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15 Things Richard Hammar Wants Pastors to Know

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Incorporation

Learn the fundamentals of incorporating a church and how it affects church governance.

Richard R. Hammar [posted 3/03/2020]



What is incorporation?

Incorporation is a simple process by which an organization is recognized by the state as a legal entity.

Two forms of church corporations are in widespread use in the United States. By far, the more common form is the *membership corporation*, which is composed of and controlled by church members. Several states also recognize *trustee corporations*. The trustees of a trustee corporation constitute and control the corporation.

A few states also permit certain officers of hierarchical churches to form a *corporation sole*, which is a corporation consisting of a single individual.

Is your church incorporated? Many ministers don't know. But there are several reasons why ministers should know whether or not their church is incorporated, including these four.

1. Members' immunity from liability

The members of a corporation may be liable for their own acts and omissions, but they are not liable for the acts or omissions of other members or of the corporation itself. Many regard this as the most compelling advantage of the corporate form of organization. To illustrate, if a member molests a minor during a church activity, and the church is sued by the victim and is awarded an amount in excess of the church's insurance coverage, the plaintiff cannot collect anything from other members who did not participate in or facilitate the injury.

The Model Nonprofit Corporation Act, which serves as the nonprofit corporation law for several states, specifies that “a member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.”

2. Annual reports

The Model Nonprofit Corporation Act requires that all nonprofit corporations file an annual report with the secretary of state’s office. A few states have amended this provision to require reports less frequently, such as once every two years.

The report is filed on a form provided by the secretary of state, and ordinarily sets forth the name of the corporation, the address of the corporation’s registered office in the state of incorporation, the name of the registered agent at such address, the names and addresses of the directors and officers, and a brief statement of the nature of the affairs the corporation is actually conducting. A nominal fee must accompany the report.

States that have adopted the Act differ with regard to the penalties imposed upon corporations that fail to file the annual report by the date prescribed. The Act itself imposes a nominal fine (\$50) on corporations that fail to comply with the reporting requirement. Many states have followed this provision, but others call for the cancellation of a corporation’s certificate of incorporation. Cancellation of a certificate of incorporation has the effect of terminating the existence of a corporation. This is an extraordinary penalty, generally available only after the secretary of state’s office has sent the corporation a written notice of the impending cancellation.

If a corporation fails to respond to the written notice, the secretary of state issues a certificate of cancellation, which is the legal document terminating both the certificate of incorporation and the corporation’s legal existence. Many states permit reinstatement of terminated corporations. Reinstatement generally is available upon the filing of a formal application within a prescribed time. Because of the potentially adverse consequences resulting from a cancellation of a church’s corporate charter (including joint liability of members for the wrongful acts of other members) church leaders should periodically check with the office of their secretary of state to ensure that the church is a corporation in good standing. Many churches will find that they are not, either because they failed to file an annual return, or because their corporation was created for a specified period of time that has expired.

3. Duration

If your church is incorporated, what do your articles of incorporation say about the duration of the church's corporate existence? Most pastors don't know. But they should know because of the potentially adverse consequences (including joint liability of members for the wrongful acts of other members) resulting from an expiration of a church's corporate charter. A church's corporate charter should specify "perpetual" as its duration.

Key point. Be sure to check your church's corporate duration (it's specified in your articles of incorporation or charter) to confirm that it says "perpetual."

4. Corporate governance

Incorporated churches are free to adopt bylaws addressing issues of internal administration, and a church's bylaws generally take precedence over conflicting provisions in state nonprofit corporation law. In other words, state nonprofit corporation law may be viewed, in most cases, as a "gap filler"—filling gaps in a church's bylaws. For example, if an incorporated church's bylaws do not address how vacancies on the board are to be filled, or do not define a quorum, the nonprofit corporation law will "fill the gaps." This feature can be helpful because it insures that issues of governance inadvertently omitted from a church's bylaws will be, in most cases, addressed by the applicable nonprofit corporation law. In most cases, this is an effective defense against the chaos that otherwise can occur when a church's governing documents provide no guidance. Here are a few issues that are addressed in nonprofit corporation laws in the event that a church's governing documents are silent:

- merger
- consolidation
- dissolution
- quorum
- meetings
- limited liability
- loans to officers

- indemnification
- inspection of records
- fiduciary duties of board

How can you determine if your church is incorporated?

You can check to see if your church is incorporated through your secretary of state's website. If you are informed that your church is incorporated, then you may wish to ask for a certificate of good standing (the name of this document varies somewhat from state to state) that confirms the corporate status of your church. You also should request a certified copy of your charter (articles of incorporation), to be sure that you have a copy of the document on file with the state.

Additional Reading

For deeper readings on church incorporation, see the following:

- [*Church Governance: What Leaders Must Know to Conduct Legally Sound Church Business*](#)
- [*Pastor, Church & Law*](#) (in the legal library, or [purchase the book](#) from the Church Law & Tax Store)
- [*"Loss of Corporate Status"*](#)
- [*"Charity's Lapse of Corporate Status Leads to Loss of Property"*](#)
- [*"Church Board's Attempts to Amend Articles of Incorporation Ruled Invalid"*](#)

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