

# PRESBYTERIAN CHURCH (U.S.A.) CORPORATIONS IN VIRGINIA

Considerations and Procedures

January 10, 2021

## CONTENTS

Executive Summary

Important Information Regarding This Memorandum

Background Considerations

Incorporation Directive in *Book of Order*

Other Reasons to Incorporate

Virginia Statutory Provisions for Church Incorporation

Considerations in Forming Corporations

Corporate Issues

Polity Issues

Operational Matters

Procedures to Incorporate Select the Right Forms

Prepare Articles of Incorporation and Bylaws

File Articles of Incorporation with State Corporation Commission

Organizational Meeting of Initial Trustees

Tax Matters

Other Corporate Actions

Procedures to Convey Property to Corporation Authorizing the Trustees

Prepare Deed of Conveyance

Consents

Title Insurance

## EXECUTIVE SUMMARY

The *Constitution of the Presbyterian Church (U.S.A.)*<sup>1</sup> requires particular churches to form corporations for the ownership of their properties where permitted by civil law (*Book of Order* G-4.0101). Such a corporation is to be a *membership corporation* (not a “stock corporation”) whose members are “...only persons eligible for membership in the congregation as required by G-4.0102. Its directors (also called trustees) are ordinarily the elders of the particular church who are on active service.”<sup>2</sup> This is not a new practice – the General Assembly of the Presbyterian Church in the United States of America (a predecessor denomination to the present P.C.(U.S.A.)) required churches to incorporate in 1927.<sup>3</sup>

Although state law long prohibited churches from incorporating in Virginia, a Federal court decision in 2002 found this prohibition to be unconstitutional. The former statutory scheme applicable to the ownership of property by churches (owned by trustees who act upon direction of their congregations and with the approval of the local court) was substantially modified by the 2005 Virginia General Assembly in a series of bills that became effective July 1, 2005. Then, in an amendment ratified by the Virginia General Assembly on November 7, 2006, and made effective January 1, 2007, the prohibition against church incorporation was struck from the Constitution of Virginia entirely and a new provision explicitly allowing the parallel existence of unincorporated churches and corporations formed by them “to hold, administer, and manage its real and personal property.”<sup>4</sup>

To enable particular churches to form corporations with a minimum of effort and expense, model forms for articles of incorporation (to be filed with the state), bylaws (for internal operations), and an organizational consent for the initial trustees to sign (to complete the organization process) are provided on the Presbytery’s web site ([www.presbyteryofthejames.com](http://www.presbyteryofthejames.com)). **These forms should not be used without reviewing the entirety of this memorandum, which includes instructions for using the forms and certain choices that need to be considered.** An attorney familiar with Virginia nonstock corporations and Presbyterian polity should be consulted and should especially be involved on behalf of any church that desires to amend or alter any of the model forms. The attorney can advise the church regarding any changes in law or court decisions that impact information in this memorandum. The attorney will in all likelihood also be necessary to help transfer the church’s property to the corporation. Please contact the Presbytery of the James to inquire whether it has a list of attorneys familiar with both incorporation matters and of issues particular to P.C.(U.S.A.) congregations to whom you can refer.

---

<sup>1</sup> The Constitution of the Presbyterian Church (U.S.A.) consists of the *Book of Confessions* (Part I) and the *Book of Order* (Part II). Quotations in this memorandum from The *Book of Order* will be follow the convention of the letter denoting the section of the Book of Order from which it is drawn (F- for Foundations of Presbyterian Polity, G- for the Form of Government, W- for the Directory for Worship, and D- for the Rules of Discipline) followed by its number reference. So, G-4.0102 means the fourth chapter of the Form of Government, section one, subsection two.

<sup>2</sup> While there are other provisions for determining the makeup of the Board of Trustees, the most efficient and least complicated method is to use the session as both elders and trustees.

<sup>3</sup> *Companion to the Constitution of the Presbyterian Church (U.S.A.): Polity for the Local Church*, by Frank A. Beattie; Louisville: Geneva Press ©2007, 1999. Page 39. Hereafter referred to as “Beattie” with page number.

<sup>4</sup> Code of Virginia, §57-16.1

Careful review of this document should be completed prior to forming a corporation, as it contains useful (though perhaps unexciting) information about the incorporation process, maintaining the corporation's status, indemnification matters, operational issues, and other important information. It also describes how to use the model forms that Presbytery has made available for this purpose. The memorandum also contains information about transferring the church's property from its current trustees to the corporation. Finally, it contains footnote references that would be important aids to the attorney engaged to assist the church in the process of forming its corporation and transferring its property to that corporation.

### **REGARDING THIS MEMORANDUM**

It is not the intention of this memorandum to provide legal, tax or accounting advice, and this memorandum hereby expressly disclaims providing any such advice. **Each particular church contemplating forming a church corporation should retain the services of a qualified attorney who is familiar with both Virginia nonstock corporations and Presbyterian polity.** Please contact the Presbytery of the James to inquire whether it has a list of attorneys and resource persons available to assist and to whom it can refer you.

The information in this memorandum is believed to be correct and accurate as of the date of the memorandum (indicated on the title page). As time passes, there may be new legislation that will impact the information in the memorandum or the forms themselves. There may also be new court decisions that will need to be considered. The attorney your church selects to help it with forming the church corporation and transferring the church property to that corporation will be in a position to advise about any subsequent legislation or court decisions that affect this memorandum and the forms.

### **BACKGROUND CONSIDERATIONS**

The Presbyterian Church (U.S.A.) (referred to in this memorandum as the P.C.(U.S.A.)) is a body of Reformed Christians who have agreed to conduct their worship and other religious activities in conformity with the *Constitution of the Presbyterian Church (U.S.A.)*. The P.C.(U.S.A.) is governed by representative governing bodies composed of presbyters, both elders and ministers of the Word and Sacrament. When gathered, these governing bodies are known as sessions (for particular congregations), presbyteries, synods and the General Assembly. Each of these governing bodies has its own particular responsibilities and powers. It is important to note that the governing bodies of the P.C.(U.S.A.) at all levels are distinct from the government of the state and "have only ecclesiastical jurisdiction for the purpose of serving Jesus Christ and declaring and obeying his will in relation to truth and service, order and discipline." (G-3.0102 and following). The corollary principle is that civil governments do not assert ecclesiastical jurisdiction (F-3.0101b and F-3.0108). Thus, neither the P.C.(U.S.A.) nor its governing bodies should be thought of as civil jural entities with legal capacities and attributes; their fundamental ecclesiastical nature, relationships, duties, and responsibilities are established by the P.C.(U.S.A.) Constitution.

The acknowledged limit of ecclesiastical jurisdiction is why the notion of incorporation is so significant. Instead of stretching the authority of the church's board of elders – the session – to tend to civil and commercial matters, incorporation creates a legal “body” (the word comes the Latin roots *in-* ‘into’ + *corporare* ‘form into a body’) which then enjoys the legal protections and privileges given to all corporations, secular or not. Note that the church *itself* is not incorporated – it remains free from state regulation. The corporate body acts as the agent of the church to tend to matters related to property, finance, and indemnity.

### **Incorporation Directives in the *Book of Order***

The *Book of Order* in G-4.0101 directs each presbytery, synod, and the General Assembly as well as each particular church to cause a corporation to be formed whenever permitted by civil law. The trustees of any corporation thus formed are limited to the following powers: “to receive, hold, encumber, manage, and transfer property, real or personal, for the congregation.” They are also “to hold and defend title to such property...” and “to manage any permanent special funds for the furtherance of the purposes of the congregation...”

Again, this directive does **not** contemplate the incorporation of the particular church, but rather the organization by the particular church of a *separate, parallel corporation* to perform limited civil law functions relating to the ownership and management of property and other assets. The church itself is called the “ecclesial body” (which employs staff, develops and implements programming and executes pastoral and ecclesiastical functions) and the corporation is the “corporate body” of the church, limited to oversight of assets and other real property subordinate to the responsibilities, powers and duties vested in the ecclesial body (G-4.0101).

Thus, trustees have no power to develop their own programming, manage the programming and affairs of the ecclesial body or to otherwise dictate policy to the church. The *Book of Order* is explicit in *subjecting* the Trustees strictly “to the authority of the session and under the provisions of the Constitution of the Presbyterian Church (U.S.A.),” going on to say that “the powers and duties of the trustees shall not infringe upon the powers and duties of the session or the board of deacons.”

In sum, where a particular church does organize a corporation to own its properties, **the particular church will not itself become incorporated** but will continue to function unincorporated as an ecclesial body as it did before, with its session continuing to serve as its governing body. The corporation formed by the particular church will be a separate and subordinate entity with a limited purpose and will be governed by its members and directors or trustees (as discussed more fully below).

### **Other Reasons to Incorporate**

Where a particular church forms a corporation to own its real and personal properties, obligations and liabilities associated with those properties will be satisfied only from the assets

of the corporation; other properties and assets of church members will not be exposed to risk.<sup>5</sup> Moreover, a corporation provides a continuity of ownership that is not present with individual trustees, who must periodically be changed as individuals come and go (and technically, requiring court approval for each change). Instead of relying on individuals or individually named trustees to establish business relationships, incorporation creates an entity (known as a “legal person”) that can be named as the responsible agent for accounts, contracts and loans. Finally, under the 2005 legislation (noted below), court approval will no longer be required for subsequent transfers of land or the encumbering of property to secure debt where the property is owned by the corporation rather than by individual trustees.

### **Virginia Statutory Provisions for Church Incorporation**

When a church in the Commonwealth of Virginia incorporates, the existing trustees of a particular church may transfer the title to that church’s real and personal property to a corporation formed to own such property for the church, without obtaining court permission if the transfer is authorized in accordance with the church’s polity. No recordation tax will be due on a deed to or from such a corporation (although the normal Clerk’s fee will still be assessed).<sup>6</sup>

Historically, the exemption from local real estate taxes for property used for religious purposes was determined by the State pursuant to a provision of the Virginia constitution that provided the Virginia General Assembly could exempt property used for religious, charitable and other similar purposes by classification or designation.<sup>7</sup> The legislature, in implementing the classification portion of this authority, provided (among other things) that buildings and land owned by churches were exempt, with the further provision that property owned by a trustee for a church would be considered as owned by the church for this purpose.<sup>8</sup> The authority to grant an exemption by classification or designation for property used for religious, charitable and other similar purposes is given to localities.<sup>9</sup>

The Virginia constitution also provides in another section that property “owned and exclusively occupied or used” by churches for religious purposes is exempt from local real estate taxation.<sup>10</sup> This exemption section has not been affected by any of the foregoing constitutional or statutory amendments. However, it is not known whether property owned by a church corporation will qualify as property “owned and used” by a church.

---

<sup>5</sup> Note that the limitation of liability to assets of the corporation applies only to the liabilities of the corporation. Any liabilities or responsibilities of church employees, officers or members will remain unchanged. This is why it is essential for all churches to have up-to-date insurance policies that cover property and liability insurance coverage to protect its facilities, programs, staff, and elected and appointed officers that are reviewed at least annually. (G-3.0112)

<sup>6</sup> Code of Virginia § 58.1-811, A.2, B.2 and C.6

<sup>7</sup> Virginia Constitution Art. X, §6(a)(6)

<sup>8</sup> Code of Virginia § 58.1-3606, A.2; § 58.1-3617

<sup>9</sup> Virginia Constitution, Art. X 6(a)(6), Code of Virginia § 58.1-3651

<sup>10</sup> Virginia Constitution Art. X, §6(a)(2)

## **CONSIDERATIONS IN FORMING CORPORATIONS**

There are several considerations in connection with the decision to organize a corporation in accordance with the *Book of Order* directive. The significant considerations are grouped together under three headings: corporate considerations, P.C.(U.S.A.) polity considerations, and operational considerations. The forms provided for particular churches to use in forming corporations comply with the requirements discussed below.

### **Corporate Issues to be Considered**

**Name of Corporation.** Under Virginia law, a nonstock corporation can adopt essentially whatever name it chooses, so long as the name does not imply a business and is distinguishable on the records of the State Corporation Commission from the name of any existing corporation.” Because there is a “First Presbyterian Church” or a “Westminster Presbyterian Church” (for examples) in many cities in Virginia, it is recommended that such churches consider adopting a corporate name that includes the city or locality in which they are located, such as “First Presbyterian Church of Richmond Corp.” Doing so would permit another church with a similar name to use its name in the same manner, such as “First Presbyterian Church of Charlottesville Corp.” If preferred, the style of the name in the foregoing example may be “First Presbyterian Church of Richmond Corporation” or “First Presbyterian Church of Richmond, Inc.”

**Directors or Trustees.** Where civil law often speaks of directors in connection with a corporation, the P.C.(U.S.A.) uses the term “trustees” In Virginia, a nonstock corporation may interchangeably use any designation it prefers for the role of a director, including “trustee.”<sup>11</sup> This memorandum will primarily use the term “trustee” as the name for the corporation’s directors, as will the forms.

**Members of the Corporation.** G-4.0102 provides that “only persons eligible for membership in the congregation or council shall be eligible to be members of the corporation.” It should be remembered that in the P.C.(U.S.A.) ministers of the Word and Sacrament, whether pastors of a particular church or involved in others forms of ministry, are *not* members of the congregation (G-2.0503), but rather are members of the presbytery.

**Trustees (Directors) of the Corporation.** G-4.0102 provides that “ruling elders on the session of a congregation, who are eligible under the civil law, shall be the trustees of the corporation...” Beattie (p.39) notes that the session of a particular church usually comprises the trustees (directors) of that church’s corporation.

While G-4.0102 and the Presbytery of the James specifically recommends that “[t]he ruling elders on the session of a congregation, who are eligible under the civil law, shall be the trustees of the corporation,” there are other possible arrangements. If a congregation wishes to have separate trustees not identical with the active ruling elders of the session, the *Book of Order* only specifies that “the corporation shall determine another method for electing its trustees.”

If that route is taken, congregations must remember that G-4.0102 provides that “only persons eligible for membership in the congregation or council shall be eligible to be members of

---

<sup>11</sup> Code of Virginia § 58.1-3606, A.2

the corporation.” Should a congregation elect to have a session and Board of Trustees that are not identical, a specific set of forms and procedures to enable this variation for church corporations are provided on the Presbytery’s website.

Once again, it is crucial to remember that P.C.(U.S.A.) ministers of the Word and Sacrament, whether pastors of a particular church or involved in others forms of ministry are *not* members of the congregation (G-2.0503), but rather are members of the presbytery. Since ministers of the Word and Sacrament are not members of congregations *they cannot be a member of the corporation and therefore will not be eligible to be elected a trustee (director) either, or be able to conduct any business on behalf of the corporation.*

**The Officers of the Corporation.** The *Book of Order* does not have a provision relating to the officers of the corporation. Under Virginia law, a nonstock corporation is required to have only such officers as are stated in its bylaws, provided there is at least a chairman or a president or some other officer specifically authorized to act on behalf of the corporation.<sup>12</sup> The model bylaws form provides that the trustees (directors) shall elect from their number a president, a secretary and a treasurer, and may elect such other officers as may be necessary for the transaction of the affairs of the corporation. The Code of Virginia allows for the original election of these officers by a call of the majority of the members of the Board.<sup>13</sup> While one person may hold more than one office, it is strongly suggested in Beattie (pg. 118) that the minimal officers for a Board of Trustees are President and Secretary, which shall be held by different persons. The forms provided by the Presbytery of the James suggest that the clerk of session serve as the secretary of the corporation, and that the treasurer elected by the session serve as treasurer of the corporation. This arrangement works well and has been recommended by the P.C.(U.S.A.).

**Indemnification.** The corporation’s articles of incorporation can contain a provision making mandatory the indemnification of officers, as well as trustees (directors), for actions taken by them in good faith and in the belief that such actions are in the best interests of the corporation. Such indemnification provisions can be extended to employees of the corporation if there are any. (The indemnification by the corporation will not be applicable to employees of the church itself – this must be done independently through your insurance agent.) The corporation’s articles of incorporation can also contain a provision relieving its trustees (directors) from liability to the corporation for acts taken in good faith and in the belief that they are in the best interests of the corporation. This relief provision is not available to corporate officers, and it does not apply to claims by third parties against such persons.

**Federal Tax Exemption.** Generally, such a corporation will automatically be exempt from Federal income taxation, as is the particular church. The P.C.(U.S.A.) has a group ruling issued by the Internal Revenue Service on January 31, 1964 and subsequently reaffirmed in 1983, which includes within the tax-exempt group (among others) the particular churches and the presbyteries, as well as the first or primary corporation of any of them.<sup>14</sup> Other incorporated bodies are not automatically included but may apply to the Office of General Assembly for inclusion upon compliance with that office’s rules and procedures. Corporations exempt from

---

<sup>12</sup> Code of Virginia § 13.1-872, A. Also see officer requirements for filings in § 13.1-804, *passim*.

<sup>13</sup> Code of Virginia § 13.1-822, A1, 2.

<sup>14</sup> This letter is attached as APPENDIX 1 to this memorandum.

Federal income tax are also exempt from Virginia income taxation.<sup>15</sup>

### **Polity Issues to be Considered**

**Authority of the Session and Constitution.** The corporation's powers to receive, hold, encumber, manage and transfer property for the particular church, and its other related powers, are all subject to the authority of the session and the provisions of the *Constitution of the Presbyterian Church (U.S.A.)* according to G-4.0101. It is important for the session of a particular church and its corporation to establish procedures that will ensure close communication between the two groups, and to ensure that the powers and duties of the corporation do not infringe upon the powers and duties of the session and the board of deacons. Moreover, when the corporation decides to buy, sell or mortgage real property, it shall act *only after the approval of the congregation in a duly constituted meeting*, and approval by the presbytery except for those churches that made the election noted in the following paragraph.<sup>16</sup>

**Certain Electing Churches Under G-4.0208.** For any particular church that (a) was not subject to a similar provision in its constitution immediately prior to reunion in 1983 and (b) properly elected the option provided in the *Book of Order*,<sup>37</sup> its property is to be held subject to the constitutional provisions applicable to that particular church immediately prior to the formation of the P.C.(U.S.A.).

For the former Presbyterian Church, US ("PCUS"), this would be the PCUS *Book of Church Order*, Chapter 6. For the former United Presbyterian Church in the United States of America ("UPCUSA"), this would be the UPCUSA *Book of Order*, Chapter XLII. This variation in the property provision is reflected in the forms provided for church corporations.<sup>17</sup>

**Holding Property for P.C.(U.S.A.).** Because all property of any entity of the P.C.(U.S.A.) "is a tool for the accomplishment of the mission of Jesus Christ in the world," (G-4.0201) and because "[t]he provisions of this Constitution prescribing the manner in which decisions are made, reviewed, and corrected within this church are applicable to all matters pertaining to property." (G-4.0202), the constitution of our denomination provides that **all** property held by or for a particular church (or by a presbytery or synod), regardless of where the title is lodged, **is held in trust for the use and benefit of the P.C.(U.S.A.)** in G-4.0203.

This principle lies at the heart of all property matters of this church... **all church property is mission property of the entire P.C.(U.S.A.), regardless of who may hold the title.** Anytime any congregation ceases to use this property "in accordance with [the Constitution of the P.C.(U.S.A.)], such property shall be held, used, applied, transferred, or sold as provided by the presbytery" (G-4.0204).

### **Operational Matters to be Considered**

**Church Staffs and Employees.** Church staffs and employees will remain staff and employees of the particular churches, not of the corporations. Thus, tax withholding, FICA, other

---

<sup>15</sup> Code of Virginia § 58.1-401, 5

<sup>16</sup> G-4.02, *passim*.

<sup>17</sup> See these paragraphs in APPENDIX 2 of this document.

employment obligations and tax return requirements of the church will remain as they exist prior to the organization of a corporation. The same thing will be true for employment benefits such as health insurance, retirement benefits, and the like.<sup>18</sup>

If the *corporation* of a particular church were to hire employees (like an administrator, bookkeeper or accountant), the duties of those employees will be limited to the purposes of the corporation. In addition, the corporation would have the same tax withholding, FICA, other employment obligations and tax return requirements as the particular church now has. However, the corporation would *not* share the ecclesial body's Employer Identification Number (EIN), but shall apply for its own number. This number will also be needed to open bank accounts as well as other trustee-related items of business. There is more information on this later in this memorandum.

**Meetings of Members.** Each particular church now holds at least one annual meeting of its congregation, to elect officers, hear reports of the session and other organizations of the church, and to review the adequacy of the compensation for its pastor.<sup>19</sup> Of course, special meetings can be called at any time. In addition to the meeting of members of the particular church, an annual meeting of the members of the corporation will also have to be held.<sup>20</sup> It is recommended that the annual meeting of the corporation's members be held immediately following the annual meeting of the congregation.<sup>21</sup> Bear in mind that meetings of the Corporation are *not* part of the Congregational Meeting. The Congregational Meeting will either have to be suspended or adjourned before the Corporate Meeting can take place. Also, the pastor or Moderator of Session or Stated Moderator for the meeting ***may not preside at the meeting.*** The president or the Board of Trustees or other Board member (as provided for in the Bylaws of the Corporation) must preside. In addition, special meetings of members of the corporation can be called at any time.

**Meetings of Session and Trustees (Directors).** The session of the particular church will continue to meet as it does now and conduct essentially the same business it now conducts. It can be anticipated that the trustees (directors) of the corporation will meet much less frequently (though at least annually), to transact whatever business is appropriate for the corporation to conduct. Again, ***pastors may not preside at these meetings*** not being members of the Corporation but should be invited to attend these meetings and may be extended the privilege of voice, but not vote, by the Board.

**Liability.** Church staff, employees and church officers retain whatever liability risks they currently have for acts or omissions in the course of their duties as such. The forming of a corporation will not have any effect on their existing liability risks. However, Virginia law does provide some relief. For example, one provision provides that no member of any church will be liable in tort or contract for the actions of any officer or employee of such church solely because

---

<sup>18</sup> Under Code of Virginia. § 60.1-213.B.1, the term "employment" does not apply to services performed "in the employ of (i) a church or convention or association of churches, or (ii) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches." Thus, employment by employees of a church, religious order or religious organization is not subject to Virginia unemployment tax.

<sup>19</sup> See G-1.05 *passim*.

<sup>20</sup> Code of Virginia § 13.1-838, A

<sup>21</sup> G-1.0503

of membership in that church.<sup>22</sup> Another provision grants civil immunity (or limits liability to the amount of their compensation) to directors, trustees and officers of federally tax-exempt organizations (which should include Presbyterian churches) for actions taken in their official capacities.<sup>23</sup>

**Insurance.** Since the corporation will acquire title to the property of the particular church, the corporation will have to obtain casualty and liability insurance on the property. Conveyance of title to the corporation results in assignment to the corporation of the interest in all insurance policies relating to the property. In addition, the Presbytery **strongly** recommends that corporations may want to consider obtaining *directors' and officers' liability insurance* (often called "D & O Insurance"). The church, which continues to use the property, will no longer have to carry casualty insurance, but will want to retain its liability insurance. Churches deciding to form corporations should consult with their insurance agents about the amounts and types of insurance they and their corporations should have. The insurance agent for your particular church may recommend that the same insurance policies continue in effect, but that both the church and the corporation be listed as co-insureds on such policies.

**Registered Agent.** A corporation must have and maintain a registered office and a registered agent (who must be either an officer, a director, a member of the Virginia State Bar or an organization authorized to serve as registered agent, and whose business address is the same as the registered office address). Failure to do so will result in the termination of the corporation's existence. Unlike other officers of the corporation who typically will rotate, the registered agent can serve as long as the corporation desires. It is advantageous to maintain the same registered agent, since each change in the registered agent requires filing the appropriate forms with the State Corporation Commission and payment of a modest fee.

**Initial and Annual Fees; Reports.** There are various fees involved with organizing a corporation and maintaining its corporate status. These include a "Charter/Entrance Fee" (currently \$50) combined with a filing fee (currently \$25) to be paid at the time the corporation is organized. All corporations must pay an Annual Registration Fee (currently \$25) each year by the last day of month in which the corporation was originally formed. Failure to pay these periodic fees will result in the termination of the corporation's existence. These fees may all be paid online with a credit card.

Virginia corporations are also required to file an annual report with the State Corporation Commission on a form provided by the Commission. The report forms will be mailed each year to the corporation's registered agent and must be filed by the date prescribed. Failure to file an annual report will result in the termination of the corporation's existence.

---

<sup>22</sup> However, Code of Virginia §8.01-220.1:3 states "...Nothing in this section shall prevent any person from being held liable for his own actions."

<sup>23</sup> Code of Virginia §8.01-220.1:1 - The liability of an officer, partner, member, manager, trustee or director shall not be limited as provided in this section if the officer, partner, member, manager, trustee or director engaged in willful misconduct or a knowing violation of the criminal law or if liability derives from the operation of a motor vehicle, or from the violation of a fiduciary obligation imposed during the period of declarant control by § 55.1-1943.

**Funds for the Corporation.** The corporation will require funds from the particular church to cover its obligations to pay taxes and fees, to purchase insurance, to maintain its property (unless the particular church retains this obligation), and to meet any other financial obligations. To be sure that its obligations can be covered, the corporation should prepare an annual budget (in addition to the budget prepared by the particular church for its needs). The source of funds to cover the corporation’s budget should be an expense item in the church’s annual budget. The aggregate costs of both the particular church and its corporation will be slightly higher than for the particular church before it forms a corporation, due in part to the annual fees for maintaining the corporation, possible additional insurance costs, and administrative costs for calling and holding corporation meetings in addition to church meetings (both for the session, the trustees (directors), members of the congregation and members of the corporation).

## **PROCEDURES TO INCORPORATE**

### **Select the Right Forms**

The Presbytery’s web site at: <https://www.presbyteryofthejames.com/resources/forms/> has four sets of forms relating to forming church corporations.

The easiest way to understand the differences among the forms is to review the following chart. Essentially, most churches will choose between Form Sets “1” and “2,” depending on how the particular church wants to elect the trustees (directors) for its corporation—that is, whether such trustees will be identical to the active session members, or separately elected by the corporation’s members. Those churches which qualify for the special elective treatment under G-4.0208 regarding the holding of their property following reunion in 1983 will choose between Form Sets “3” and “4,” which provide the same two variations in how the trustees (directors) of the corporation are determined.

Forms	Church with Session Members as Trustees	Church with Elected Trustees Separate from the Session
Non-Electing Church	Forms Set “1” Form 1-A (articles) Form 1-B (bylaws) Form 1-C (consent)	Forms Set “2” Form 2-A (articles) Form 2-B (bylaws) Form 2-C (consent)
Church Granted Exception under G-4.0208	Forms Set “3” Form 3-A (articles) Form 3-B (bylaws) Form 3-C (consent)	Forms Set “4” Form 4-A (articles) Form 4-B (bylaws) Form 4-C (consent)

Each set of forms contains three forms: articles of incorporation, bylaws, and a unanimous written consent. The correct use of each of these forms is described below. The forms within a given set are coordinated to work together. Thus, forms from one set must **not** be

intermixed with forms from another set.

A particular church that believes it made the election under G-8.0701 must confirm that election with the records of its presbytery prior to using either Form Set “3” or Form Set “4.” If that election either was not timely made or was not reported to the presbytery, the church will not qualify for the benefit of the election and must use either Form Set “1” or Form Set “2.”

### **Select a Name for the Corporation**

This process was discussed above. In order to make sure the name you have chosen is available for use, go to the State Corporation Commission’s “Clerk’s Information System” and perform a free name check at <https://cis.scc.virginia.gov/Account/NameCheckAvailability>. You may then go to <https://cis.scc.virginia.gov> to open an account with the Clerk’s Office to download relevant documents, submit reports and pay fees online.

### **Prepare Articles of Incorporation and Bylaws**

Once again, while happy to provide these documents as a service to its member congregations, the Presbytery of the James expressly disclaims providing legal advice on matters of incorporation for congregations.

Using the proper set of forms found at:

<https://www.presbyteryofthejames.com/resources/forms/>

insert the relevant information called for in the articles of incorporation, the bylaws, and the consent. Be sure to delete the instructions inserted in each form (in all cases, instructions are in *underlined italics type enclosed in brackets*) as the requested information is filled in. Although some other changes could be made to any of these forms, it is recommended that no changes be made. The forms were carefully reviewed both by attorneys specializing in corporation and tax law and by ministers and elders familiar with the Constitution of the P.C.(U.S.A.). Nonetheless, ***every church embarking on this process should engage an attorney familiar with incorporation matters and Presbyterian polity to review these documents and guide them through the filing process.***

In the articles, blanks that need to be completed are found in the heading of the form for the name of the corporation, in articles 1, 2, 7, 10 and 12, and, at the end of the form, the date and the name of the incorporator. In article 10, the post office address for the registered office must be the physical location (not a post office box) where a process server can find the registered agent. Note that the registered office is to be the business address of the registered agent. See the further discussion under the heading, “Registered Agent,” at page 9.

In the bylaws, blanks that need to be completed are found in the heading of the form for the name of the corporation, and in sections 1.1, 4.4, 7.1, and 7.3

### **File Articles of Incorporation with the State Corporation Commission**

The completed articles of incorporation need to be signed by the incorporator, who can be any person. Presumably, it should be a person authorized by the session of the particular church, which should have reviewed and approved the completed articles and bylaws. The signed articles of incorporation (but ***not*** the bylaws) must be filed with the Clerk’s Office of the State Corporation Commission, together with the appropriate filing fee.

If you have engaged an attorney to shepherd this process, they will usually file the needed incorporation forms for you as a part of their service. However, if you need to file to them yourself, have been checked by your attorney and signed by your incorporator. Then, you may file them online at:

<https://cis.scc.virginia.gov>

There are many helpful resources there to help you through the process. All required fees may be paid online using a credit card or eCheck.

If you cannot file online, you may download all needed forms from:

<https://scc.virginia.gov/pages/Virginia-Nonstock-Corporations>

and complete, print, and mail or deliver to below address:

### **State Corporation Commission**

Clerk's Office

P.O. Box 1197

Richmond, VA 23218-1197

### **Courier Delivery Address**

1300 E. Main St, 1st floor Richmond, VA 23219

all fees may be paid by check

*(If you do not have access to the internet, you can write to the SCC and request these forms by mail.)*

As of the date of this memorandum, the filing fee is \$75 and can be paid in one check made payable to the State Corporation Commission and mailed to:

Clerk's Office

State Corporation

Commission 1300 East Main

Street Richmond, VA 23209

After the articles are reviewed and accepted as being in proper form and otherwise complying with state law, the State Corporation Commission will issue its certificate of incorporation for the corporation. The cover letter transmitting the articles and the check should identify the name and address of the person sending them, so that the Clerk's Office will know where to send the certificate of incorporation and receipt for fees.

### **Organizational Meeting of Initial Trustees**

After issuance by the State Corporation Commission of a certificate of incorporation, the incorporator should call an organizational meeting of the corporation's trustees (directors) to complete the organizational activities of the corporation. This typically will include the adoption of a few more or less standard corporate resolutions:

- To adopt bylaws;
- To authorize obtaining an EIN for the corporation
- Opening bank accounts; and
- To elect officers (there must be at least those officers-such as a president and secretary-who are authorized to execute documents and maintain corporate records).  
**n. b. -** ministers of the Word and Sacrament, although not a member of the corporation, may hold office under Virginia law. However, the Legal Office of the General Assembly of the P.C.(U.S.A.) has recommended *against* this in the past, and the Presbytery of the James *strongly recommends against* ministers assuming these posts now. This ensures a clear delineation between the ecclesial body and the corporate body. Best practice is for ministers to be invited to all corporate meetings with privilege of the floor, but no vote.

In lieu of an actual meeting, or even where there is an actual meeting, of the initial trustees, their corporate actions may be recorded by unanimous written consent. A form for this purpose is included with the Articles of Incorporation and Bylaws. Using the proper set of forms, insert the relevant information called for in the unanimous written consent form. Be sure to delete the instructions inserted in the form (in all cases, instructions are in *[underlined italics type enclosed in brackets]*) as the requested information is filled in. Before any changes are made to this form, it is recommended that an attorney familiar with both Virginia nonstock corporations and Presbyterian polity be engaged to assist with such changes.

In the consent, blanks that need to be completed are found in the heading for the name of the corporation, and in the resolutions setting the number of trustees (directors), listing elected officers, authorizing the opening of bank accounts, accepting the conveyance of the church's property, and providing the names and dates of signing the consent by the initial trustees (directors).

In connection with opening bank accounts, *it is recommended that the corporation first register for a distinct EIN* (Employer Identification Number) with the Internal Revenue Service. In addition, each bank has its own form of corporate resolution that it may want the corporation to adopt. The bank will also require a corporate officer to certify that such a resolution was, in fact, adopted by the trustees (directors). The form of consent facilitates this by incorporating the resolution by reference to an attached certificate form that the bank will provide. Be sure that the certificate form is completed and that a copy of the certificate is attached to the consent.

If one or more of the initial trustees (directors) cannot sign such a consent for whatever reason, the written consent cannot be used. In this case, there must be an actual meeting, with the action taken being recorded in minutes for that meeting. Such actions should mirror the actions provided in the written consent.

## **Tax Matters**

The corporation will be required to obtain its own Federal Employer Identification Number (EIN). **Note that the corporation cannot use the taxpayer identification number of the particular church for which it will own the property.** You may easily apply for an EIN online at

<https://www.irs.gov/businesses/small-businesses-self-employed/apply-for-an-employer-identification-number-ein-online>

The number can also be obtained by completing Internal Revenue Service Form SS-4, Application for Employer Identification Number, which can be found at:

<https://www.irs.gov/pub/irs-pdf/fss4.pdf>

Complete all relevant entries on the form. For type of entity, select “Church or church-controlled entity” and in the “Group Exemption Number” blank enter the number 1617 (the general exemption number listed on the Group Ruling granted to the Presbyterian Church (U.S.A.)).

The Group Ruling exempts covered entities from the Form 990 annual filing requirement imposed on other nonprofit organizations (unless the corporation has unrelated business income for any year, in which event Form 990T must be filed and taxes paid). The Federal exemption does not automatically establish exemption from state and local taxes, but in Virginia there is such an exemption for so-called Section 501(c)(3) organizations such as the corporation contemplated here.<sup>24</sup>

It is assumed in this memorandum that the corporation will not have employees. If in fact it does have employees, it will need to comply with various rules and regulations governing *non-church* employers, including rules relating to tax withholding for both Federal and Virginia, and meeting social security or FICA obligations.

## **Other Corporate Actions**

Upon completion of the organizational meeting, the corporation can open a bank account into which it can deposit any funds it receives, and from which it can pay any expenses it incurs. Ideally, the bank’s corporate account resolutions and certificate forms would have been obtained in advance and attached to the unanimous written consent as the banking resolutions called for by that consent. The corporation can also apply for any insurance coverages it needs to obtain and take any other actions that may be appropriate in connection with the conveyance to it of the property of the particular church.

Where the corporation’s trustees (directors) are different from the session, it is important (i) to establish procedures whereby regular communications occur between the two bodies; (ii)

---

<sup>24</sup> Va. Code Ann. § 58.1-401; Va. Tax Administrative Code 23 VAC 10-120-90. The instructions for the Virginia corporate income tax return Form 500 state that a nonprofit corporation exempt from income tax under § 501(c) of the Internal Revenue Code is not required to file a Virginia income tax return unless it has unrelated business income.

designate specific functions to be performed by the trustees (directors) of the corporation; and (iii) recognize that the corporation and its trustees (directors) perform their work subject to the authority of the session.

### **PROCEDURES TO CONVEY PROPERTY TO CORPORATION**

After formation of the corporation, the property of the particular church, currently held by its present trustees, will have to be conveyed to the new corporation. This will require proper authorization for those trustees to make the conveyance, preparation of a deed, and recordation of the deed in the appropriate clerk's office.

#### **Authorizing the Trustees**

The trustees who currently hold title to a particular church's property must be authorized pursuant to *Book of Order* requirements in order to convey that church's property to the corporation. In G-4.0206a, this requires the authorization of the particular church's session, approval of the particular church's congregation and, except for former PCUS churches that made the G-4.0208 election, approval by the Presbytery.

#### **Prepare and Record a Deed of Conveyance**

The current trustees will have to prepare (or engage an attorney to prepare) a deed of conveyance, to transfer the particular church's real property to the corporation. The deed may be a quit claim deed, but it should be certain to include the entirety of the real property. The deed should contain a recital that the property is held for benefit of the particular church's worship and ministry, subject to the constitution of the P.C.(U.S.A.). The recommended form of recital follows:

The premises herein conveyed shall be used, kept, maintained and held in trust by the grantee for Divine Worship and other purposes of its ministry as a particular church belonging to the Presbytery of [Insert Name of Presbytery] (or its legal successors), subject to the provisions of the *Constitution of the Presbyterian Church (U.S.A.)*.

The deed will have to contain a satisfactory legal real property description, not a street address or tax map parcel number. More than likely, the description used in the deed to the trustees will be satisfactory unless there have been subsequent acquisitions of additional property, boundary line adjustments, easements, street condemnation proceedings or sales of portions of the original property. In a few cases, it may be advisable to obtain a current survey of the property for use in preparing the deed.

When the deed has been executed by the current trustees, whose signatures will have to be acknowledged before a notary public, the deed will need to be recorded in the clerk's office of the circuit court for the city or county in which the property is situated. The clerk of court will assess a recordation fee (based on the deed's page count). Once the deed is prepared, it can be shown to the clerk who will calculate the fee, which then can be paid by check. Because of the provision (enacted at the 2005 Virginia General Assembly) the clerk should not charge any recordation taxes. However, since this is a new provision, the current trustees should be alerted

to so advise the clerk where necessary.

For all deed and conveyance matters, the advice and services of an attorney should be obtained.

### **Consents; Title Insurance**

If the property is subject to an encumbrance by deed of trust or other lien, the conveyance to the new corporation will necessarily be made subject to that encumbrance or lien. In this regard, it is important to confirm that a conveyance of the property will not trigger a default under the encumbrance or lien, or otherwise accelerate the secured debt. If it might, the consent of the lien holder should be obtained before the conveyance is made in order to prevent a default from occurring.

If the current trustees are beneficiaries of a title insurance policy covering the property, it is advisable for the corporation to obtain an update to that title policy from the title insurance company along with a change in beneficiary from the trustees to the corporation. The title insurance company will charge a premium for the update and change in beneficiary, but it should be less expensive than would be the premium for a new policy.

**APPENDIX 1**

MAY- 6-97 TUE 10:11 New Brunswick Presbytery 16093928681

P.05

**PRESBYTERIAN CHURCH (U.S.A.)**

Office of the General Assembly

James E. Andrews, *Stated Clerk*

341 Ponce de Leon Ave. NE  
Atlanta, GA 30365  
404-873-1531

475 Riverside Drive  
Room 1201  
New York, NY 10115  
212-870-2005



**Atlanta Office**

*Lucille S. Hicks, Assistant Stated Clerk*  
*Catherine M. Shipley, Assistant Stated Clerk*  
*Eugene D. Witherspoon, Jr., Assistant Stated Clerk*

**New York Office**

*Otto K. Finkbeiner, Associate Stated Clerk and Treasurer*  
*Robert T. Newbold, Jr., Associate Stated Clerk*  
*Robert F. Stevenson, Associate Stated Clerk*  
*Mildred L. Wager, Assistant Stated Clerk*

November 19, 1984

TO STATED CLERKS OF PRESBYTERIES AND SYNODS

Dear Colleagues:

In recent months the question about tax-exemption for the Presbyterian Church (U.S.A.) and its congregations, institutions, and agencies has been raised from a number of places. Some of you know that we spent a good deal of time and energy before the last Assembly making sure that particular matter was nailed down, and that we do indeed have a letter of determination from the Internal Revenue Service.

We are enclosing copies of two letters from the Internal Revenue Service which ought to be a part of your files in case you need this kind of verification for use in your governing body, or for the assistance of the particular churches under your jurisdiction. The first is the most recent letter of October 22, 1984. With it is the earlier determination of January 31, 1964. These two documents together should answer any questions raised regarding tax-exempt status of the congregations, governing bodies, and institutions of the denomination.

We have also received inquiries about the way in which the Presbyterian Church (U.S.A.) is listed in the classified directories of various phone companies. Most of those directories still continue to list the names of our former denominations, and through the courtesey of one of our pastors we have received the following information from officials with one of the Bell System companies:

"Our suggestion is that in each city where the listings are unsatisfactory to the Church that the spokesman for that city contact the Yellow Pages sales office or the business office and request the change. There is no procedure in place that a blanket request can be made, especially since the divestiture and establishment of independent Bell companies."

It is therefore the position of those who handle advertising in the Yellow Pages that any change must come from those who do the advertising. You may wish to inform the member churches under your jurisdiction of this matter in the event that they wish to make some corrections.

Best wishes for a joyous and meaningful Advent season.

Sincerely,

*James E. Andrews*

James E. Andrews

JEA:mr  
Enc 1.

AUG 27 1986

20-20-5 n

MAY- 6-97 TUE 10:09 New Brunswick Presbytery 16093928681

P.02



U. S. TREASURY DEPARTMENT  
INTERNAL REVENUE SERVICE  
WASHINGTON 25, D. C.

1964 FEB 4 AM 9:09

JAN 31 1964

IN REPLY REFER TO  
T:R:EO:1  
JGD

The United Presbyterian Church in the  
United States of America  
Office of the General Assembly  
510 Witherspoon Building  
Philadelphia 7, Pennsylvania

Gentlemen:

Your application for a group ruling, holding you and your subordinate units exempt from Federal income tax as organizations described in section 501(c)(3) of the Internal Revenue Code of 1954, has been considered.

Based on the information submitted, it is held that you and your synods, presbyteries and churches whose names appear on pages 542 through 620 inclusive, of the May 1963 edition of part III of the minutes of your general assembly are exempt from Federal income tax as organizations described in section 501(c)(3) of the Internal Revenue Code of 1954 as it is shown that you and your subordinate units are organized and operated exclusively for religious purposes.

You and your synods, presbyteries and churches are not required to file Federal income tax returns so long as a tax exempt status is maintained.

It will not be necessary for you and your synods, presbyteries and churches to file the annual return of information, Form 990-A, generally required of organizations exempt under section 501(c)(3) of the Code, as the specific exceptions contained in section 6033(a) of the Code are applicable.

Contributions made to you and your synods, presbyteries and churches are deductible by the donors as provided by section 170 of the Code. Bequests, legacies, devises, transfers, or gifts, to or for the use of you and your synods, presbyteries and churches are deductible for Federal estate and gift tax purposes as provided by sections 2055, 2106 and 2522 of the Code.

MAY- 6-97 TUE 10:10 New Brunswick Presbytery 16093928681

P.03

-2-

The United Presbyterian  
Church in the United  
States of America

You and your synods, presbyteries and churches are not liable for the taxes imposed under the Federal Insurance Contributions Act (social security taxes) unless waiver of exemption certificates are, or have been, filed as provided in that Act. Inquiries about the waiver of exemption certificate should be addressed to your District Director. You and your synods, presbyteries and churches are not liable for the tax imposed under the Federal Unemployment Tax Act.

For next year and each succeeding year thereafter, please send us the following information annually not later than forty-five days after the close of your annual accounting period:

1. Lists, arranged in alphabetical or numerical order, showing the names and mailing addresses of (a) your new subordinate units and (b) those which have ceased to exist or have changed their names or mailing addresses. One copy of the list should be furnished for use of this office and one additional copy for the use of each District Director in whose district one or more of your subordinate units are located. Directories may be furnished in lieu of the lists referred to above if a directory is published.
2. A statement, signed by one of your principal officers, stating whether or not the information upon which your original group ruling is based is applicable in all respects to your new subordinate units.
3. A statement, if at the close of the year, there were no changes in your roster.
4. A statement of any changes in the character, purposes or method of operation of your organization or those of any of your subordinate units.

MAY- 6-97 TUE 18:18 New Brunswick Presbytery 16093928681

P. 04

-3-

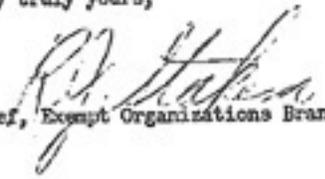
The United Presbyterian  
Church in the United  
States of America

5. Duplicate copies of any amendments to the  
charters or bylaws of your organization or  
those of any of your subordinate units.

This ruling is not applicable to any of your subordinate units  
organized and operated in a foreign country.

The District Director in Philadelphia is being advised of  
this action.

Very truly yours,

  
Chief, Except Organizations Branch

## **APPENDIX 2**

The 195th General Assembly (1983) of the newly formed P.C.(U.S.A.) adopted G-8.0701(now G-4.0207), which opened an eight-year window where former PCUS congregations could opt to be exempt from provisions in the current section on church property to which there was no similar provision in the 1982-1983 PCUS Book of Church Order. The presbytery had to be informed of this decision and record it in its minutes. That window closed in June 1992. Section 6-3 through 6-7 of the *Book of Church Order* for the PCUS as of 1983 (year of reunion) provides that:

6-3 “All property held by or for a particular church, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church in the United States.”

6-4 “If a particular church is dissolved by the Presbytery, attempts by either majority or unanimous vote to withdraw from the PCUS or otherwise ceases to exist or function as a member of the PCUS, any property that it may have shall be within the control of the Presbytery and may be held for designated purposes or sold or disposed of in such manner as the Presbytery, in its discretion, may direct.”

6-5 “The relationship to the PCUS of a particular church can be severed only by constitutional action on the part of the Presbytery. If there is schism within the membership of a particular church and the Presbytery is unable to effect a reconciliation or a division into separate churches within the PCUS, the Presbytery shall determine if one of the factions is entitled to the property because it is identified by the Presbytery as the true church with the PCUS. This determination does not depend upon which faction received the majority vote within the particular church at the time of the schism.”

6-7 “Nothing in this chapter shall be construed to limit the power of Presbytery to receive and dismiss churches with their property, provided such requests are made in proper order.”

Although the “in trust” language was added by amendment to the *Book of Church Order* in 1982 shortly before the vote on reunion, the principle expressed in that language had been recognized by both civil and ecclesiastical courts for a long time. It appears that the primary result for a particular PCUS church that made the election under G-08.0701 is an exemption from sections G-8.0501 (presbytery approval for selling or encumbering church property) and G-8.0502 (presbytery approval for leasing church property), for which there was no comparable provision in the PCUS *Book of Church Order*.

Section 72.02 of the *Book of Order* for the UPCUSA as of 1983 (year of reunion) provides that “all property held by or for a particular church, a presbytery, synod, the General Assembly, or The United Presbyterian Church in the United States of America, whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of the particular church or of a more inclusive judicatory or retained for the production of income, is held in trust nevertheless for the use and benefit of The United Presbyterian Church in the United States of America.” It appears that the primary result for a particular UPCUSA church that made the election under G-8.0701 is an exemption from section G-8.0601 (property of church in schism), for which there was no comparable provision in the UPCUSA *Book of Order*.