



Legal Requirements for ID

Nonprofit corporations are not required to have members; however most churches incorporate as nonprofit corporations with members. Therefore, the following requirements assume that a church is incorporating with members. If a church chooses to incorporate without members then some of the requirements in this document will not be applicable.

Helpful links

Idaho Nonprofit Corporation Act (Idaho Statutes (IS) Title 30, Chapter 3):

<https://legislature.idaho.gov/statutesrules/idstat/Title30/T30CH30/>

State of Idaho Business Entity Forms Page: <https://sos.idaho.gov/business-forms/#corporationForms>

Federal Employer Identification Number (EIN)

To obtain an EIN go to the IRS website page for Employer ID Number (EINs):

<http://www.irs.gov/businesses/small/article/0,,id=98350,00.html>

For other tax information and requirements go to the Tax Information for Churches and Religious Organizations page: <https://www.irs.gov/charities-non-profits/churches-religious-organizations>

Areas Covered by State Law (this list is not meant to be exhaustive)

- Purpose and Powers
- Articles of Incorporation – how to file, amend and restate
- Bylaws – how to adopt and amend
- Members – qualifications, rights, removal, meetings, voting and quorum
- Board of Directors – number, term, election, vacancies, removal, meetings, voting and quorum
- Officers – required officers, duties, term, election, removal
- Books and Records
- Incorporators
- Merger
- Consolidation
- Dissolution, both voluntary and involuntary

Reasons for Incorporating

- In order for a church to have employees, bank accounts, own things (buildings, chairs, sound systems, etc.), or have tax-exempt status, the church must incorporate. A church does this by filing Articles of Incorporation with their state.

Reasons for Bylaws

- The state requires that the initial board of directors adopt bylaws.
- The Bylaws may contain anything to regular and manage the corporation as long as they do not conflict with the law or the Articles of Incorporation. The state sees the Articles as primary over the Bylaws. If there is any conflict between the Articles and Bylaws, the Articles will win.
- There is great latitude in what may be included in the bylaws (and what may be left out). However, it is important to note that in most areas, if you leave it out of the bylaws, then state law has something to govern your church in that area.

Articles of Incorporation

All corporations must file Articles of Incorporation with their state. The state provides a form that must be filled out and instructions on how to file this form with the state along with the appropriate fee.

The Articles must include the purpose and dissolution for the corporation.

Areas Covered by the Articles (this list is not meant to be exhaustive)

- Name
- Purpose
- Distribution of Assets upon Dissolution
- Registered Agent Name, Physical Address
 - The Registered Agent is a person who can be reached, in person, in order to be served, if necessary.
- Mailing Address
- Incorporators and/or Initial Board of Directors

Distribution of Assets upon Dissolution

In order to obtain 501(c)(3) status from the IRS, the purpose and dissolution must meet the IRS guidelines for a 501(c)(3).

Recommend Sample wording:

In the event of the dissolution of this church, the property of this church will be distributed to the organization currently known as Northwest Conservative Baptist Association, a 501(c)(3) tax exempt, nonprofit Conservative Baptist agency. If at the time of dissolution this agency is no longer in existence, the Elders shall redirect the assets to one or more 501(c)(3) tax exempt, nonprofit organizations sharing common doctrinal beliefs and goals.

Annual Reports

An annual report is required to be filed with the Secretary of State. Failure to do so can result in administrative dissolution.

Organizational Meeting

After the Articles of Incorporation have been filed with the state, the initial Board of Directors must call an organizational meeting to complete the corporation. The meeting is called by a majority of the incorporations or directors.

The incorporators must elect the initial Board of Directors at the organizational meeting if an initial Board of Directors were not named in the Articles.

The the Incorporators must adopt bylaws at the organizational meeting.

The initial Board of Directors must elect officers at the organizational meeting.

Bylaws

Initial bylaws shall be adopted by the initial board of directors, or members.

Members

State law speaks to the election or appointment, qualification, removal, and rights of members. In many cases the bylaws may override state law, but if the bylaws make no provision in an area, then the law is the guideline.

Removal of members set forth in bylaws must provide not less than 15 days prior written notice of the expulsion, suspension or termination and the reasons therefor; and an opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective day of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place. Any written notice given my mail must be first class or certified mail.

Member Meetings

State law speaks to the types of meetings, notice, voting, and quorum. In many cases the bylaws may override state law, but if the bylaws make no provision in an area, then the law is the guideline.

If the corporation has members, there must be an annual meetings of members.

- At the annual meeting the President and CFO shall report on the activities and financial condition of the corporation.

10% of the votes entitled to be cast must be represented in person, by proxy, by mailed written ballot, by absentee ballot, or by remote communication to constitute a quorum. *Bylaws may provide for a higher or lower quorum.*

Unless 1/3 or more of the voting power is present in person, by proxy, by mailing written ballot, by absentee ballot, or my remote communication, the only matters that may be voted upon at an annual or regular meeting are those matters that are described in the meeting notice.

10% of the voting members may call a special meeting unless declared otherwise in the bylaws.

The corporation must prepare and make available to any member an alphabetical list of members with name and address for notice and voting beginning 2 business days after the notice of a meeting is given. The list must be available at the corporate office or a reasonable place identified in the meeting notice in the city where the meeting will be held. The list must also be available at the meeting. *Religious corporations may limit or abolish this requirement in their bylaws.*

Notice of Meetings

Generally, all states require fair and reasonable notice of regular and special meetings to all members entitled to vote at a meeting. Some states require written notice, others allow for oral notice, but regardless of the means, **notice must be given to all member entitled to vote at the meeting**. Different states have specifics for what is considered fair and reasonable. Note that notice is to be delivered on certain timelines, and each state has guidelines for when a notice can be considered delivered based on the method of delivery.

Notice in all states must include the place, date and time of the meeting. Additionally, for special meetings, the purpose or purposes of the meeting must be included.

Notice for annual and regular meetings may be done by way of a schedule of meetings rather than providing notice for each meeting.

Notice may be oral or written. May be communicated in person, by phone, voicemail, telegraph, teletype or other electronic means or by mail or private carrier. Notice must be delivered no fewer than 10 days and no more than 60 days before meeting date. Timeline for notice being considered delivered: oral, when communicated; electronic, when transmitted; mailed, when received or 5 days after deposit with USPS. Bylaws may prescribe requirements not inconsistent with state law.

Directors

State law speaks to the number, election or appointment, terms, resignation, removal, vacancies, and meetings of directors. In many cases the bylaws may override state law, but if the bylaws make no provision in an area, then the law is the guideline.

The affairs of a corporation are managed by the board of directors. The bylaws may specify a different title for directors.

The board of directors must have at least 1 director. The bylaws may either fix or prescribe a manner for determining the minimum number greater than 1. Directors are elected at the annual meeting by the members unless bylaws state differently. The term of an elected director may not exceed 5 years. Directors may serve successive terms.

If the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may only be removed only if a majority of the directors vote for removal. Article or Bylaws may limit the application of this.

Director Meetings

Quorums for director meetings may not be less than the greater of 1/3 of the number of directors or 2 directors.

Officers

A religious organization is not required to have officers. Unless otherwise specified in the articles or bylaws there will be a president, secretary, and treasurer. An individual may hold more than one office, but not both president and secretary. The bylaws or board shall delegate to 1 of the officers responsibility for preparing minutes of the directors' and members' meetings and for authenticating records of the corporation.

The board of directors or bylaws may designate other officers.

Books and Records

State law speaks to the types of records a corporation must keep, as well as where they must keep them, for how long, and members' rights to inspect these records. In most of these things, the bylaws cannot change anything.

A corporation shall keep permanent records of minutes of all members, directors, and board committees meetings as well as actions by members and directors without a meeting; appropriate account records; and record of members with name, address, and class. At its principal office it shall keep articles of incorporation; bylaws; resolutions; minutes for the past 3 years; written communication to members within the past 7 years (including financial statements), a list of the names and addresses of directors and officers, and the most recent annual report for the state. Members may inspect at a reasonable time any records of the corporation with written 15-day notice unless bylaws limit or abolish this right. *The articles or bylaws may limit or abolish the right to inspect and copy any corporate record.*

Amendments

State law speaks to the procedures for amending bylaws. Bylaws may override state law, but if the bylaws make no provision for amendments, then the law is the guideline.

Sale, Lease, Exchange, Mortgage, or Other Disposition of Assets

A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation with members entitled to vote must follow procedures set in law.

Loans to directors and officers

Loans cannot be made to directors and officers outside of a loan or guarantee program available to all members.