Chapter 59B.
Uniform Unincorporated Nonprofit Association Act.

§ 59B-1. Short title.
This Chapter may be cited as the Uniform Unincorporated Nonprofit Association Act. (2006-226, s. 1.)

§ 59B-2. Definitions.
In this Chapter:

(1) "Member" means a person who, under the rules or practices of a nonprofit association, may participate in the selection of persons authorized to manage the affairs of the nonprofit association or in the development of policy of the nonprofit association.
(2) "Nonprofit association" means an unincorporated organization, other than one created by a trust and other than a limited liability company, consisting of two or more members joined by mutual consent for a common, nonprofit purpose. However, joint tenancy, tenancy in common, or tenancy by the entireties does not by itself establish a nonprofit association, even if the co-owners share use of the property for a nonprofit purpose.
(3) "Person" means an individual, corporation, limited liability company, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States. (2006-226, s. 1.)

§ 59B-3. Supplementary general principles of law and equity.
Principles of law and equity supplement this Chapter unless displaced by a particular provision of it. (2006-226, s. 1.)

§ 59B-4. Title to property; choice of law.
Real and personal property in this State may be acquired, held, encumbered, and transferred by a nonprofit association, whether or not the nonprofit association or a member has any other relationship to this State. (2006-226, s. 1.)

§ 59B-5. Real and personal property; nonprofit association as legatee, devisee, or beneficiary.

(a) A nonprofit association is a legal entity separate from its members for the purposes of acquiring, holding, encumbering, and transferring real and personal property.
(b) A nonprofit association, in its name, may acquire, hold, encumber, or transfer an estate or interest in real or personal property. NC General Statutes - Chapter 59B 2
(c) A nonprofit association may be a beneficiary of a trust or contract, a legatee, or a devisee.
(d) Any judgments and executions against a nonprofit association bind its real and personal property in like manner as if it were incorporated. (2006-226, s. 1.)
§ 59B-6. Statement of authority as to real property.

(a) A nonprofit association may execute and record a statement of authority to transfer an estate or interest in real property in the name of the nonprofit association.

(b) An estate or interest in real property in the name of a nonprofit association may be transferred by a person so authorized in a statement of authority recorded in the office of the register of deeds in the county in which a transfer of the property would be recorded.

(c) A statement of authority must be set forth in a document styled "affidavit" that contains all of the following:

1. The name of the nonprofit association.
2. Reserved for future codification purposes.
3. The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.
4. That the association is an unincorporated nonprofit association.
5. The name or office of a person authorized to transfer an estate or interest in real property held in the name of the nonprofit association.
6. That the association has duly authorized the member or agent executing the statement to do so.

(d) A statement of authority must be sworn to and subscribed in the same manner as an affidavit by a member or agent who is not the person authorized to transfer the estate or interest.

(e) The register of deeds shall collect a fee for recording a statement of authority in the amount authorized by G.S. 161-10(a)(1). The register of deeds shall index the name of the nonprofit association and the member or agent signing the statement of authority or any subsequent document relating thereto as Grantor and the name of the appointee as Grantee.

(f) An amendment, including a termination, of a statement of authority must meet the requirements for execution and recording of an original statement. Unless terminated earlier, a recorded statement of authority or its most recent amendment expires by operation of law five years after the date of the most recent recording.

(g) If the record title to real property is in the name of a nonprofit association and the statement of authority is recorded in the office of the register of deeds in the county in which a transfer of real property would be recorded, the authority of the person or officer named in a statement of authority is conclusive in favor of a person who gives value without notice that the person or officer lacks authority. (2006-226, s. 1.)
§ 59B-7. Liability of members or other persons.
(a) A nonprofit association is a legal entity separate from its members for the purposes of determining and enforcing rights, duties, and liabilities.
(b) A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.
(c) Reserved for future codification purposes.
(d) A tortious act or omission of a member or other person for which a nonprofit association is liable is not imputed to a person merely because the person is a member of the nonprofit association, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a "member" by the nonprofit association.
(e) A member of, or a person referred to as a "member" by, a nonprofit association may assert a claim against or on behalf of the nonprofit association. A nonprofit association may assert a claim against a member or a person referred to as a "member" by the nonprofit association. (2006-226, s. 1.)

§ 59B-8. Capacity to assert and defend; standing.
(a) A nonprofit association, in its name, may institute, defend, intervene, or participate in a judicial, administrative, or other governmental proceeding or in an arbitration, mediation, or any other form of alternative dispute resolution.
(b) A nonprofit association may assert a claim in its name on behalf of its members or persons referred to as "members" by the nonprofit association if one or more of them have standing to assert a claim in their own right, the interests the nonprofit association seeks to protect are germane to its purposes, and neither the claim asserted nor the relief requested requires the participation of a member or a person referred to as a "member" by the nonprofit association. (2006-226, s. 1.)

§ 59B-9. Effect of judgment or order.
A judgment or order against a nonprofit association is not by itself a judgment or order against a member, a person referred to as a "member" by the nonprofit association,
or a person authorized to participate in the management of the affairs of the nonprofit association. (2006-226, s. 1.)

§ 59B-10. Disposition of personal property of inactive nonprofit association.
If a nonprofit association has been inactive for three years or longer, or a different period specified in a document of the nonprofit association, a person in possession or control of personal property of the nonprofit association may transfer custody of the property:
(1) If a document of the nonprofit association or document of gift specifies a person to whom transfer is to be made under these circumstances, to that person; or

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(2) If no person is so specified, to a nonprofit association, nonprofit corporation, or other nonprofit entity pursuing broadly similar purposes, or to a government or governmental subdivision, agency, or instrumentality. (2006-226, s. 1.)

§ 59B-11. Appointment of agent to receive service of process.
(a) A nonprofit association may file in the office of the Secretary of State a statement appointing an agent authorized to receive service of process, notice, or demand required or permitted by law to be served on a nonprofit association.
(b) A statement appointing an agent must set forth all of the following:
   (1) The name of the nonprofit association.
   (2) Reserved for future codification purposes.
   (3) The street address, and the mailing address if different from the street address, of the nonprofit association, and the county in which it is located, or, if the nonprofit association does not have an address in this State, its address out-of-state.
   (4) The name of the person in this State authorized to receive service of process and the person's address, including the street address, in this State.
(c) A statement appointing an agent must be signed and acknowledged by a person authorized to manage the affairs of a nonprofit association. The statement must also be signed and acknowledged by the person appointed agent, who thereby accepts the appointment. The appointed agent may resign by filing a resignation in the office of the Secretary of State and giving written notice to the nonprofit association at its last known address.
(d) The sole duty of the appointed agent to the nonprofit association is to forward to the nonprofit association at its last known address any notice, process, or demand that is served on the appointed agent.
(e) The Secretary of State is not an agent for service of any process, notice, or demand on any nonprofit association.
(f) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to the Secretary of State for filing:
   Document Fee
   (1) Statement appointing an agent to receive service of process $5.00
   (2) Amendment of statement appointing an agent 5.00
   (3) Cancellation of statement appointing an agent 5.00
   (4) Agent's statement of resignation No fee
   (g) An amendment to or cancellation of a statement appointing an agent to receive service of process must meet the requirements for execution of an original statement. (2006-226, s. 1.)
§ 59B-12. Claim not abated by change.
A claim for relief against a nonprofit association does not abate merely because of a change in its members or persons authorized to manage the affairs of the nonprofit association. (2006-226, s. 1.)

For purposes of venue, a nonprofit association is a resident of a county in which it has an office or maintains a place of operation or, if on due inquiry no office or place of operation can be found, in which any officer resides. (2006-226, s. 1.)

§ 59B-14. Uniformity of application and construction.
This Chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Chapter among states enacting it. (2006-226, s. 1.)

§ 59B-15. Effect as to conveyances by trustees; prior deeds validated.
(a) Nothing in this Chapter changes the law with reference to the holding and conveyance of land by the trustees of churches under Chapter 61 of the General Statutes where the land is conveyed to and held by the trustees.
(b) All deeds executed before January 1, 2007, in conformity with former G.S. 39-24 and former G.S. 39-25 are declared to be sufficient to pass title to real estate. (1939, c. 133, ss. 3, 4; 2006-226, s. 2(b).)
Impact of Provisions of NC Gen Stat. 59 on Incorporation of Churches and Nonprofit Ministries

A major factor in considering incorporation of both businesses and nonprofit organizations, including churches, has been to take full advantage of the “limited liability” available through a corporate form. In the development of liability law, a corporate form or legal structure had the substantial advantage that while the corporation was liable for its debts and obligations, the stockholders (owners) of the corporation were not personally liable merely because of their ownership interest. This of course encouraged investment and risk in business ventures. The same advantages developed for nonprofit corporations, so that while the nonprofit corporation remained fully liable for debts and judgments for its acts, the members of those nonprofit organizations were not personally liable. Without this protection from the corporate form, members of many organizations—social, fraternal, benevolent—might find themselves financially at risk if the association they were a member of had some debt exceeding its assets.

The same issues affected churches which in North Carolina were rarely incorporated prior to the 1980s, and thus members were potentially at risk if the church’s debts exceeded their resources. This was a principal factor in the recommendations from legal and church leaders that churches consider moving from an unincorporated association status to incorporation. In North Carolina this was particularly advantageous because the state imposed no annual fees or reporting obligations on such nonprofit incorporations.

In 2007 North Carolina enacted a Uniform Unincorporated Nonprofit Association Act, now Chapter 59, in the General Statutes. This new statutes addressed a range of legal issues and sought to give clarity in regard to matters affecting all kinds of unincorporated associations, including many church and religious unincorporated associations in North Carolina. Of particular relevance to the issue of incorporation is Section 59B-7 which changes some older traditional legal principles, and treats the unincorporated association as a legally separate entity from the members as far as certain rights and duties exist and specifically provides that “A person is not liable for the contract, tort, or other obligations of a nonprofit association merely because the person is a member, is authorized to participate in the management of the affairs of the nonprofit association, or is referred to as a ‘member’ by the nonprofit association.”

The effect of this provisions is to provide the same kind of limited liability to members of an unincorporated nonprofit (such as an unincorporated church), as they would have if the entity were incorporated. This does provide it would seem one of the kinds of protections historically sought by incorporation. And under this statute, the unincorporated association such as a church need take no specific action in order for its members to have the protection from personal liability “merely” because they are members.

NOTE: This new statute does NOT provide absolute immunity from liability – but only provides that there is not any personal liability merely because of membership in the group. If the person, whether a member or not, has engaged in some acts creating liability – even if for and on behalf of the church – they may well be liable – but not because they were a member, but because they personally did some act creating the liability. Thus if a person who is a member negligently operates a vehicle while acting for the church and injures a person, they may well be liable because they were personally negligent, but not because they were a member.

The same is largely true of immunity and limited liability derived from incorporation provisions.
Now the question is appropriately asked whether now that 59B-7 provides limited liability similar to incorporation protection, is there any reason any longer for churches and other nonprofit associations or ministries to bother with incorporation.

I believe the answer remains Yes – that it remains advisable and prudent for such unincorporated churches and ministries to carefully review the full advantages of a corporate form, notwithstanding the clear benefits of the new Chapter 59 provisions.

In sum, I believe this is so for several reasons:

1) Chapter 59 is a valued new source of legal protection, but its scope and the application of its provisions is untested, compared to a wealth of clear provisions and cases addresses provisions under the nonprofit corporation provisions.

2) Chapter 59 is less clear and specific about other aspects of limits on liability especially in regard to officers and directors – or in churches we might think of deacons and other church leadership. By contrast, the Nonprofit Corporation Act in Section 55A-8-60 is very clear about certain immunities of directors and officers, AND the conditions under which they are and are not immune. Given the fact the most serious risks for liability are NOT so much extensions of liability to mere members, but arising from acts of the leadership of a church, it is in this area that the greater clarity of the scope of protections provided by the corporate form are clearly preferable. It may be that a court might construe the provisions of Chapter 59 similarly, but that is not so clear.

3) Chapter 59 addresses a relatively small set of issues related to organizational legal identity, and does, as noted, provide some protection for unincorporated bodies, but in no way does it even attempt to provide the much broader provisions of the nonprofit corporation act which are so very key and constructive in clarifying all kinds of issues and aspects of organizational affairs. One of the greatest values of incorporation is not just the limited liability, but the order and breadth of clarity about many other aspects of the structures and procedures of an effective organization. In my experience, carefully crafted Charters and Bylaws developed as an aspect on the process of incorporation have been extraordinarily valuable in clarifying many areas that, because they have not been addressed, have often been the subject of disruptive and divisive conflict in churches.

4) Since North Carolina has long been a friendly state to nonprofit corporations, has no history of intrusive regulations or reporting schemes, has no annual fees, and offers superior and clear protections for both members and leadership, and provides a framework for other broad areas of organizational life, it would in my view be a mistake to rely on one small piece of the puzzle through Chapter 59, and ignore the broader provisions of a nonprofit corporate structure.

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