
PURPOSE:

To provide general information to local churches about incorporation

FACTS:

1. What is incorporation?

- a. Incorporation is the creation of an entity (pursuant to the laws of a state) which is capable of conducting business and otherwise acting as a legal person. In South Carolina, the creation of nonprofit corporations is governed by the South Carolina Nonprofit Corporation Act of 1994, codified at S.C. Code Ann. §§ 33-31-10, et seq. The South Carolina Secretary of State is responsible for overseeing nonprofit corporations within the state.
- b. When a church is not incorporated, it is treated as an unincorporated association.
- c. Do not confuse the chartering of a local church by the Annual Conference with incorporation. A church may only be established as a corporation in South Carolina by filing articles of incorporation with the Secretary of State.
- d. Along with filing the articles of incorporation, a newly-incorporated local church must fulfill other requirements (e.g., adopt bylaws, transfer the title of property to the incorporated entity, etc. See paragraph 4 below.)

2. The reason for incorporation.

- a. The primary reason for the incorporation of local churches is the same for religious nonprofit corporations as it is for other

corporations: limitation of liability. Churches and church members are not immune from lawsuits and liability. Charitable immunity has been abolished in South Carolina since 1981. Although some limitations on liability exist for churches and church officers under statutory law, state law does not prevent lawsuits from being filed against churches or church members for occurrences related to church activities.

- b. Members of an unincorporated local church are potentially individually liable for the debts of the local church and could be exposed to liability for the tortious acts committed by other members or employees of the unincorporated church. (Of course, church members would still be liable for their own negligence regardless of whether their church is incorporated.)

3. Resources for incorporation.

- a. The Bishop and the Cabinet strongly recommend that any church considering incorporation retain an attorney to assist the church.
- b. The website of the General Council for Finance and Administration (GCFA) contains information about church incorporation including sample resolutions, articles of incorporation, and bylaws. Caution: Although the formats are helpful references, the forms provided are merely sample forms and do not necessarily comply in all respects with South Carolina law.
- c. The website of the South Carolina Secretary of State contains forms for non-

profit corporations including a standard format for articles of incorporation.

- d. Pursuant to The Book of Discipline of The United Methodist Church (the “Discipline”), charge conference approval (or church local conference approval for churches in a pastoral charge consisting of two or more local churches) is required before a local church may incorporate.
- e. The Discipline also mandates the inclusion of certain provisions in the articles of incorporation and bylaws (“corporate documents”) of any church corporation.

4. Some additional considerations for local churches considering incorporation (not intended to be an exhaustive list).

- a. Upon incorporation, the real and personal property of the unincorporated church must be conveyed or transferred to the church corporation.
 - b. The church corporation should obtain a new federal tax identification number even though the unincorporated church may already have one.
 - c. While the Discipline will largely guide the governance of a local church of The United Methodist Church, a local church corporation in South Carolina must still comply with the requirements of the South Carolina Nonprofit Corporation Act, which in some respects contains provisions more restrictive or involved than those of the Discipline (e.g., certain notice requirements, merger procedures, etc.). Under the Discipline, local laws
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control in the event of conflict between the local laws and provisions of the Discipline regarding formation and operation of church corporations.

- d. Churches that have day care centers, counseling centers, or other similar ministries or activities sponsored by their churches should thoughtfully consider separately incorporating those activities. (Note: If those types of activities are not being operated or controlled by the church but are being conducted on church property by independent persons or entities, the church should verify that adequate insurance is being maintained by the persons or entities.)
- e. Incorporation does not lessen the need for a church to have a good insurance program to protect the church against liability and losses. Adequate insurance coverage, even after incorporation, remains an important aspect of good stewardship, especially in today's world where more and more lawsuits are being filed against churches and other nonprofit institutions.
- f. When a local church incorporates, the church must appoint a registered agent and maintain a registered office. The purpose of a registered agent and registered office is to designate a place for the service of legal process and for the receipt of notices from governmental entities. An incorporated local church must ensure that the designation of the registered agent and registered office remains current.

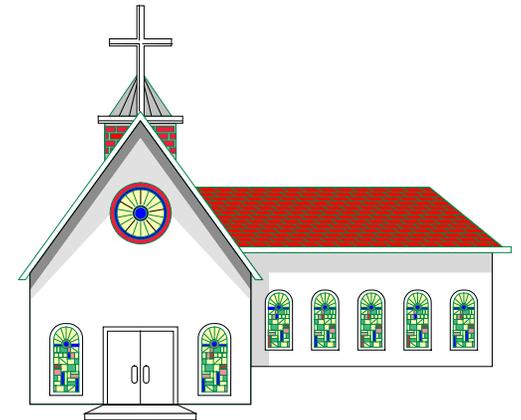


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Incorporation of Local Churches



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