We now have, or are about to have; a new entity, a church corporation. But we also still have our unincorporated association, and that is the body which has, up till now, bought property, entered into contracts with suppliers and employees and generally carried on the ministries of the church.

Certainly we don't want two organizations, so we need to close up the association's affairs and transfer its business obligations and property to the corporation.

What do we Transfer from the Association to the Corporation?

We need to transfer several different kinds of property and obligations and rights from the association to the corporation. Among those things to be transferred are at least the following:

a. Property - real estate, leases, buildings, bank account assets, bonds, furniture, lawn mowers, etc.

b. Other assets - debts owed the church,

c. Liabilities - debts the church has incurred such as bills payable, employee contracts, and any other contracts not yet performed by the church
2. The Process of Transferring

Two basic requirements must be met to effectuate the transfer. First, the association must offer to convey or assign the rights, assets and properties it owns to the corporation; and second, the corporation must accept these assets or rights. The same with the liabilities: the corporation must accept the liabilities and obligations of the association.\textsuperscript{122}

3. How to do it?

Prepare and adopt resolutions both for the association-church and for the new corporation-church

\textit{For the association:}
Resolutions should be prepared and adopted by the church at a properly called meeting\textsuperscript{123} offering to convey to the corporation and authorizing the trustees or other appropriate officials to convey to the corporation all assets of the church including named real property. A general resolution authorizing the trustees to make such conveyances could read as follows:

\textit{Resolved, that the members of (First Baptist Church) hereby instruct and authorize the duly elected trustees and officers of this church to take all necessary steps to dissolve this associations, and offer and transfer all its identity and assets, including all the real property listed below to the successor corporation of this church, (First Baptist Church, Inc.). [List address/description all the real property.]}\textsuperscript{124}

\textit{For the church corporation:}
At its organizational meeting (see next section of this chapter), the new corporation should adopt a resolution accepting the offer of the property and assets of the church-association and accepting the liabilities of the church-association as liabilities of the corporation. General resolutions to this effect, and further emphasizing the absorption of the church in the new corporation are as follows:

\textit{Resolved, that the members of this corporation hereby authorize and instruct the Directors to accept all the assets, including the real property listed below, as transfers and gifts to this church corporation from its predecessor association, First Baptist Church of Centerville. The Directors are instructed and authorized to take all steps necessary to receive title in the name of the church corporation to such assets. The corporation hereby further assumes responsibility for all the contracts, employment agreements and other legal obligations of the First Baptist Church. [List real property to be transferred.]}
Be it further resolved the the members of this corporation recognize, affirm and declare that this corporation is the sole successor to the First Baptist Church, and that all rights of the former association are, so long as consistent with law, fully absorbed and merged into this corporation.

4. Legal Transfers

In the case of real property, it will be essential to conclude the transfer by the formal recording of a new deed. Similarly with automobiles, transfer of title should be completed. If the property is mortgaged, usually the lending institution will have no objection to the corporate form of the church, and may actually prefer it.

You should consult with any financial institution with whom the church has secured obligations, such as a building loan. A mutually acceptable solution would in virtually every case be available permitting the transfers without special costs or legal problems. This is also an area where local legal counsel can assist the church in effectuating the transfers.

5. Notifying Others

In the case of companies with whom the church does regular business, they should receive a letter from the church advising them of the new corporate status, and that the church corporation has assumed liability for any obligations incurred by the church.

State agencies from whom the church has permits or licenses should also receive a notice from the church of the formal change in the church’s legal structure.

Banks and other financial institutions with whom the church does businesses should be notified of the incorporation.

B. DISSOLVING THE ASSOCIATION

In addition to transferring the assets, assigning rights and having the corporation accept the liabilities, the association must also terminate its existence so that it is fully merged into the corporation. A failure to dissolve the association would mean there were two entities existing side by side, the unincorporated church and the church corporation. While it would be possible to create such a structure, the more appropriate approach is to have the corporation assume all the legal identity once held by the association.
At a church meeting, a formal resolution should be adopted dissolving the association, authorizing the trustees to wind up all the affairs of the association, and noting that the association is fully merged into the new corporation. The resolution suggested above authorizing the trustees to transfer the assets to the corporation included language instructing them to take all steps necessary to dissolve the association.

C. THE ORGANIZATIONAL MEETING OF THE CORPORATION

1. Generally

Proper procedure requires that after the filing of incorporation papers with the Secretary of State, an organizational meeting of the new corporation must be held "for the purpose of adopting bylaws, electing officers and the transaction of . . . other business."125 This is the meeting at which the corporation will organize itself and "get going." This meeting should be held as soon as reasonably possible after the filing of the Articles, but there is no specific time limit.

2. Business to Be Conducted

There are no restrictions on what business may be conducted at this organizational meeting, but there are some minimum matters which must be covered. Because of the crucial importance of these matters in setting up the corporation, it is important to proceed carefully. Many new corporations seek to have an attorney present at this meeting to further assure them that the crucial matters are covered. The agenda which follows will provide a checklist and a procedural guide to the meeting.

Agenda:

1. Appoint a temporary chairman and secretary

The incorporators or the attorney should call the meeting to order and appoint or supervise an election of a temporary chairman and secretary to conduct the meeting until the officers are elected. The secretary should begin to take careful minutes of the meeting including the action preceding the appointment of the temporary secretary.

2. Report by incorporators (or attorney) on incorporation

The incorporators or an attorney should report on the completion of the incorporation and deliver to the secretary a copy of Articles of Incorporation, and the receipt for filing the articles with the secretary of state, a seal if one has been obtained and perhaps a minute book. The "minute book" is simply a book in which minutes of the meeting will be taken.
Actually, any book will do, but it should be carefully maintained and preserved. A resolution may be adopted accepting the certificate of incorporation.

3. Accept members

Members of a new corporation would then be accepted. Since, however, a church already exists with members who commonly are being received directly and automatically into the new corporation, it would be sufficient here to move, approve and record in the minutes that all members of the church prior to incorporation are now members of the church corporation. If the Articles provided for such as in the sample Articles provided in the Appendix, no formal action is required, but the church might wish to formally do so anyway.

4. Adopt bylaws

The initial directors should move to adopt the bylaws which are being proposed. Following any discussion, the members should vote on the adoption and if approved, a record of the adoption made in the minutes of the meeting.

5. Elect directors and officers who then replace the temporary chairman and secretary

Pursuant to the particular manner in which the Articles and Bylaws have provided for the directors, their election or confirmation should take place. If by prior agreement persons such as the initial directors or the deacons (or trustees or whomever) will continue to serve as directors, it would still be important to formally approve them and a motion and vote taken and recorded to that effect. Where there is simply a transfer of officers to the new corporation, one resolution naming all the officers and their terms/tenure can be introduced and approved as a group, e.g.

"Resolved that the following persons be duly elected [or confirmed as provided for in the Articles] as the directors [and deacons, if they are the same], for the terms noted: [list each director and/or officer and their tenure]."

6. Authorize books, records and bank accounts

A resolution should be adopted authorizing the corporate directors and officers to take such steps as are necessary to open checking and savings accounts, and name the officers who are authorized to sign checks and other orders of payments from those accounts.
7. Acceptance of transfers from the church association

A formal resolution accepting the transfers of property including real property, other property, monies etc. should be proposed and adopted. A resolution should also accept all the present liabilities and obligations of the association. A sample form for these purposes is included in the appendix.

8. Adoption of corporate seal

While not necessary, many corporations have a corporate seal which is used to authenticate formal corporate documents. The seal is circular, contains the name, state and date of incorporation. It is used in a formal way of identifying that a given document is a duly authorized act of the corporation. Others may expect you to use it. It may be ordered from stamp makers.

If you have obtained such a seal, a resolution should be adopted stating that

Resolved that the corporate seal entitled "(name of church, e.g. First Baptist Church of Centerville)" has been secured and is hereby adopted as the official seal of the corporation.

9. Other Business

Other routine business may be carried on as in any other business meeting.

D. MAINTAINING CORPORATE STATUS

In this section we shall note several aspects of what is involved in maintaining the nonprofit corporate status.

1. Act as a Corporation

It is essential that the church comply with the formalities of a corporation. If the corporation is formed, but the requisite meetings of members are not held, and the church never acts as if it is incorporated, it is possible that the church would lose the protective qualities of the corporation.
2. Comply with Reporting Requirements

A. State Reports

1. There are no general requirements of nonprofit corporations to file regular reports with the secretary of state. Unlike some states where annual reports are required which survey activities and finances, in North Carolina no such reports are required.

2. There are some specialized situations in which reports or filings with the state are required, which we have already noted:
   (a) Filing notice of changes in the Charter/Articles, or any major structural changes.
   (b) Filing notice of changes in the address and/or name of the registered Agent.

B. Federal Reporting Requirements for Tax Exempt Organizations

As we have noted, nonprofit organizations which are tax exempt must normally file annual informational returns, Form 990. However, churches are specifically exempted both from filing for a recognition of tax exemption and from filing annual 990 reports. Even if churches have chosen to formally obtain 501(c)(3) exempt status, they are exempted from the annual filing requirements.

3. Abide by Requirements of Church's Governing Documents

The corporate documents including the Articles/Charter and Bylaws constitute commitments on the part of the corporation in terms both of its purposes and internal government. It is incumbent on the corporation to operate consistent with those commitments.

4. Maintain Accurate Records

It is a duty of the corporation to maintain accurate records of the corporation as we have already noted. These records are, within some limits, available to members of the corporation, and to government officials in order to confirm the nonprofit and exempt status of the corporation.

5. Permit authorized inspections of records

a. Do members have some rights to inspect the church's records?

Yes. We noted that the Nonprofit Corporation Statute provides that "all books and records of a corporation may be inspect by any member . . . for any proper purpose at any reasonable time."129

b. Do non-members have any rights to inspect church records?
Yes. In general, only members have rights of inspection of corporate records, and the Freedom of Information Act does not cover such church corporation records. In some circumstances, however, non-members may have some limited rights to inspect certain church records. Among such circumstances are these:

1) Where churches have sold securities, investors have certain rights to inspect financial statements.
2) Where the church is a defendant in a lawsuit, materials may be subpoenaed for inspection if relevant and not privileged
3) Certain federal and state agencies have investigative powers that permit rights to subpoena and inspect certain records.
4) The Internal Revenue Service has certain statutory powers which may involve the inspection of church records.

c. May the I.R.S. examine church records?

Yes. I.R.C. § 7602 empowers the Internal Revenue Service to examine or subpoena books and records of any person or organization. This would include churches, whether or not they are incorporated. Such examination may be for the following purposes:

1) to ascertain the correctness of any federal tax return
2) making a return where none has been filed
3) determining the liability of any person or organization for any federal tax
4) collecting any federal tax


d. Are there limits on I.R.S. inquiries into church records?

Yes. Legislation and judicial rulings have placed limits on I.R.S. inquiries into churches. IRS actions must conform to various requirements. Specific limits on I.R.S. subpoenas and inspections of church records were embodied in Tax Reform Act of 1969, placing limits on the scope of IRS investigations of church finances.

No examination of the books of account of a church or convention or association of churches shall be made to determine whether such organization may be engaged in the carrying on of an unrelated trade or business or may be otherwise engaged in activities which may be subject to [unrelated business income tax] unless the Secretary (such officer being no lower than a principal internal revenue officer for an internal revenue region) [1] believes that such organization may be so engaged and [2] so notifies the organization in advance of the examination. No examination of the religious activities of such an organization shall be made except to the extent necessary to determine whether such organization is a church or a convention or association of churches, and no examination of the books of account of such an organization shall be made other than to the extent necessary to determine the amount of tax imposed by this title.
While most cases have upheld I.R.S. investigatory powers to inspect church records against First Amendment challenges, some cases have found I.R.S. inquiries "too far reaching." 136

As you can see, there are relatively few requirements for a church to maintain its corporate status. The chief danger is that churches might "shelve" their corporate character and responsibilities, and fail to function properly within requirements of a corporation. The requirements are not onerous, but do assume the church will take seriously its legal structure and function accordingly. North Carolina imposes almost no requirements other than that the church function in keeping with its own Charter and Bylaws including those aspects which affirm its nonprofit status. There are no reported North Carolina cases of a church corporation having its corporate status questioned or denied.

NOTES

122 Legally, the association cannot simply "give" its liabilities to someone else. While the corporation can agree to assume the liabilities of the former church association, the association theoretically remains liable for those liabilities unless the person(s) or corporations to whom those liabilities are owed agree to release the association from liability. Therefore, as to any present liabilities of the association for which it or individuals associated with it may be liable, they are not released from their liabilities merely by the acceptance of the obligations by the new corporation.

123 According to the Charter and Bylaws of the association - not the new corporation.

124 In such a case, the corporation would simply be acting in a way in which the trustees acted, as holders of the property and legal identity of the body while the "church" persisted alongside but not coextensive or coexistent with the church. Besides creating a complex structure, this approach would seem to be inconsistent with some of the corporate goals: to control liability and clarify identity. There have actually been cases in which courts have held that church corporations were not coextensive with the church, and that the corporations were merely legal fictions to hold the property. These older cases which may have relied on the specific facts in those cases would not seem to reflect a proper understanding of the corporation and would defeat some of the purposes of incorporation. See Blount v. Sixteenth St. Baptist Church, 90 So. 602 (Ala. 1921), Hundley v. Collins, 131 Ala. 234, 32 So. 575 (1902), Hardin v. Baptist Church, 51 Mich. 137 (1883).

125 § 55A-9. The section also provides for a minimum three day notice to all directors of said meeting.

126 In many nonprofit corporations this would be much later in the agenda, but in the congregational structure of a Baptist church it is important to formalize the membership at this stage since they have the power to adopt the bylaws and elect the directors and officers.
The Form 990 requests information primarily on the nonprofit organization's income, expenses, assets and liabilities. Treas. Reg. § 1.6033-2(a)(2)(ii).

For cases dealing with IRS powers in relation to churches see U.S. v Coates, 692 F.2d 629 (9th Cir. 1982); U.S. v Dykema, 666 F. 2d 1096 (7th Cir. 1981); U.S. v Freedom Church, 613 F. 2d 316 (1st Cir. 1979).

Can't inquire into the religious activities themselves (Treas. Reg. §301.7605-1(c)(3)); must show good faith; show relevancy of inquiry to purpose; have a legitimate purpose; the information must not already be in IRS possession; and the proper administrative steps must have been followed. See U.S. v. Powell, 379 U.S. 48 (1964) establishing these requirements, and U.S. v. Holmes, 614 F.2d 985 (5th Cir. 1980) holding the Powell test as to churches requires necessity and not mere relevancy.

In part, amending section 511 and extending unrelated business income tax to churches.

© 1981. R.C. § 7605(c). These restrictions apply ONLY where the inquiry concerns a review of books of account to assess potential liability for unrelated business income taxes.

Income tax regulation 301.7605-1(c)(2) and (3) parallels 7605. The first sentence refers to the limited situation where the I.R.S. seeks to review the books of account to assess potential tax liability for unrelated business income. In such cases the two conditions noted in the statute are applicable. Where, however, the purpose is to assess "whether such an organization is a church" and involves an inquiry into the religious activities as well as the books of account, the limit is "to the extent necessary." See Treas. e.g., § 301.7605-(1)(c)(2) and (3).

See, e.g., United States v. Holmes, 614 F.2d 985 (5th Cir. 1980) U.S. v. Trader's State Bank,(No. 81-3275 9th Cir. 1983)(IRS summons held overly broad when it sought to compel production of all a church's bank statements, correspondence and records related to bank accounts, safe deposit boxes and loans.) For other cases dealing with the scope of such inquiries and first amendment analysis see U.S. v. Coates; U.S. v. Life Science Church of America, 636 F. 2d 221 (8th Cir. 1980); U.S. v. Freedom Church, 613 F. 2d 316 (1st Cir. 1979). As to the right to obtain donor lists, see U.S. v. Brigham Young University, 679 F.2d 1345 (10th Cir. 1982) and Savola v. Webster, 644 F.2d 743 (8th Cir. 1981) basically establishing a relevancy requirement.