

Unincorporate Your Church - With Care!

by Everett Ramsey

EDITOR'S NOTE: Please be sure to read the section below (Some serious potential problems when trying to unincorporate) before getting started on the unincorporation process.

How to Unincorporate Your Church

Step 1:

Answer these questions.

1. Is your church a "Not-for-Profit Corporation"?
2. When was it Incorporated?
3. Do you have a copy of the incorporation papers filed with the State?
4. Do you have a copy of the corporate Constitution and By-Laws?
5. Does your church corporation have a State Sales Tax Exemption?
6. Does your church corporation have a Federal ID Number?
7. Is your church corporation approved by the IRS as a 501 c 3?
8. Has your church ever filed an annual report with the IRS?
9. Does the church corporation hold property for the church?
10. Does your church corporation have any loans, debt or mortgages?
11. Do you have Trustees?
12. Do you have deacons
13. Do you have Elders?
14. Where is the authority of your church as described by the Constitution and By-Laws. NOTE: Incorporated churches cannot claim the Bible as the authority of their church.
15. Do you have a copy of the current State Statutes related to not-for-profit corporations and their dissolution?

All of the above need to be answered before you start.

Step 2:

Determine the steps of action for any business as defined and outlined by your constitution and By-Laws.

Whoever has authority to act, needs to draw up a resolution to unincorporate.

Example:

Our church had trustees and deacons.

The Trustees had to authorize a resolution to unincorporate and present it to the deacon.

The Deacons had to approve it and present it to the congregation.

Draw up the resolution.

Example:

Be it resolved that the Trustees of the _____ Church Corporation recommend to the deacons and membership of the church that said church corporation be dissolved.

Approved:

Date: _____

Signed: _____

Now, the Deacons or Elders must approve it and document it with a written record.

Then the resolution and the Deacon/Elder approval is presented to the congregation for a vote.

Make sure you follow the Constitution and BY-Laws in notifying all members of the congregation in advance by how many days are required before a special business meeting.

Remember: A vote to unincorporate does not mean you are now unincorporated. You now have the authority to do the necessary steps to unincorporate.

Step 3:

The First step will be to form the new church. If you can change names, that will simplify many of your problems, but it is not absolutely necessary to change the name.

You will need to form the new church and have a Sunday where you will ask all the current members who want to become charter members of the new church to come forward and sign a membership line or form.

The new members then need to call the pastor and/or elect all the officers of the new church. If all the officers join the new church, you can simply vote to elect all the officers of the Corporate church as the officers of the new church.

If you have any tax exemption, the State and the IRS will usually make you add to your constitution and BY-Laws, that in event that you dissolve the corporation, you will need to give the assets and liabilities to a like institution.

So, the first step will be deciding how you will hold property and bank

accounts and make a motion that the corporation make such transfers to the new church.

We recommend that you stay away from anything that looks like legal documents for the new church. Make sure that the Bible is your authority. Don't have any constitution or By-Laws.

Check with your recording officer of the county to see what is needed in order to record your deeds.

Check with the bank to see how you will hold accounts without Federal ID numbers. In our case, we elected one man to act on behalf of the church to file property deeds in the name of the church, not incorporated, not an association or any other statutory entity. Once that was done, that man had no further authority to act on behalf of the church related to the property. If we ever bought or sold property in the future, we elected a man for that one transaction and no more. This keeps someone, like a trustee from having the authority to sell property out from under you.

Step 4:

Once the membership is transferred, the officers are transferred and the assets and liabilities are transferred, all you have left is a corporate shell. Now, you can file dissolution papers with the Secretary of State.

NOTE: It is important that in the future, you cease to operate as a state defined entity. Churches are not democracies. The Pastor should always have a good group of Elders, deacons and even at other times should consult the men of the church. But you should never revert to monthly business meetings and democratic vote on policy and every little thing.

I believe the Bible teaches "a pastor led church" and that is what you will now become. This means that if there is any lawsuit, liability will always fall to the pastor. [EDITOR'S NOTE: The Bible teaches an elder led church with a plurality of elders if at all possible. - In the multitude of counselors there is safety. (Proverbs 11:14)].

There is a lot more that needs to be learned and taught in this area, but that is not the purpose of this paper.

Some serious potential problems when trying to unincorporate

Dr. Robert McCurry of Atlanta makes the following comments:

In working with pastors/churches in recent times I have encountered several problems that can't be resolved with a 'boilerplate formula' as you suggest.

For example:

- 1) Corporation laws vary from state to state.
- 2) Some/many/most not-for-profit church corporations require property to be transferred/donated to another not-for-profit corporation/organization if the current corporation is dissolved.
- 3) Some/many church corporations are also a IRS 501(c)(3) organization and dissolving the state corporate status does not automatically dissolve the IRS nexus.
- 4) Many corporate churches now require pastors to complete a W4 form and file an annual W2 or 1099 form with the IRS. For a church to suddenly cease doing so will raise red flags with the IRS.
- 5) Most/many churches have EIN/TIN numbers for bank accounts. Dissolving a corporation requires dissolving the existing bank account and opening a new bank account — which is now impossible without a government issued identifying number.
- 6) Many churches are entangled with a corporate contractual mortgage that prevents dissolving the corporate status.
- 7) Unincorporated churches are classified/treated as an ‘unincorporated association’ by the state/courts. This includes a church/group that assembles, with or without a membership, and/or votes on anything. This creates many legal complications.

To unincorporate a church in today’s legal/political climate is not impossible but it is a mine field of complications and potential encounters with the ‘authorities.’

Since unincorporated churches are in law excluded from taxes, they can receive property from tax exempt corporations. The best way to avoid problems when unincorporating, is to change the name of the church. As a matter of note, the larger the church, the more problems you will encounter. You need to have someone hold your hand and walk with you through the process. I do not know very many people who have the ability, the time and the desire to do this. It is possible that churches have waited until it is too late in many cases to make this change.

SOURCE: <http://www.everettramseydd.com/unincorporate.html>

Related Material On Unincorporating A Church:

Reasons To Unincorporate Your Church

Unbiblical Incorporation Of Churches
Church Freedom and The Corporation Sole
501c3 Myths
The Truth About Church Incorporation
IRS Double-talk About Incorporating Your Church
501c3: The Devil's Church
