

REASONS TO FORM A CHURCH CORPORATION

All churches need to have a corporation, even though most of their activities do not involve property and are not in the church corporation, and most churches in the Minnesota Annual Conference are believed to have formed a corporation. Because there is a question whether a deed to an unincorporated association is void, and could require judicial action to reform it, local churches need to be incorporated in order to be certain that they have good title to their property.

There are two additional benefits of incorporation:

- A. The corporation owns and can transfer title to property in its own name, rather than through one or more trustees or individuals.
- B. Individual church members and their personal assets are shielded from liability for corporate debts and obligations, limiting the liability of pastors, board members and individuals to their own personal actions for such debts.

There are two facts that need to be kept in mind when forming a church corporation. First, the church itself is not incorporated. The church still exists as an unincorporated association that is governed, not by Minnesota corporation statutes, but by the Book of Discipline and the Constitution of the United Methodist Church. The church has a corporation that holds the church property. The second fact is that the shield against liability of the church members applies only to claims involving the property of the church which is held in the corporation. Incorporation is not a shield for claims against the church for non- property matters.

MINNESOTA INCORPORATION STATUTES.

A local church intending to form a corporation must follow The Book of Discipline and Minnesota law. Minnesota has two statutes under which churches formerly could form a corporation. The earliest law is now contained in Minn. Stat. Chapter 315, Religious Corporations, which was originally adopted before statehood by the governing body of the Territory. Chapter 315 applies only to religious corporations. Today Minnesota also has a second statute which is applicable to all non-profit corporations, including churches. Chapter 317A is the general non-profit corporation statute. That law has been successively codified over the years as Chapters 300, 309, 317 and is now contained in Chapter 317A of Minnesota Statutes. Chapter 317A now requires churches forming a corporation after January 1, 1991 to incorporate under that Chapter.

Church corporations that were incorporated under Chapter 315 can remain under that Chapter or can elect to come under Chapter 317A by following a procedure set out in Chapter 317A.101.

Both Chapter 315 and Chapter 317A provide the basic features to create a corporation. Chapter 315, which goes back to when Minnesota was still a Territory, is a more “primitive” statute and Chapter 317A is more comprehensive, goes into more detail about such things as the adoption of articles and bylaws, organization of the board of directors, defining members and the procedure for dissolution. Chapter 315 has nine separate sections for the formation of corporations by different denominations, synods and dioceses. Sprinkled through these nine sections are provisions relating to such matters as consolidation, no streets through church property, amending of articles and disposition of assets. Sometimes it is difficult to know the denomination sections to which these provisions apply. There are very few court decisions construing the sections of Chapter 315 to give guidance. Having said that, there are some churches that have managed to operate Chapter 315 church corporations without a problem for almost a hundred years, or even longer.

Church corporations that incorporated under the prior Chapter 317 were required to come under the new law as of January 1, 1991, if they had not already acted to come under the new law. Church corporations that

incorporated under Chapter 300 or Chapter 309 may also elect to come under Chapter 317A if they had not previously come under Chapter 317.

Church corporations electing to come under Chapter 317A are required to amend their articles of incorporation to eliminate any provision prohibited by Chapter 317A or to add any provisions required by Chapter 317A.

INCORPORATION PROCEDURES.

It is desirable to have the assistance of counsel in the formation of a local church corporation. The preparation of the articles of incorporation that need to be filed with the Secretary of State, and the bylaws that govern the management of the corporation need to comply with the numerous provisions of Chapter 317A. Preparation of the articles and bylaws also need to consider the provisions of The Book of Discipline, Sections 2524, *et. seq.*, which apply to the local church.

VERIFICATION OF CORPORATE STATUS; LOST ARTICLES

Every church should know that it has a church corporation and the statute under which it is organized. Information about corporate status can be obtained from the Secretary of State's web site at: <http://www.sos.state.mn.us/> Business Information Phone Line at 651-296-2803 or 1-877-551-6767. Details of the church's corporate status must be a part of the church's permanent records relating to corporation matters.

If a church has lost its articles the church can adopt restated articles of incorporation and file them.

ANNUAL REGISTRATION

All Minnesota nonprofit corporations governed by Chapter 317A must file an annual registration with the MN Secretary of State at <http://mbportal.sos.state.mn.us/> . Churches which have a corporation under Chapter 315 are not required by the Secretary of State to file this registration statement. Churches under Chapter 317A which do not file this statement will receive a "Certificate of Involuntary Dissolution." In order to prevent the involuntary dissolution and ending of a church's status as a nonprofit corporation, file on-line annually. If a search of the corporate name (looking at both active and inactive corporations on <http://mbportal.sos.state.mn.us/>) shows an involuntary dissolution, contact the Secretary of State's information phone line at 651-296-2803 or 1-877-551-6767 to obtain forms to reinstate the corporation. Once this form has been timely filed, the Church's incorporation status will be restored.