

Incorporation Guidelines

by Steve D. Spacek

The following procedures are a guide to incorporation. This is based on the requirements for the Commonwealth of Pennsylvania but can be helpful for any state.

It is strongly recommended that a Christian attorney qualified in nonprofit law be retained. Get recommendations from other churches or ministries. Ask the attorney to help you do most of the work, complete the forms, review the material, and recommend suggestions. If you do all this, process the material and submit it to the appropriate agencies, you will have control and complete the project in a timely manner.

1A. Preliminary Considerations

There is an engineering axiom that says “form follows function.” The apostle Paul in 1 Corinthians 4:17b speaks of “*remembrance of my ways which are in Christ, as I teach everywhere in every church.*” This implies a uniformity of practice. Paul’s way of life in Christ was consistent with (“agrees with”) what he taught “*everywhere in every church.*” His way of life (form) was in agreement with what he taught (function). There was a uniformity of practice that grew out of Paul’s teachings. His belief determined his behavior. His doctrine determined his duty. Similarly, the apostles’ beliefs about the function of the church would naturally have affected the way they organized churches (the form of the church). This concept should be kept in mind while evaluating the ramifications of incorporation - structure can either facilitate or hinder the function of the church.

1B. Questions Concerning the Church

1. Has the whole church reached consensus of a biblical purpose statement through a careful and thorough study of God’s Word?
2. Has the whole church reached consensus of a philosophy of ministry with regard to biblical principles, methodology, function, etc.?
3. Has the whole church reached consensus with regard to the proposed Constitution and Bylaws including such items as the doctrinal position, church polity, membership, conflict resolution, confidentiality, counseling, discipline, leadership roles, finances, missions, etc.?
4. Has the church consistently demonstrated that it is functioning as an organism - not as an organization, with respect to its purpose?
5. What are your reasons as a church for wanting to incorporate at this time?
6. What expectations does the church have of the attorney?

2B. Questions Concerning the Attorney

1. To what degree does the attorney have a biblical perspective?
2. Does the attorney have skills with regard to nonprofit, church related issues?

3. What associations or seminars does the attorney relate to that reflect on his experience with nonprofit and church related issues?
4. Is the attorney familiar with current church legal issues and how to address risk management features in the Constitution & Bylaws?
5. Does the attorney have experience in church conflict resolution?
6. What experience and references of other churches does the attorney have?
7. Is the attorney willing to allow the church to perform the “detail work” and simply render legal advice as necessary?
8. What is the attorney’s fee structure?

2A. Statement of Purpose

A statement of purpose must be carefully considered and worded. It is the basis for setting priorities, choosing programs and projects, and evaluating results. It provides unity and direction for the organization and is required for incorporation.

A handbook on *Developing Church Strategy* deals with discerning a biblical approach and defining a biblical direction for the local church. It provides simple yet comprehensive method for understanding the biblical position of the church, and establishing a purpose, priorities, and process of church development. The handbook can be obtained from Help Ministries.

3A. Name of the Organization

1B. Choosing the Name

The name should take into consideration the purpose statement, doctrinal position, community perception, geographical area, length, and ease of use.

2B. Verifying the Name

Any name chosen must be validated as not being used within the state of incorporation. A phone call to the state Corporation Bureau can determine its availability. In Pennsylvania the number is: (717) 787-2004.

4A. Address of the Organization

This should include the location and post office address of the initial registered office of the corporation.

5A. Incorporators

The name(s) and post office address(es) of each incorporator(s) are required. In the state of Pennsylvania, only one is necessary to sign the Articles of Incorporation.

6A. Dissolution Clause

To meet the requirements for not-for-profit tax exempt organization, a dissolution clause in the Articles of Incorporation and Constitution is necessary.

1B. Proposed Dissolution Clause

Upon the dissolution of the Church and after paying or making full provision for the payment of all of the debts and liabilities of the Church, the net assets of the Church shall be distributed as determined by the Board to a nonprofit religious organization or organizations as defined under Sec. 501(c)(3) of the Internal Revenue Code, which is exempt under Sec. 501(a) of the Internal Revenue Code (or of any future corresponding provision of any future United States Internal Revenue Code) and which is in agreement with the statement of faith contained herein. In no event shall any of the assets of the Church be distributed to the directors, officers, ministers, or members of the Church.

7A. Articles of Incorporation

1B. Filing

In order to incorporate, an Articles of Incorporation must be filed with the Department of State Corporation Bureau. The form required is "Articles of Incorporation - Domestic Nonprofit Corporation" and can be acquired from the Corporation Bureau. It is not necessary to file the Constitution & By-laws with this document. It is also necessary to send a "Docketing Statement" to the Departments of State and Revenue. Forms can be obtained by calling the PA Corporation Bureau at (717) 787-1057.

2B. Proposed Statement

This church is organized exclusively for religious, charitable and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, including, for such purpose, the ordination and licensure of ministers of the Gospel, the establishment, conduct and maintenance of religious worship, church services, evangelistic meetings, Bible classes, Bible conferences, radio and television programs, Sunday School classes nursery classes, day school classes, other modes of Christian education, and missionary activities in the United States and in any foreign country, the construction and maintenance of churches, parsonages, schools, chapels and such other religious, charitable and educational institutions as the corporation may from time to time deem appropriate, and the operation and conduct of such business enterprises for solely religious, charitable and educational purposes as it may from time to time deem appropriate, together with related and kindred and incidental purposes, and any other lawful purpose or purposes.

8A. State Registry Information

All nonprofit corporations are required to register with the Department of State, Corporation Bureau, before beginning operations in Pennsylvania, and to annually notify the Corporation Bureau of any changes in its officers. The form required is entitled "Corporate Registry Information for Departments of State and Revenue".

9A. Legal Notices

Public notice of incorporation must be provided to two newspapers. One should be a Legal Journal and the other a well known paper in the county of incorporation.

1B. Sample Legal Notice

TO:

Montgomery Court Law Reporter	A	The Mercury
100 West Airy	N	Hanover & King Streets
Norristown, PA 19404	D	Pottstown, PA 19464

Please publish the following notice one time under legal notices and forward the invoice and proof of publication to <name>.

NOTICE

Notice is hereby given that Articles of Incorporation were filed with the Commonwealth of Pennsylvania, Department of State, Corporation Bureau, Harrisburg, Pennsylvania on <Month, Day, Year>, for the purpose of obtaining a Certificate of Incorporation for <Name of Organization>, a nonprofit corporation organized under the Nonprofit Corporation Law of the Commonwealth of Pennsylvania.

The purpose for which such corporation has been organized is: To establish and maintain religious worship, church services, school classes, missionary activities and other exclusively charitable, religious and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1954, as amended, with related and kindred and incidental purposes and the operation and conduct of business enterprises for solely religious, charitable and educational purposes. The registered office of the corporation is <Address, City, State, Zip>.

10A. Corporate Seal

Some states may require a corporate seal. A corporate seal may be ordered from M. Burr Keim, 105 N. Watts St., Philadelphia, PA 19107 or calling (215) 563-8113. Ask for a catalogue.

11A. Federal Employer's Number

All corporations and nonprofit organizations are required to use an employer identification number. This is applied for by using the IRS Form SS-4. To apply by phone call (215) 961-3908.

12A. IRS Exemption

Church are automatically exempt. You may consider applying for a letter of determination to recognize an organization's exempt status under section 501(c)(3). The only reason this needs to be filed is for advance assurance of a tax deduction for a large gift. This is applied for by requesting Package #1023 (Application for Recognition of Exemption) from the IRS Forms Department at (800) 829-3676.

An option to this long and difficult process is to apply for membership in IFCA International, a fellowship committed to biblical ministry. They can be contacted at (800) 347-1840 for an information packet. Their web site is: www.IFCA.org

13A. State Sales & Use Tax Exemption

In order to be exempt from paying state sales tax on selected items, it is necessary to make application. In Pennsylvania it is with the Bureau of Accounts Settlement. It is required to file a copy of the Constitution and By-laws with this application.

14A. Constitution & By-Laws

It will be necessary to set forth a stated purpose, doctrinal position, and guidelines for the operation of the organization. It is not necessary to rush into this very important matter to become incorporated. Much prayer, wisdom, and research should go into preparing this document.

A comprehensive, updated model that reflects legal issues and risk reduction as well as biblical based principles is provided by Help Ministries.

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