Section 3

Establishing and Administering the Organization

Chapter 13: Organizing and Incorporating

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13.100: Introduction

It is very important to know what technical steps to take in both organizing and incorporating a congregation. The following sections provide information for both processes, as well as closing a congregation. Organizing and closing is presented in summary form listing the steps; while incorporation is discussed in some detail. A more comprehensive examination of the steps to take in organizing a congregation should be discussed with your district office.

13.110: Organizing Steps Before Charter Sunday

- Request district's affirmation for congregation to organize.
- Appoint temporary officers.
- Select a name.
- File for incorporation.
- Obtain Employer Identification Number (EIN). Complete IRS Form SS-4 and either (a) mail or fax it to the IRS and wait for them to send you your EIN, or (b) call the IRS and obtain your EIN immediately and mail them the form with the EIN.
- Open bank account.
- Determine preliminary insurance needs.
- Obtain church seal, if one is desired.
- Make preliminary contact with Concordia Plan Services.
- Hold special business meeting six to eight weeks before Charter Sunday to vote on the following:
  a) Adopt articles of incorporation, a constitution and bylaws.
  b) Elect a church council and officers.
  c) Authorize the council to make application for reception into the Synod and district.
  d) Authorize the officers to incorporate.
  e) Adopt a motion stating that the resolutions acted on at the business meeting becomes effective on the date of organization.
- Request copy of the Congregational Treasurer's Manual and the Personnel Manual from district.
- Obtain district approval of constitution and bylaws.
- Select a Charter Sunday where those wishing to become members sign the constitution.

13.120: Organizing Steps After Charter Sunday

- Replace temporary officers with permanent officers.
- Send report of organization to the Synod's Department of Statistics.
- Install the church council.
- Obtain state identification number, if any.
- Prepare a budget.
- Begin the process of calling a pastor.
- Become familiar with district periodic report.
- Check again on all appropriate insurance and bonding.

13.200: Incorporation

13.210: Why Incorporation?

Incorporation is a method by which individuals unite under a common purpose and thereby acquire certain advantages and protections.

Every congregation of the Synod should be incorporated. The value of corporate status lies in the protection from legal liability it affords for the individuals who belong to the organization. Without this status, the members are individually responsible for acts of the organization that might cause injury to someone or for defaults by the organization such as on loans. However, the officers of the congregation should be aware of the legal responsibility they have as officers to carry out the activities of the congregation in a responsible manner.

The type of incorporation that is recommended is the modern not-for-profit corporation and not the older form of incorporation as a religious or benevolent society, which some states permit. Although the congregation will still be "incorporated," the potential legal implications for officers and directors are substantial. Although you may not have to file an annual report or registration renewal under the older form of incorporation, the modern not-for-profit corporation law provides more legal guidance for officers and directors in carrying out their corporate duties. It is therefore regarded as providing greater legal protection than the older form of incorporation.

If the congregation has a parochial school, the school should normally not be separately incorporated but should be included with the congregation's incorporation. The same is usually true for Congregational Endowment Funds and other controlled organizations. The decision to incorporate these organizations should be based on the nature and relationship of the organization and the advantages and disadvantages that come with a separate corporation.

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13.215: How to Incorporate

The act of incorporating is governed by the laws of the state in which the congregation exists and so must conform to the laws of that state. The process for incorporation can be obtained from your Secretary of State's office. The congregation may want to engage an attorney to assist in the process or in periodically reviewing the corporate status. The attorney may also act as the congregation's registered agent.

13.300: Organizational Documents

13.305: Articles of Incorporation

The articles are the principal instrument of incorporation and the legal statements required by the state. State law is very specific about the items required to be contained in the articles, and must be reviewed when preparing the articles. However, typically the articles must include the following:

1. The organization's legal name. The name should clearly identify the organization but not be unwieldy. The name chosen must be available for use as determined by the Secretary of State's office.
2. The purpose of the organization.
3. The duration of the corporation. It should be as long as possible and be perpetual if state law permits.
4. A statement that the congregation will have members.
5. A statement as to the type of corporation (e.g. public benefit or mutual benefit), if required by state law.
6. Names and addresses of incorporators (and directors).

For purposes of the federal income tax exemption, the articles of incorporation must specifically provide that the net earnings of the corporation shall not inure to the benefit of any member, director, officer, or other individual, and that in the event of dissolution, the corporate assets are to be distributed for one or more exempt purposes, such as to the synodical district in which the congregation exists.

For purposes of the federal income tax exemption, the articles also should contain the statement that the corporation is organized exclusively for charitable, religious, and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code.

The articles should not contain rules for the internal government of the corporation. State law requires that every amendment to the articles be filed with the state, so the articles should be as brief as possible and be limited to only those matters required.

When completed, duplicated and notarized, copies of the articles must be submitted to the secretary of state. A filing fee must accompany the copies. If the articles comply with state requirements, the secretary of state will endorse both copies, file one in his or her office, and return the other to the congregation along with a certificate of incorporation. The congregation should file its endorsed copy and the certificate in a safe location.

13.310: Constitution

The constitution sets forth the fundamental purposes or objects of the congregation and includes the basic form of organization and the general principles. The constitution is usually short and compact and is the ruling document to the bylaws.

If a congregation wants to avoid the confusion that may result from the creation of articles, a constitution, and bylaws, it is appropriate for a congregation to have only articles and bylaws prepared, and to include in the articles some of the provisions that would have appeared in the constitution, if state law permits. Whether the congregation chooses to be governed by only two organizational documents (articles and bylaws) or three (a constitution also), the organizational documents should be written to be consistent with each other.

13.315: Bylaws

The bylaws contain the organizational details omitted from the articles and constitution and are the rules of internal government adopted by the organization. For example, while meetings and elections may be mentioned in the constitution, the specifics as to time, manner, etc., belong in the bylaws.

At a minimum, the bylaws should cover the following matters: selection of members; time, place, and notice of annual business meetings; quorums; voting rights; selection, tenure, responsibilities, and removal of officers and directors; filling of vacancies; method of amending bylaws; indemnification of directors and officers; and purchase and conveyance of property.

If ambiguity or contradiction exists between the articles, constitution or bylaws, the articles or constitution takes precedence. Amendments to the constitution should require a larger majority vote than an amendment of the bylaws.

13.316: Approval

The constitution and bylaws, and any future changes to these, must be approved by the district for the congregation to become and remain official members of the Synod.

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13.400: Corporate Reporting

In some states, nonprofit corporations are required to file reports with the secretary of state's office. (Contact the Secretary of State's office in your state to determine your filing requirements.) The report generally is brief and requires, among other things, the purpose of the organization, the names and addresses of the board of directors or governing body, and the name of the registered agent. A nominal filing fee may be required.

Failure to file the report imposes penalties that differ by state. Some states impose only a nominal fine, but others may call for cancellation of a corporation's certificate of incorporation, which has the effect of terminating the existence of the corporation. This extreme measure usually occurs only if the state has notified the organization of such action.

13.500: Fiscal Year

The fiscal year of the congregation is established when the organization files for an Employer Identification Number (see 7.310) or incorporates. The fiscal year should be the period that best fits the organization's activity and operations.

A congregation can change its fiscal year if one becomes more practical than another. The action should be approved by the board of directors or church council. The church is not obligated to report that fiscal year change to the IRS unless it files a Form 990T with the IRS for any reason (especially if the organization has unrelated business income).

13.600: Registered Agent

Each corporation must have a registered resident agent or agent for process of service. A registered agent can be an attorney or member of the organization and is the individual to whom any papers will be delivered if the organization is named in a lawsuit. If the agent's name or address changes, contact the Secretary of State's office and advise them. Sometimes a nominal fee must accompany the revision.

13.700: Closing a Congregation

The following list of closing procedures is provided here as a mere suggestion for congregational leaders to considered and discuss BEFORE closing their church doors for its final worship service.

1. When a congregation is considering dissolution, it should immediately contact the Offices of the District President and the Circuit Counselor to invite them to participate in the discussion on the subject.
2. The congregation should also seek the advice of a competent attorney who is familiar with the state laws governing the dissolution of religious corporations.
3. If a congregation concludes that it should dissolve, this recommendation ought to be presented to a legally called meeting of the congregation.
4. The congregation should heed close attention to its constitution and bylaws regarding the calling of any meetings for the purpose of deciding on a possible dissolution; in this repect, any quorums and the necessary majority needed to make the vote legal. Notice of all meetings should be clearly announced in advance by letter to each member of the congregation so that they are notified of the date, time, place and purpose of the meeting.
5. Adopt a normal resolution to dissolve; passed by a majority of the voting members as required by the congregation's constitution. To accomplish this task, information should be prepared in advance and circulated to the members to support the reasons for this action. The resolution should include the setting of the date when the dissolution is to become effective and the date at which a festival closing service will be held.
6. Establish a timeline of all events/actions associated with the dissolution.
7. Secure an appraisal of all property to be sold.
8. Following the adoption of a resolution to dissolve, the following supporting resolutions need to be adopted:
   a. Transfer/release the members to neighboring congregations, effective on the date of dissolution.
   b. Authorize the officers of the congregation to sign the necessary documents to finalize all legal matters pertaining to the dissolution.
   c. Where necessary, authorize the transfer/disposal of all church property, including the building, furnishings, title to the cemetery and other properties.
   d. Authorize the transfer or disposition of the funds that are left in the treasury of the dissolving congregation. Most constitutions state that the funds should revert to the District of which the congregation is a member. It is appropriate for these funds to be used in the mission outreach program of the District. *(This is referring to assets which remain after the dissolution date.)*
   e. Transfer the records of the congregation for safe-keeping. These include the records of all offical acts of the congregation, its financial records, and the official minutes of the congregation. It could also include other items of historical value. These are important since they not only have historical value, but also information about the members which will help them when they transfer or desire verification of dates of birth,

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baptism, confirmation, marriage, death, etc. If the District Office declines record-keeping responsibility, these records should then be deposited in the Concordia Historical Institute in St. Louis, Mo., so that they are kept safe and accessible for future reference. Discuss this matter with the District Office.

Procedure for dealing with documents and artifacts:

1. Locate
2. Sort
3. Organize in chronological order
4. Search for missing information
5. Determine value
   a. Fiscal—audits, property records and contracts, tax record
   b. Legal—constitution and bylaws, articles of incorporation
   c. Administrative—agendas, minutes, ministerial acts
   d. Historical—stories of people in mission and ministry, pictures, videos

9. Notice should be sent to the Secretary of State's office that the congregation is dissolving, giving the effective date.
10. The dissolving congregation should pay all outstanding bills.
11. The Minutes of the final business meeting of the congregation should be adopted before adjournment.
12. Copies of the Minutes and all official correspondence should be sent to the Office of the District President.
13. Provide for a final service in the congregation which will be dissolving.
14. Address the need for all of the members transferring to new congregations.

13.800: Additional Information

For additional information on organizing and incorporating a congregation, contact the following:

1. An attorney.
2. Your district office for information on church planting.
3. *Guidelines for the Constitution and Bylaws of a Lutheran Congregation*, at LCMS.org under Administrative Resources.
4. The district's committee on constitutional matters.
5. The Secretary of State's office in your state.

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