

INCORPORATION OF A LOCAL CHURCH

Paragraph 2528.1 vests the charge conference with the authority to direct the local church BOT to incorporate the church. The incorporation must be accomplished in accordance with local law and the *Discipline*. Minimum standards for a local church corporation are found in ¶ 2506. Incorporation should protect and exempt the individual officers and members of the local church, jointly and severally, from legal liability for and on account of the debts and other obligations of every kind and description of the local church.⁴⁶

The first step in the incorporation process should be the retention of qualified legal counsel. Legal counsel should be very familiar with the structure of the United Methodist denomination, the trust clause (¶ 2503), the local church structure, and the various roles of the district superintendent as to certain local church matters.

1. Advantages of Incorporation.

Under the law, a corporation is a separate legal entity from its officers, directors and incorporators, with the power to enter into contracts and agreements in its own name. The corporate form provides a continuous entity for the ownership and management of property and for the carrying out of the business and programs of the local church. If proven, assertions of liability for acts undertaken by the corporation may be satisfied only by corporate assets, not by the personal assets of the corporate directors, except in cases of fraud against the corporation by a director or when corporate formalities are not followed.

2. Powers.

A corporation derives its powers and existence from the state. The sources of its powers are its charter and the general statute under which the corporation was organized. The statutes grant numerous specific powers relating to organization, the use and conveyance of property, the election of officers, the amendment of articles of incorporation and by-laws, the right of dissolution, etc.

The “express powers” of a corporation are those related to the business activities in which the corporation is engaged and that are enumerated in its charter. “Implied powers” arise out of reasonable inferences about the scope and intent of the language of the charter powers as they relate to certain facts and circumstances. Great care should be taken by the local church

⁴⁶ ¶ 2528.1.

corporation to ensure that its acts and transactions do not extend beyond its limits of authority. Such *ultra vires* acts should be expressly barred by the Articles of Incorporation.

3. Formation.

Procedures for forming and organizing corporations vary from state to state. However, general incorporation statutes in every jurisdiction provide for the issuance of a certificate of incorporation to certain persons by a designated state official (usually the Secretary of State). The typical statute requires:

1. The preparation and execution of the articles of incorporation by the incorporators, and the acknowledgment of their signatures before a notary public;
2. The delivery of the articles of incorporation to the Secretary of State, including any other required incorporation papers and payment of requisite organizational fees;
3. Filing of the articles by the Secretary of State, and subsequent issuance by him or her of the certificate of incorporation;
4. The recording of the Certificate and Articles of Incorporation with the Recorder of Deeds, or any other county officials as required in the county or parish where the corporation is located;
5. The convening of the first corporate organizational meeting at the call of the directors to adopt by-laws, elect officers, and transact other business.

The articles of incorporation generally include the following provisions:

1. The name and address of the corporation;
2. The address of its registered agent for the service of process, notice, or demand upon the corporation within the state;
3. The duration or tenure of the corporation, which may be perpetual or limited (church corporations are typically perpetual);
4. The names and addresses of the incorporators;
5. A statement of purpose for which the corporation is formed;
6. The names of the individuals constituting the initial board of directors and the names and addresses of those who are to serve as directors until the first called meeting;
7. Membership in the corporation, and, in the case of the local church, specific reference to the *Discipline* provisions on incorporation of the local church;
8. The powers of the corporation;
9. Procedures for the adoption of by-laws by the board of trustees;

10. Definition of the quorum of directors needed to transact corporate business;
11. Procedures for amending the articles of incorporation;
12. Provisions for the distribution of assets upon dissolution of the corporation.

Upon completion of the required charter application and the articles of incorporation, these documents must be submitted to the district superintendent for his or her written approval. The purpose of obtaining the superintendent's written approval is to insure conformity of the documents with the *Discipline*. Particular attention should be devoted to the following:

1. The corporation's stated purpose and powers must support the doctrine of the United Methodist denomination, and all its property must be subject to the "laws, usages, and ministerial appointments" of the Church.
2. The board of trustees, which ordinarily will serve as the board of directors of the corporation, must be properly selected. Officers of the board of trustees are the officers of the board of directors of the corporation.
3. The powers and responsibilities of the corporation, and its board of directors, should include the powers and responsibilities about property specified for the charge conference by the *Discipline*.
4. The members of the corporation are to be the members of the charge conference.
5. Should the corporation cease to exist, the title to all its property is to be vested in another 501(c)(3) tax exempt organization. We suggest the title vest in the annual conference board of trustees, to be held in trust for benefit of the local church, if it should continue to exist, and, if not, for the benefit of the conference or successor entity.
6. The articles of incorporation and the by-laws of the corporation that are submitted to the state should include the provisions of the *Discipline* by reference.
7. After completion of the incorporation, care should be taken to deed all property to the new corporation. Real property can be deeded by use of a quitclaim deed. This transfer can present an excellent opportunity to review the title to property, to determine if there are any limitations on reversionary interests, and to ensure the inclusion of the trust clause (§ 2503).

Many states now have special not-for-profit corporation statutes or religious corporation statutes that significantly decrease the reporting requirements and filing costs for such corporations. Local counsel should be instructed to incorporate under such statutes if possible.

It might be helpful as well to consult with other local churches that have recently incorporated in your state to obtain samples of their forms for review, assuming their incorporation forms have been prepared by a knowledgeable attorney with attention to the unique structure of the United Methodist denomination.

Sample incorporation forms, including bylaws, are included at the end of this section. Each state has different incorporation requirements, so these samples should only be used as starting points for the creation of documents tailored to a respective state's requirements.

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