

**LOCAL CHURCH
INCORPORATION**

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These are sample documents which are created to assist local churches, working with their own attorney or the conference chancellor. Each church must consider state and local laws, as well as their own unique facts and circumstances. The General Council on Finance and Administration is not engaged in providing legal or accounting services. The service of a competent professional should be sought for legal and tax advice.

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Incorporating the Local United Methodist Church

This memo discusses some of the considerations and concerns involved in the incorporation of a United Methodist local church. Each church needs to make its own decision on whether to incorporate, based on the general factors and considerations set forth below and based on their own set of facts and circumstances. The forms at the end of the memo are suggested corporate forms and structures that need to be reviewed by an attorney who is familiar with your church and not-for-profit incorporation laws in your state.

¶ 2528.1 of The Book of Discipline vests the charge conference with the authority to direct the board of trustees of the local church to incorporate the church. The incorporation must be accomplished subject to the Discipline and in accordance with local law. (Note that as of January 2001, incorporation of churches is prohibited in Virginia and West Virginia).

Incorporation should protect and exempt the individual officers and members, jointly and severally, of the local church, from legal liability for and on account of the debts and other obligations of every kind and description of the local church. The first step in the incorporation process should be the retention of qualified legal counsel. Legal counsel should be very familiar with the structure of the United Methodist denomination, especially the trust clause (¶ 2503), the local church structure, and the various roles of the district superintendent as to certain local church matters.

Advantages of Incorporation

1. Limited liability
2. Clear legal capacity to enter into contracts and agreements
3. Perpetual duration

Under the law, a corporation is a separate legal entity from its officers, directors and its incorporators. Corporate powers are conferred by the corporate charter and by the state corporation statute. The corporate form provides a continuous entity for the ownership and management of property, and for carrying out the business and programs of the local church. Assertions of liability for acts undertaken by the corporation may be satisfied, if proved, from corporate assets only, rather than from personal assets of the corporate directors, except in cases of fraud against the corporation by a director, or where corporate formalities are not followed, and a case can be made that the corporation is acting as an alter ego of its directors.

A corporation derives its powers and existence from the state. The sources of its powers are its charter and the general statute under which the corporation was organized. The statutes grant numerous specific powers relating to organization, the use and conveyance of property, the election of officers, the amendment of articles of incorporation and by-laws, the right of dissolution, etc.

The "express powers" of a corporation are those related to the business activities in which the corporation is engaged that are enumerated in its charter. "Implied powers" arise out of reasonable inferences about the scope and intent of the language of the charter powers as they relate to certain facts and circumstances. Great care should be taken by the local church corporation to insure that its acts and transactions do not extend beyond its limits of authority. Such acts are termed ultra vires and should be expressly barred by the corporation's Articles of Incorporation.

Procedures for forming and organizing corporations vary from state to state. However, general incorporation statutes in every jurisdiction allow for the issuance of a charter of incorporation to certain persons by a designated state official (usually the Secretary of State) in compliance with the provisions of the corporation statute. The typical statute requires:

1. The preparation and execution of the articles of incorporation by the incorporators, and the acknowledgment of their signatures before a notary public

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2. The delivery of the articles of incorporation to the Secretary of State, including any other required incorporation papers and payment of required organizational fees
3. Filing of the articles by the Secretary of State, and subsequent issuance by him or her of the certificate of incorporation
4. The recording of the Certificate and Articles of Incorporation with the Recorder of Deeds, or any other county officials as required in the county or parish where the corporation is located
5. The convening of the first corporation organization meeting at the call of the directors to adopt by-laws, elect officers, and transact other business.

The articles of incorporation generally include the following provisions:

1. The name and address of the corporation.
2. The address of its registered agent for the service of process, notice, or demand upon the corporation. Usually the agent will be the board of trustees, inasmuch as it manages the business of the local church about property and other legal affairs.
3. The duration or tenure of the corporation, which may be perpetual or limited. Church corporations are typically perpetual.
4. The names and addresses of the incorporators.
5. A statement of purpose for which the corporation is formed.
6. The names and number of directors constituting the initial board of directors, and the names and addresses of those who are to serve as directors until the first called meeting.
7. Membership of the corporation, and, in the case of the local church, specific reference to the Discipline provisions on incorporation of the local church.
8. The powers of the corporation.

9. Procedures for the adoption of by-laws by the board of trustees.
10. Definition of the quorum of directors needed to transact corporate business.
11. Procedures for amending the articles of incorporation.
12. Provisions for the distribution of assets upon dissolution of the corporation.

Upon completion of the required charter application and the articles of incorporation, these documents must be submitted to the district superintendent for his or her written approval. The purpose of obtaining the superintendent's written approval is to insure conformity of the documents with the Discipline. Particular attention should be devoted to the following:

1. The corporation's stated purpose and powers must support the doctrine of The United Methodist denomination, and all its property must be subject to the "laws, usages, and ministerial appointments" of the Church.
2. The board of trustees, who ordinarily will serve as the board of directors of the corporation per the Discipline, must be properly selected. Officers of the board of trustees are the officers of the board of directors of the corporation.
3. The powers and responsibilities of the corporation, and its board of directors, should include the powers and responsibilities about property specified for the charge conference by the Discipline.
4. The members of the corporation are to be the members of the charge conference.
5. Should the corporation cease to exist, the title to all its property is to be vested in the annual conference board of trustees, to be held in trust for benefit of the local church, if it should continue to exist, and, if not, for the benefit of the conference or successor entity.
6. The articles of incorporation and the by-laws of the corporation that are submitted to the state should include the provisions of the Book of Discipline of The United Methodist Church by reference.
7. After completion of the incorporation, care should be taken to deed all property into the new corporation. Real property can be deeded by use of a quitclaim deed. This transfer can present an excellent opportunity to review the title to property, to determine if there are any limitations on reversionary interests and to make sure that the trust clauses (§ 2503) are

put into the new deeds.

Many states now have special religious corporation statutes that significantly decrease the reporting requirements and filing costs for such corporations. These statutes also often restrict the oversight role of the attorney general. Local counsel should advise on incorporating under such statutes.

Note: Sample incorporation forms, including bylaws, are included. Each state has different incorporation requirements. These forms should be a useful starting point for the local church's attorney.

It might be helpful as well to consult with other local churches that have recently incorporated in your state to obtain samples of their forms for review, assuming their incorporation forms have been prepared by a knowledgeable attorney with attention to the unique structure of the United Methodist denomination.

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Incorporation of the Local Church - Sample Charge Conference Resolutions

WHEREAS, it is the recommendation of certain members of this local church that the Charge Conference elect to direct the Board of Trustees to incorporate said church under the laws of the State of _____ and the *Discipline* of The United Methodist Church; and

WHEREAS, such members further desire said incorporation to be for and in accordance with the purposes set forth in the United Methodist *Discipline*; and in such manner as will fully protect and exempt from any and all legal liability the individual officers and members, jointly and severally, of the local church, and the Charge, Annual, Jurisdictional, and General Conferences of The United Methodist Church and each of them, for an on account of the debts and other obligations of every kind and description of the local church; and

WHEREAS, this meeting of the Charge Conference is called to consider the said recommendation to incorporate the local church as hereinbefore stated; and

WHEREAS, said members of the Charge Conference have been duly notified of the special meeting of the Charge Conference of this said association and the purpose thereof, which meeting has been duly authorized to be held and called in accordance with the United Methodist *Discipline*.

NOW, THEREFORE, BE IT RESOLVED that the membership of the Charge Conference of _____ (church name and state), an unincorporated association, duly called and convened, do hereby authorize and direct the incorporation of said association as (church name and state), a(n) _____ (state) nonprofit religious corporation (or not for profit corporation), in accordance with the *Discipline* of The United Methodist Church and for the purposes as set forth in said *Discipline*, and do further authorize and direct the Board of Trustees of this association to forthwith cause proper Articles of Incorporation, containing therein the requirements and necessary provisions of the United Methodist *Discipline*, to be prepared, executed, and transmitted forthwith to the Office of the Secretary of the State of _____ for filing therein, and that the expense of said incorporation be paid from the General Treasury of said association.

BE IT FURTHER RESOLVED, that the following persons be, and they are hereby designated as the original trustees of said new nonprofit corporation:

[as many lines as Trustees designated, but not fewer than three (3) members nor more than nine (9) - Paragraph 2524 of *The Book of Discipline*, 2000]

RESOLVED FURTHER, that said Board of Trustees be further authorized to do and perform any and all acts necessary to carry this resolution into full force and effect.

(Date of Meeting)

VOTE:

Approved ___ Defeated ___

(Place of Meeting)

CERTIFICATION
(if required)

The undersigned, Secretary of the Charge Conference of _____ Church, an unincorporated association, do hereby certify that the following action was duly taken by said Charge Conference on the ____ day of _____, 20_____, and that the same is in full force and effect.

Secretary
Charge Conference

Incorporation of the Local Church - Charge Conference Resolution 2

WHEREAS, the members of the Charge Conference of _____
(name and state), an unincorporated association, did this ___ day of _____, 20_____,
by proper resolution direct and authorize the Board of Trustees of said association to promptly
incorporate said association under the laws of the State of _____ pursuant to the
Discipline of The United Methodist Church, as a nonprofit, religious corporation (or not for
profit corporation); and

WHEREAS, it will become necessary upon the incorporation of said association to
transfer all of the assets of said association to the new corporation, which shall be known as

(name and state).

NOW THEREFORE, BE IT RESOLVED by the members of the Charge Conference
of _____ (name and state), an unincorporated
association, duly called and convened, that the Board of Trustees of said association in order to
perfect further and carry on the operation of said association as a corporation and to comply with
the *Discipline* of The United Methodist Church be, and it is hereby authorized and directed to
prepare, transfer and convey unto _____
(name and state), the newly formed corporation, by proper deeds, bills of sale, and other
instruments, all the property of said association, real and personal, of whatever kind and
description whatsoever, subject to all the encumbrances and liabilities of the unincorporated
association and that thereupon all the rights, privileges, immunities, powers, franchises, and
authority and all the property and obligations of such unincorporated society or association shall
pass to, vest in, and be the property and (in the case of encumbrances and liabilities) obligations
of the corporation so formed, and that the expense of said transfer and conveyance and all
matters necessary and incidental thereto be borne by and paid from the General Treasury of said
unincorporated association.

Place of Meeting: _____

Date of Meeting: _____

VOTE: Approved ____ Defeated ____

CERTIFICATION (if required)

The undersigned, Secretary of the Charge Conference of _____ Church, an
unincorporated association, do hereby certify that the following action was duly taken by said
Charge Conference on the ___ day of _____, 20__, and that the same is in full force
and effect.

Secretary
Charge Conference

Incorporation of the Local Church – Sample Board Of Trustees Resolution

Pursuant to the direction of the Charge Conference of the

(name of unincorporated association) authorizing this Board by its proper officers to prepare, execute, and file Articles of Incorporation for this religious, unincorporated association, be it hereby

RESOLVED, that the President (Chairman) and Secretary of this Board forthwith cause Articles of Incorporation to be prepared, executed, and filed with the Secretary of the State of _____ as a nonprofit corporation; and

BE IT FURTHER RESOLVED, that _____ be designated as Statutory Agent of this corporation upon whom any process, notice, or demand required or permitted by statute to be served upon the corporation may be served; and

BE IT FURTHER RESOLVED, that the following persons be, and they are hereby designated as the incorporators of said new nonprofit corporation:

(minimum of one (1) incorporator required,
typically Chairman of Board of Trustees)

BE IT FURTHER RESOLVED, that said President (Chairman) and Secretary of the Board be, and they are hereby authorized and directed to do and take such actions as they deem necessary to carry into effect the foregoing resolutions, all pursuant to the *Discipline* of The United Methodist Church.

(Date of Meeting)

VOTE:

Approved ___ Defeated ___

(Place of Meeting)

Each state varies on the form required for Articles of Incorporation

Approved for filing:

By _____

Date _____

SAMPLE
Articles Of Incorporation
OF

The undersigned, all of whom are citizens of the United States, desiring to form a corporation, not for profit, under _____ (state authority or statute), do hereby certify:

FIRST: The name of said corporation shall be

SECOND: The place where the principal office of the corporation is to be located is _____
(City, County, and State)

THIRD: The purpose or purposes for which the corporation is formed are as more fully set forth in the *Discipline* of The United Methodist Church or as may hereafter, from time to time, be amended including:

(a) The promotion of the Christian religion through the preaching of the Word of God, the administration of the sacraments, ordinances, and other means of grace, the maintenance of worship, the edification of believers, the evangelization of the world, and the promotion of the missionary and benevolence causes.

(b) The promotion of the Christian religion through the preaching of the Word of God, the administration of the sacraments, ordinances, and other means of grace, the maintenance of worship, the edification of believers, the evangelization of the world, and the promotion of the missionary and benevolence causes.

(c) Receiving, holding, and disbursing gifts, bequests, and funds arising from all sources.

(c) Acquiring, owning, and maintaining real estate, buildings, and other property real or personal, incidental, necessary, or proper to carry out said objects.

(d) Doing of any and all things necessary or incident to the accomplishment of such purposes.

(e) All of the above shall be in accordance with the Doctrines, Laws, Usages, *Discipline*, and Ministerial appointments of The United Methodist Church.

FOURTH: The following persons shall serve as the initial trustees of said corporation and shall serve as provided in the *Discipline* of The United Methodist Church:

NAME	ADDRESS
_____	_____
_____	_____
_____	_____

[Note: Not less than three (3), nor more than nine (9)]

FIFTH: Upon the filing of these Articles of Incorporation of _____, the society or association now known as _____, a corporation not for profit, and the members of such society or association shall be members of such corporation, and all the rights, privileges, immunities, powers, franchises, authority, property, and obligations of such unincorporated society or association shall thereupon pass to, vest in, and be the rights, privileges, immunities, powers, franchises, authority, property, and obligations of _____, a corporation not for profit.

SIXTH: The corporation shall support the Doctrine of The United Methodist Church and all its property, both real and personal, shall be subject to the *Discipline*, Laws, Usages, and Ministerial appointments of The United Methodist Church as are now or shall be, from time to time, established, made, and declared by the lawful authority of the said church.

SEVENTH: The corporation, in conformity with the *Discipline* of The United Methodist Church, shall have the power to receive, acquire, and hold title, in trust or otherwise, to real and personal property, and to improve, encumber, lease, sell, convey, and dispose of all such property.

EIGHTH: Subject to the provisions of the *Discipline*, the corporation shall have the power to erect and maintain buildings for the worship of God, for training in Christian faith and conduct, and for Christian social intercourse, and to purchase, lease, and/or rent and otherwise acquire or build and maintain residences for the use and occupancy of its ministers.

NINTH: The business of this corporation shall be conducted in conformity with the *Discipline* of The United Methodist Church as the same now exists or as may hereafter be amended, changed, or modified, and the bylaws of the corporation shall include the *Discipline* of The United Methodist Church and no bylaws shall be adopted inconsistent with the provisions of said *Discipline*.

In addition to the powers and duties granted to this corporation by the *Discipline* of The United Methodist Church, the corporation assumes for itself all the rights, powers, and privileges and immunities which are now, and which may be during the existence thereof be

