

Incorporation Information

The process of incorporation is relatively straightforward, however when incorporation is approved, the Virginia and common law specify that an organization meeting of the congregation shall be called for the purpose of:

- a) Adopting the initial Bylaws and Constitution of the Corporation,
 - b) Accepting members from the unincorporated entity to the new church incorporation,
 - c) Transferring property held in trust for the unincorporated entity to the new church incorporation,
 - d) Confirming church leadership and officers (the legal church representatives), and
 - e) Authorizing new bank accounts and change to legal documents to reflect corporate status.
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1. Incorporation will substantially limit liability of the Pastor(s), leadership and members, providing a sure liability shield, provided the church leadership is not 'grossly negligent.' It should be noted that under VA Code 8.01-220.12 members of any church, synagogue or religious body shall not be liable in tort or contract for actions of any officer, director, employee or other member of such church solely because of membership. VA Code 8-220.1.1 provides some limited immunity for volunteer officers, trustees and directors of 501(c)(3) tax-exempt organization and limits liability in some cases for paid directors and officers to 1 year salary and benefits.
 2. Under the new law which became effective July 1, 2005, Section 57-8 trustees are no longer needed for church corporations and court appointment of such trustees is not required to hold, manage, buy, sell, transfer or encumber real property of the church corporation. Of course, church corporations may still authorize trustees to have that legal authority with the church members' approval or it can delegate it to one or more of its leadership. This leadership should be in the form of a "team" or committee" rather than individuals. Unincorporated churches, however, must comply with all the old law provisions requiring court approvals for appointment of Trustees and buying, selling, encumbering or transferring land to another entity (other than the new church corporation).
 3. Under Section 57-10, real or personal property for church corporations no longer need to be held by trustees but can be held in the name of the church corporation or a separate property holding nonprofit corporation under the new section 57-16.1. If no petition is filed within one year of recordation of the trustee's deed transferring property, it shall be conclusively presumed that the transfer was valid.
 4. Incorporation often makes it easier for a church to buy, sell, and encumber real estate, operate bank accounts and engage in other business transactions.
 5. Incorporation protects the corporate name in Virginia and eases trade name registration and trade marking the name where appropriate.
 6. Incorporation also lends to stability of an organization more so than an unincorporated association, since the members, leadership, trustees, and officers of a church change over the years.
 7. Churches must be incorporated to receive grants through government faith-based social service provider programs or private foundations.
 8. Incorporation and tax exemption can often permit special nonprofit mailing rates and procure discounts from vendors.

9. Some banks and lending institutions prefer to deal with an incorporated entity to assure its governance, purpose and legal status.
10. Any incorporated entity is required to submit an informational report and nominal fee annually to the State Corporation Commission or suffer the loss of its non-profit corporate status. This fee is currently \$75.
11. Any church that incorporates still retains all the government privileges, protections and rights already provided to churches and other religious organizations, such as tax deductibility of donations, no corporate tax, sales and use tax exemptions, property tax exemptions, housing allowances for ministers, etc.
12. To assure proper protection of its privileges and rights, competent legal counsel knowledgeable in church and tax exempt law for legal compliance should review the constitution and bylaws of a church, governance changes, to identify suggested updates to conform to current church practices and best practices risk management. *
13. An incorporated entity is required to have a set of "Directors of the Corporation." This can be the church's current governing organization, e.g. those attending an authorized business meeting or an organization having authority to act for the membership between business meetings (as stated in its bylaws).
14. Incorporated entities require an Incorporator and Registered Agent. This is ideally a member of the Virginia Bar since Virginia Law provides for that qualification and since most, if not all, of the papers to be delivered as part of the incorporation request will be legal in nature. *
15. Legal documents (deed, mortgages, bank accounts etc) must be changed to reflect the status of being incorporated. *
16. The incorporation process normally takes 2-4 months but can take longer if the church needs more time to work the acceptance process for the updated constitution and bylaws or to identify and obtain the roster of member for the incorporated church.

* The initial set up fee (non-recurring) is estimated to be about \$ 2,000.

Excerpted from *Incorporation of Churches in Virginia: A New Day and Law*.