE STATE OF NORTH CAROLINA CHURCH TRUSTEE-RELATED CODES



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North Carolina Church Trustees Have Limited Immunity

Article by *The Legal Counsel for Churches*

(<https://www.legalcounselforchurches.com/church-trustees-have-limited-immunity/>)

Church trustees have important responsibilities. The North Carolina general statutes outline the broad powers of church trustees. Under certain circumstances, trustees may be sued as a result of their actions taken in this role. It is important for churches to understand the statutory limitations that protect trustees from liability.

The statutes state that trustees have the power to receive donations and purchase, take and hold property in trust for the church. The law states that trustees are accountable to the church for the use and management of such property. In this context, property can be personal items and/or real estate.

Generally, a church trustee is immune from individual civil liability for acts performed in the trustee role. This does not mean the trustee cannot be sued. It just means that a plaintiff can only sue a trustee up to the amount of insurance coverage that may exist. Individual civil liability beyond the insurance amount is normally ruled out.

The limited immunity rule for a church trustee is just that... limited. There are situations where a trustee can be liable for personal damages beyond insurance coverage. In these instances, the immunity rule may not protect the trustee from personal liability. Here are some instances mentioned in the statute where the immunity rule does not apply for church trustees.

Compensation – When a church trustee is compensated for his services beyond reimbursement for expenses, the limited immunity rule does not apply. In this case, a church trustee can be sued for personal liability beyond insurance coverage. To avoid this exception, churches should carefully monitor payments made to trustees to make sure the payments are not considered compensation. If payments arise to the level of compensation, there are tax implications to consider as well.

Scope of Official Duty – A church trustee must act properly to be shielded from personal liability. If the trustee acts outside the scope of his official duties, personal liability could apply. The church should have an updated position description and clear policies that govern the role of a trustee. Properly documented procedures not only make for an efficient operation, it helps protect the trustees from facing personal liabilities.

Good Faith – A church trustee should act in good faith at all time. If it is determined that the trustee acted in a manner that is not in good faith, the trustee can be sued and held personally liable for actions taken in the office.

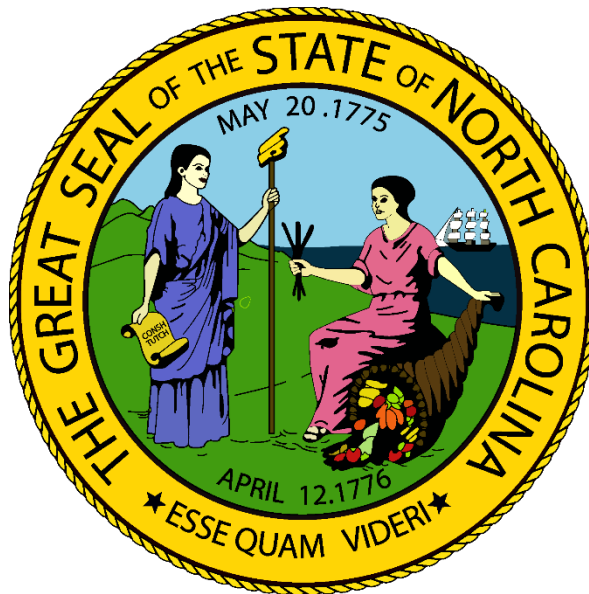
Negligence – If a church trustee commits gross negligence or willful or wanton misconduct that results in damages or injuries, the immunity from individual liability may not apply. Negligence generally means the trustee did not carry out his duty in a reasonable way. If a trustee, as with any church officer, acts badly, it will be difficult to escape personal responsibility.

Improper Personal Benefit – There is nothing inherently wrong with a trustee receiving a benefit in his role with the church. There could be taxable compensation implications though. The possible wrongdoing is when the personal benefits are improper. A personal benefit could be improper if the church was not informed, the benefit exceeded authority or a policy was violated in the process. Church trustees who receive an improper personal benefit void immunity for themselves.

Motor Vehicle Operation – If a trustee incurs liability from the operation of a motor vehicle, the immunity rule does not apply. This is an important exception. For this reason, the church should ensure that adequate liability insurance is in place for volunteers who operate vehicles for the church.

Derivative Action – If a trustee is the target of a lawsuit that is brought on behalf of a class of persons, the immunity protection may not apply. A derivative action is a legal claim that seeks remedies for a group of persons. In the case of a church, the group could be the church members.

Church leaders should seriously consider the legal exposure its trustees face as a result of their official duties. If insurance levels seem inadequate, have a conversation with your agent to reevaluate the policy. If policies and procedures are lacking, take steps to update the documents. Failure to make the necessary corrective steps could lead to unintended personal liability for trustees.



Chapter 61. Religious Societies.

§ 61-1. Trustees may be appointed and removed.

(a) The conference, synod, convention or other ecclesiastical body representing any church or religious denomination within the State, as also the religious societies and congregations within the State, may from time to time and at any time appoint in such manner as such body, society or congregation may deem proper, a suitable number of persons as trustees for such church, denomination, religious society, or congregation. The body appointing may remove such trustees or any of them, and fill all vacancies caused by death or otherwise.

(b) A person serving as a trustee appointed pursuant to subsection (a) of this section or a director or officer of a religious society shall be immune individually from civil liability for monetary damages, except to the extent covered by insurance, for any act or failure to act arising out of this service, except where the person:

- (1) Is compensated for his services beyond reimbursement for expenses,
- (2) Was not acting within the scope of his official duties,
- (3) Was not acting in good faith,

- (4) Committed gross negligence or willful or wanton misconduct that resulted in the damage or injury,
- (5) Derived an improper personal financial benefit from the transaction,
- (6) Incurred the liability from the operation of a motor vehicle, or
- (7) Is sued in an action that would qualify as a derivative action if the organization were a for-profit corporation or as a member's or director's derivative action under G.S. 55A-28.1 or G.S. 55A-28.2 if the organization were a nonprofit corporation. The immunity in this subsection is personal to the officers, directors, and trustees and does not immunize the organization for the acts or omissions of the officers, directors, or trustees. (1796, c. 457, ss. 1, 2; 1844, c. 47; 1848, c. 76; R.C., c. 97; Code, ss. 3667, 3668; Rev., ss. 2670, 2671; C.S., s. 3568; 1987, c. 799, s. 1.)

§ 61-2. Trustees may hold property.

The trustees and their successors have power to receive donations, and to purchase, take and hold property, real and personal, in trust for such church or denomination, religious society or congregation; and they may sue or be sued in all proper actions, for or on account of the donations and property so held or claimed by them, and for and on account of any matters relating thereto. They shall be accountable to the churches, denominations, societies and congregations for the use and management of such property, and shall surrender it to any person authorized to demand it. (1796, c. 457, ss. 1, 3; 1844, c. 47; 1848, c. 76; R.C., c. 97; Code, ss. 3667, 3668; Rev., ss. 2670, 2671; C.S., s. 3569.)

§ 61-3. Title to lands vested in trustees, or in societies.

All glebes, lands and tenements, heretofore purchased, given, or devised for the support of any particular ministry, or mode of worship, and all churches and other houses built for the purpose of public worship, and all lands and donations of any kind of property or estate that have been or may be given, granted or devised to any church or religious denomination, religious society or congregation within the State for their respective use, shall be and remain forever to the use and occupancy of that church or denomination, society or congregation for which the glebes, lands, tenements, property and estate were so purchased, given, granted or devised, or for which such churches, chapels or other houses of public worship were built; and the estate therein shall be deemed and held to be absolutely vested, as between the parties thereto, in the trustees respectively of such churches, denominations, societies and congregations, for their several use, according to the intent expressed in the conveyance, gift, grant or will; and in case there shall be no trustees, then in such churches, denominations, societies and congregations, respectively, according to such intent. (1776, c. 107; 1796, c. 457, s. 4; R.C., c. 97, s. 1; Code, s. 3665; Rev., s. 2672; C.S., s. 3570.)

§ 61-4. Trustees may convey property.

The trustees of any religious body may mortgage or sell and convey in fee simple any land owned by such body, when directed so to do by such church, congregation, society or denomination, or its committee, board or body having charge of its finances, and all such conveyances so made or heretofore made, or hereafter to be made, shall be effective to pass the land in fee simple to the purchaser or to the mortgagee for the purposes in such conveyances or mortgage expressed; and they may sell or mortgage its personal property. (1855, c. 384; 1889, c. 484; Rev., s. 2673; C.S., s. 3571.)

§ 61-5. Authority of bishops, ministers, etc., to acquire, hold and transfer property; prior transfers validated.

Whenever the laws, rules, or ecclesiastic polity of any church or religious sect, society or denomination, commits to its duly elected or appointed bishop, minister or other ecclesiastical officer, authority to administer its affairs, such duly elected or appointed bishop, minister or other ecclesiastical officer shall have power to acquire by gift, purchase or otherwise, and to hold, improve, mortgage, sell and convey the property, real or personal, of any such church or religious sect, society or denomination, for the purposes, in the manner and otherwise as authorized and permitted by its laws, rules or ecclesiastic polity; and in the event of the transfer, removal, resignation or death of any such bishop, minister or other ecclesiastical officer, the title and all rights with respect to any such property shall pass to and become vested in his duly elected or appointed successor immediately upon appointment or election, and pending appointment or election of such successor, such title and rights shall be vested in such person or persons as shall be designated by the laws, rules or ecclesiastic polity of such church or religious sect, society or denomination.

All deeds, deeds of trust, mortgages, wills or other instruments made prior to March 24, 1939, to or by a duly elected or appointed bishop, minister or other ecclesiastical officer, who, at the time of the making of any such deed, deed of trust, mortgage, will or other instrument, or thereafter, had authority to administer the affairs of any church, religious sect, society or denomination under its laws, rules or ecclesiastic polity, transferring property, real or personal, of any such church or religious sect, society or denomination, are hereby ratified and declared valid; and all transfers of title and rights with respect to property, prior to March 24, 1939, from a predecessor bishop, minister or other ecclesiastical officer who has resigned or died, or has been transferred or removed, to his duly elected or appointed successor, by the laws, rules or ecclesiastic polity of any such church, or religious sect, society or denomination, either by written

instruments or solely by virtue of the election or appointment of such successor, are also hereby ratified and declared valid. This section shall not affect vested rights, or repeal any of the provisions of G.S. 61-1 to 61-4, or of G.S. 36-21 to 36-23. (1939, c. 177.)

§ 61-6. House on vacant land vests title.

All houses and edifices erected for public religious worship on vacant lands, or on lands of the State not for other purposes intended or appropriated, together with two acres adjoining the same, shall hereafter be held and kept sacred for divine worship, to and for the use of the society by which the same was originally established. (1778, c. 132, s. 6; R.C., c. 97, s. 2; Code, s. 3666; Rev., s. 2674; C.S., s. 3572.)

§ 61-7. Governing body of assembly authorized to adopt traffic regulations.

(a) The governing body of any religious organization or assembly may by appropriate resolution establish rules and regulations with respect to the use of the streets, roads, alleys, driveways, and parking lots on the grounds or premises owned or under the exclusive control of such organization, and it shall be unlawful for any person to park a motor vehicle or other vehicle on the streets, roads or on the premises of a religious assembly where parking has been prohibited by the religious assembly by the erection of "No Parking" signs at each space on the street, road or on the premises where parking is prohibited. Each space in which parking is prohibited shall be clearly designated as such by a sign no smaller than 24 inches by 24 inches. All rules and regulations adopted pursuant to the authority of this section shall be recorded in the proceedings of said governing body and copies thereof shall be filed in the office of the Secretary of State of North Carolina.

(b) It shall be unlawful for any person to park a motor vehicle or other vehicle in a parking space on the streets, roads, or premises of a religious assembly where the parking space has been designated by the religious assembly as being limited to a named individual or to a person holding a named position with the assembly; provided, that such private parking space or private parking lot be clearly designated as such by a sign no smaller than 24 inches by 24 inches prominently displayed at the entrance to the parking lot, if within a parking lot, and provided further that the private parking spaces within the lot or the private parking spaces on the streets, roads or on the premises of the religious assembly be clearly marked by signs setting forth the name of each individual for whom the space is reserved or the name of the position held with the assembly for which space is reserved.

(c) It shall be unlawful for any person to park a motor vehicle or other vehicle on the streets or roads of a religious assembly, except where parking is expressly designated, so as to interfere with, or obstruct the free flow of vehicular traffic on the streets or roads within the assembly grounds.

(d) It shall be unlawful for any person to park a motor vehicle or other vehicle at the entrance to any driveway on the grounds of a religious assembly so as to block the driveway.

(e) Any vehicle parked in violation of subsections (a), (b), (c), or (d) may be removed by the assembly, or its agents, or its employees to a place of storage and the registered owner of such motor vehicle shall become liable for removal and storage charges. Any person who removes a vehicle pursuant to subsections (a), (b), (c), or (d) shall not be held liable for damages for the removal of the vehicle to the owner, lienholder or other person legally entitled to the possession of the vehicle removed; however, any person who intentionally or negligently damages a vehicle in the removal of such vehicle, or intentionally or negligently inflicts injury upon any person in the removal of such vehicle, may be held liable for damages.

(f) A "religious assembly" is defined as being a corporation or association formed for the purpose of providing a resort community for religious and recreational purposes and where the streets and roads are solely maintained by the religious assembly without governmental funds. (1977, c. 398, s. 1; 1989, c. 644, s. 3; 1989, c. 644, s. 3.)