

CHURCH INCORPORATION Q&A

In our March 28, 2021 business meeting, one of the items we will consider is a motion to pursue incorporation. Our deacons have examined this issue and believe it to be a wise step – especially with the recent Supreme Court decisions and legal changes in Virginia. While it is a bit technical, we have prepared this Q&A document to address the most common questions.

What is incorporation?

Church incorporation is a series of administrative processes and the creation of various documents which provide certain legal and practical protections and advantages for the church. It does not have any direct effect on the church's worship or spiritual life or subject it to any domination by the state.

If we are not incorporated now, what are we?

As an unincorporated entity, the church's assets (i.e. land, building, vehicles, debt, and other liabilities, etc.) are technically owned by our Trustees; church members who are nominated by the church and who must formally be approved and appointed by the Circuit Court of Roanoke County. Our current Trustees must request a Judge's approval to hold, manage, buy, sell, and transfer our assets. This is a cumbersome process and involves the costs of securing a court order for every such transaction.

Are there risks or disadvantages to remaining unincorporated?

Yes, there are! Listed below are three significant issues.

Personal Liability of Church Leaders | This is the biggest risk for unincorporated churches. Under current law, trustees, officers, and church leaders can individually or personally be held liable for actions performed (or not performed) on behalf of the church or by the wrongful actions of others. This is unlimited liability in cases of a lawsuit. As such, our church leaders can be attractive targets of lawsuits, and recent changes to Virginia law have incentivized people to bring suits related to faith-based employment and hiring practices with no penalties for bringing a frivolous case.

Indemnification of Church Leaders | In the absence of some agreement within an unincorporated entity, entities are not obligated to indemnify (or reimburse) members and leaders if they are sued.

Approval by Circuit Court Judges for property Issues | Unincorporated churches must hold and maintain the title to property through trustees who must petition the court for approval to make changes to our assets. Also, whenever a church desires to change its trustees, a petition must be approved by Circuit Court Judge. (We are under more government oversight by being unincorporated than by being incorporated.) Also, now that VA churches can incorporate, lenders, businesses, and banks prefer to deal with incorporated churches, and some choose not to serve unincorporated entities.

What are the benefits?

Corporate Entity Provides Liability Protection | This is the biggest advantage of becoming incorporated. As a non-profit corporation, board members, church leaders and members are protected by a limited liability shield. Individuals, however, always remain liable for their own personal, “negligent actions.”

Indemnification of church leaders | Non-profit corporations may, and in some cases are required to, indemnify (reimburse) officers and directors for legal fees who act in good faith and in the best interests of the corporation.

Strengthening our Constitution and Bylaws | During the incorporation process, our attorneys will work with the Constitution and Bylaws Committee to develop a Constitution and Bylaws, based on their expertise and with church consent, input and approval, which will strengthen and protect our church in the face of recent court decisions, regarding issues on the same-sex marriage, gender identity, and nondiscrimination laws.

Do other churches do this?

Yes. In 2002, Thomas Road Baptist Church (Jonathan Falwell is lead pastor) led the charge in the Virginia churches to incorporate. All Southern Baptist Convention of Virginia (SBCV) church plants currently begin as incorporated entities, and the SBCV encourages all churches to incorporate.

Why are the deacons making this motion?

Not only do our state/national conventions recommend this for practical reasons and ease of doing the work of the church, but incorporation will also strengthen us from a legal perspective in a world that is increasingly set against churches that seek to follow King Jesus.

What are we specifically voting on at the March 28, 2021 meeting?

The deacons are making a motion that we allocate up to \$7,500 from the General Fund and pursue the incorporation of the church.

Assuming we vote in favor, what does this mean in the future?

We will engage the experienced law firm who works with churches who are a part of the SBCV to begin the process. The church will have the final say in approving the new governing documents (at a later business meeting). We will remain a congregational church, this legal change will help protect our congregation and free us from unnecessary court interference in the major business decisions and transactions of the church.