# Attorney General Compliance

## Avoid State Regulatory Scrutiny

Strategic Framework for State Nonprofit & Charity Compliance

Church Clergy Tax Management & Compliance

# Today's Agenda

- State Attorney General Jurisdiction Over Churches
- Charity Registration & Reporting Requirements
- Governance & Fiduciary Compliance Standards
- Financial Accountability & Transparency Requirements
- Real-World Enforcement Actions Against Churches
- State Compliance Roadmap & Implementation

# Attorney General Authority Over Nonprofits & Churches

- State Attorneys General have **broad authority** over charitable organizations
- Churches increasingly scrutinized: no longer automatic exemption from AG oversight
- States regulate: governance, financial reporting, solicitation practices, executive compensation
- Enforcement activity increasing: AG investigations up 40% in past 5 years
- Some states regulate clergy compensation as charitable asset misuse
- AG can file civil actions, demand restituition, remove officers
- Recent trend: consumer protection laws apply to churches (state-specific)

# Charity Registration: State-by-State Requirements

- **39 states + DC** require charity registration with Attorney General
- **Church exemptions vary:** Some states exempt all religious organizations, others scrutinize closely
- **Initial Registration:** Form varies by state, typically $25-200 filing fee
- **Annual Renewal:** Many states require annual certification and fee (even churches)
- **Failure to Register:** Can result in civil penalties $500-5,000+ and loss of liability protections
- **Critical Action:** Contact your state AG's office to determine church filing requirements

# State Governance Standards Increasingly Applied to Churches

- **Board Composition:** Some states require independent board members (non-clergy/family)
- **Written Bylaws:** Many AG offices now require churches to adopt formal bylaws
- **Board Meetings:** Regular documented meetings with minutes (quarterly minimum)
- **Conflict of Interest Policy:** AG increasingly requires this for all nonprofits including churches
- **Audit or Review Requirement:** Some states require annual audit for churches over certain size
- **Executive Compensation Policy:** Written policy on how compensation is determined

# Charity Solicitation Laws: Donor Protection Statutes

- **Registration Requirement:** 39 states require charities soliciting funds to register
- **Church Exception Varies:** Some states exempt churches, others require registration if soliciting outside congregation
- **Donor Disclosures:** Some states require financial statements available to public (transparency)
- **Fundraising Conduct:** Anti-fraud provisions apply to church fundraising and appeals
- **Telemarketing Restrictions:** Federal/state regulations on phone solicitation compliance
- **Online Giving Platforms:** Payment processor terms often require compliance certifications

# Financial Reporting: What States Require

## Small Churches

Under $50K revenue: Often simplified Form or no filing required

## Mid-Size Churches

$50K-$500K: Many states want annual financial report with revenue/expense detail

## Large Churches

Over $500K: Form 990-N or 990-EZ often required directly by state AG

# Clergy Compensation: AG Scrutiny Increasing

- **Reasonableness Standard:** AGs increasingly question excessive pastor compensation
- **"Lavish Lifestyle" Red Flag:** High compensation + luxury vehicles/housing = AG investigation trigger
- **Transparency Requirement:** Form 990 Schedule J shows top 5 employees (including pastors)
- **Documentation Required:** Board approval process & fair market value analysis
- **No Personal Loans:** AG views pastor personal loans from church as asset diversion
- **Fringe Benefits Scrutiny:** Country club memberships, vehicles, housing must be reasonable

# Related-Party Transactions: AG Scrutiny Area

- **Prohibited Transactions:** Pastor's family companies receiving contracts without competitive bidding
- **Self-Dealing:** Board members approving payments to themselves or related entities
- **Disclosure Requirement:** All conflicts must be documented in board minutes
- **Recusal Standard:** Conflicted person must recuse from discussion and voting
- **Competitive Bids:** For contracts over certain amount, bids from non-conflicted vendors required
- **AG Enforcement:** AGs view self-dealing as charitable asset theft

# Transparency vs. Privacy: The Balance

## Public Accountability

- Form 990-N public data
- Annual summary to congregation
- Major gift reporting

## Donor Privacy

- Individual giving amounts private
- Pledge cards confidential
- Restricted fund use honored

# Website & Online Disclosure: Increasing Requirement

- **Charity Registration Number:** Some states require AG registration # on solicitation materials
- **Financial Statements Available:** AG increasingly expects Form 990 accessible on website
- **Mission Statement Clarity:** Website must clearly state 501(c)(3) purposes (religious + charitable)
- **Use of Funds Disclosure:** Percentage breakdown of revenue use (administration, programs, fundraising)
- **Contact Information:** Website must have board contact info & complaint process
- **No Misleading Statements:** Claims about fund usage must match financial reality

# Case Study: The Pastor Self-Dealing Investigation

- **Situation:** Church paid pastor's family construction company $500K for building renovation. No other bids obtained. Church had no conflict of interest policy.

**AG Investigation:** AG received donor complaint. Audited payments, found overcharges and work quality issues.

**Result:** AG demanded $150K restitution. Pastor removed from board. Church required to establish ethics policy.

✅ **Prevention:** Conflict of interest policy + competitive bidding + board approval documentation.

# Case Study: The Excessive Compensation Complaint

**Situation:** Mid-size church (500 members) paid pastor $200K + housing + $30K auto allowance. No board minutes documenting justification. Congregation viewed as excessive.

**AG Investigation:** Received complaint from member. No documentation of market analysis or board approval.

**Result:** AG letter requiring board approval process documentation. Church reduced compensation 25%. Established annual compensation review policy.

✅ **Prevention:** Board minutes documenting FMV analysis + transparent compensation policy + annual review.

# State-Specific Compliance Pitfalls

- **California:** Strict charity registration, Form 199 annual filing required even for small churches
- **New York:** Extensive governance requirements, Form 990-N transparency expectations
- **Texas:** Less restrictive but annual charity registration still required for many churches
- **Florida:** Charity registration requirement with annual renewal fee (many churches comply partially)
- **Illinois:** Public Charitable Registration Act applies to churches soliciting funds statewide
- **ACTION:** Contact your state AG's website to determine YOUR state's specific requirements

# AG-Compliant Governance Framework

- **Board Composition:** Minimum 3-5 unrelated board members (clergy + laypeople)
- **Regular Meetings:** Quarterly or monthly documented board meetings with minutes
- **Conflict of Interest Policy:** Written, signed annually by all board members
- **Compensation Committee:** Dedicated committee approves salary/benefits with FMV analysis
- **Audit/Review:** Annual independent audit or review by certified firm
- **Document Retention:** Keep all records 7 years (minutes, policies, financial documents)

# Financial Transparency: Build AG Confidence

- **Annual Summary to Congregation:** Publish simplified revenue/expense report (show charitable use)
- **Form 990-N or 990-EZ Availability:** Make public tax filing available on website or upon request
- **Budget vs. Actual Reporting:** Monthly board report showing financial health & variances
- **Major Gift Disclosure:** Board approval of gifts over certain amount (prevents improper use)
- **Fund Restrictions Honored:** Track designated funds separately, use as donor intended
- **Annual Audit Engagement:** Use reputable CPA firm, publish audit opinion summary

# Whistleblower Protection: Required by Many States

- **Written Policy Required:** Many states require charities to adopt whistleblower protection policy
- **Non-Retaliation Standard:** Employees/volunteers can report concerns without fear of termination
- **Reporting Channels:** Multiple ways to report (board member, independent hotline, external counsel)
- **Investigation Process:** Board must investigate complaints independently
- **Document Retention:** Keep all complaints & investigation reports confidential but documented
- **AG Benefit:** Shows church takes governance seriously, reduces AG scrutiny

# AG Compliance: 120-Day Implementation Plan

## Days 1-30

- Contact state AG office
- Identify requirements
- Complete registration forms

## Days 31-60

- Draft governance policies
- Adopt bylaws updates
- File charity registration

# AG Compliance Documentation Checklist

- ☐ State charity registration certificate filed & current
- ☐ State annual renewal/reporting completed (if applicable)
- ☐ Bylaws formally adopted with governance structure documented
- ☐ Board of directors with minimum 3 unrelated members
- ☐ Monthly/quarterly board minutes documenting all major decisions
- ☐ Conflict of interest policy signed annually by all board members
- ☐ Executive compensation policy with documented FMV analysis
- ☐ Annual independent audit or review engagement completed

# AG Compliance Checklist - Continued

- ☐ Form 990-N/990-EZ/990 filed timely with state AG (if applicable)
- ☐ Form 990 publicly available on website or upon request
- ☐ Annual financial summary published to congregation
- ☐ Website discloses 501(c)(3) status and charitable purposes
- ☐ Whistleblower protection policy adopted & distributed
- ☐ Written fundraising/solicitation practices documented
- ☐ Document retention policy in place (7-year minimum)
- ☐ Designated state compliance officer for AG communications

# Proactive Relationship With State AG

- **Call Ahead:** Contact charity division before filing - ask about church exemptions/requirements
- **Ask Questions:** Clarify state requirements (better to ask than discover via enforcement action)
- **Voluntary Compliance:** AG appreciates churches that proactively establish governance
- **Respond Promptly:** If AG requests information, respond quickly (shows good faith)
- **Document Everything:** Keep copies of all AG communications and your responses
- **Annual Check-In:** Review state requirements annually in case they've changed

# Key Takeaways

- Attorney General jurisdiction over churches is expanding - not decreasing
- Charity registration requirements vary by state - contact YOUR AG office
- Governance standards increasingly applied to churches (board meetings, conflict policies, audits)
- Compensation scrutiny increasing - document FMV analysis & board approval
- Financial transparency builds AG confidence and prevents complaints
- Whistleblower policies and ethics frameworks now expected by AGs

# Achieve AG Compliance Today

Next: Board Governance Excellence Deep Dive

Do not wait for state inquiry - implement governance standards now

# Thank You

Building State Regulatory Confidence Through
Excellent Governance & Compliance

Questions & Discussion Welcome