

Church Incorporation in Virginia

REYNOLDS LAW GROUP, PLLC

GLENN S. REYNOLDS,
D.MIN, J.D



Glenn S. Reynolds earned his Juris Doctor from Regent University School of Law, graduating as a member of the Honors Program. In addition to his JD, Glenn earned a Doctor of Ministry in Redemptive Leadership and Organizational Development from Gordon-Conwell Theological Seminary, where he also graduated with Honors.

Glenn's vision for the Reynolds Law Group is to come along side clients, particularly churches and non-profit organizations, to help them make great legal decisions. He views the practice of law as a calling that demands effective and ethical lawyers who serve clients and society.

Before founding Reynolds Law Group and Reynolds Leadership Group, Glenn served as the lead pastor of a church plant that grew from fifteen to over 600 people, as well as the tenth pastor of a church that grew from 1,500 to over 2,500 during his tenure.

TABLE OF CONTENTS

01

1

**THE HISTORY BEHIND
CHURCH INCORPORATION**

02

2

**RISKS AND DISADVANTAGES
OF REMAINING
UNINCORPORATED**

03

3

**BENEFITS AND
ADVANTAGES OF
INCORPORATION**

04

4

**INCORPORATION
PROCESS**

05

5

**KEY POINTS ABOUT
INCORPORATION**



Chapter 1

The History Behind Church Incorporation

Historically, Virginia churches were not permitted to incorporate under Virginia Constitution Article IV § 14(20) which stated, “The General Assembly shall not grant a charter of incorporation to any church or religious denomination.” The late Reverend Jerry Falwell filed suit against the City of Lynchburg and the Commonwealth of Virginia, leading the charge for Virginia churches to incorporate See *Falwell v. Miller*, 203 F.Supp. 2d 624 (W.D. Va. 2002). As a result of that effort, the Virginia General Assembly modified most of its laws in order to integrate church corporations into Virginia law.

Chapter 2

Risks and Disadvantages of Remaining Unincorporated

Even with the changes in the law, many churches currently remain unincorporated in Virginia. Although some churches are reluctant to become incorporated entities, there are risks and disadvantages of remaining unincorporated, including:

Potential Personal Liability for Church Leaders.

Under Virginia Code Ann § 8.01-220.1:3, church members may not be held liable for the actions of an officer, director, employee or other member. However, those officers, directors, and leaders could be found to be personally liable for negligent actions performed on behalf of the church. Examples of such claims include, but are not limited to: negligent selection of church workers; negligent retention of church workers; and negligent supervision of church workers.

Approval by Circuit Court Judges for Property Issues.

Unincorporated churches must hold and maintain title to property through trustees. Most transactions involved in acquiring, selling, or encumbering such property require that a petition be filed with the Circuit Court in which the property is located. This requires that a judge approve the transaction. In addition, whenever a church desires to change its trustees, a petition must be filed and the change approved by a Circuit Court judge.

Financing Options for Future Acquisitions.

Although lenders have historically dealt with churches as unincorporated entities, now that churches are able to incorporate, many lenders are requiring churches be incorporated before entering into financial transactions. Lenders are becoming more and more opposed to having to deal with several trustees and wait for court approval as part of a financial transaction involving church property.



Chapter 3

Benefits and Advantages of Incorporation

There are many benefits to churches becoming incorporated entities and some of those benefits include:

Limiting the Potential Liability for Leaders and Members.

It should be noted that individuals always remain liable for their own personal actions. However, incorporation substantially limits the liability of church leaders and members provided that the church leaders are not grossly negligent in the performance of their duties.

Ease of Property Acquisition and Transfer.

As mentioned in the disadvantages outlined above, incorporation greatly eases the acquisition and transfer of property because incorporated churches no longer have to petition a court for approval of such transactions.

Business Dealings.

Many banks and other financial institutions prefer and require a church to be incorporated before dealing with them.

Organizational Stability.

The incorporated structure of the church creates better organizational stability as the members, directors, and leaders change over the course of time. Incorporated churches no longer have to petition the Circuit Court to have trustees removed or added and are better able to integrate their leadership structure into the entity.

Flexibility.

There is no one-size fits all requirement for church governance in order to be incorporated. The corporate organizational structure may be set up to accommodate elder-led churches, congregational churches, and board-led churches.



Chapter 4

Incorporation Process

Churches in Virginia currently follow the Virginia Non-Stock Corporation Act in setting up the incorporated entity. The incorporation procedure generally involves:

- (1).** Drafting and filing Articles of Incorporation with the Virginia State Corporation Commission (“SCC”);
- (2).** Sending a filing fee along with the Articles of Incorporation which is currently \$75.00 (thereafter, an annual filing fee of \$25.00 is required);
- (3).** After the Articles of Incorporation are approved, the SCC issues a Certificate of Incorporation;
- (4).** Revise the church’s constitution and bylaws to comply with the Virginia Nonstock Corporation Act and provide the church with the greatest legal protections possible.
- (5).** The newly incorporated church then holds an organizational meeting (typically conducted as a business meeting) for the purpose of adopting the initial Constitution and Bylaws of the incorporation, confirming Directors and Officers, accepting members from the unincorporated entity to the incorporated entity, and authorizing any new bank accounts and changes to legal documents to reflect the corporate status.

Chapter 5

Key Points about Incorporation

Registered Agent.

Incorporations are required to select a registered agent who is a person appointed to receive important legal notices. It is highly recommended that the registered agent be a Virginia attorney familiar with church incorporations. Many of the legal documents received by the registered agent will have critical deadlines and must be promptly filed.

Directors of the Incorporation.

We strongly recommend that the directors of the corporation are the same as the church's current or desired governing board (Elder Board, Deacon Board, Church Council, Leadership Team, etc.). This serves to avoid creating confusion regarding corporate roles and church roles and allows most of the existing duties and responsibilities of leaders to remain unchanged.

Revisions to Existing Constitution and Bylaws.

It is imperative to have the church's existing Constitution and Bylaws reviewed and revised as part of the incorporation process in order to ensure that everything complies legally and practically with the new incorporated entity. The degree to which each church's Constitution and Bylaws needs to be changed is unique to that specific church and should be reviewed to best fit the legal and practical desires of the church.

Annual Fee and Report.

After the incorporation process is complete, the State Corporation Commission will annually mail an Annual Report which must be completed and submitted, along with a fee (currently the fee is \$25.00) to the State Corporation Commission in order to remain in good standing with the SCC. The Annual Report consists simply of the name and address of the corporation, the registered agent's name and address, and the names and addresses of the current officers and directors.





**REYNOLDS
LAW GROUP**

For more information, please
contact:

Glenn S. Reynolds

Reynolds Law Group, PLLC

109 E. Main Street, Suite 412

Norfolk, Virginia 23510

Website: <https://www.reynoldslawgroup.com>

Direct Phone: (757) 219-2500

Facsimile: (757) 233-1084

Email: glenn@reynoldslawgroup.net

Legal Disclaimer: *This Article and any related documents have been prepared for churches considering whether to incorporate in the Commonwealth of Virginia. It is not meant to provide legal advice or as a substitute for competent legal counsel to address the specific needs of any church. Any church considering incorporating in Virginia is encouraged to seek the advice and counsel of a legal professional who practices in this area of law.*