

## Launching Your Church Legally

Welcome to Launching a Church Legally, my name is Galen Thompson, the Director of Education for North American Missions.

Compiling and completing the legal documents required to start a church are generally a church planter's least enjoyable piece of church planting. Where do I turn? What all do I have to do? Is there one place I can go and get all the information I need? It may seem daunting. There's no need to fear! We will guide you and provide you with resources and contacts. In this lesson, I will lay out nine essential steps to launching your church legally. You can do this! God has called you to plant a church that is both spiritually and legally aligned. You must implement simple legal strategies to guard what God has called you to protect.

Before we launch into the lesson, a big thanks goes out to [www.Startchurch.com](http://www.Startchurch.com) and [www.church-planting.net](http://www.church-planting.net) for their guidance in this session. Please know, I am not an attorney, and this lesson is not meant to replace legal advice. This lesson is a guide to follow in consultation with a legal professional. Consider each step to see if it is right for you. Take next steps as you feel appropriate for your church.

### Step 1 – Select a Church Name

Start with a great name. Most parents select the name of their child in advance of his or her birth. Like naming a baby, before an organization can incorporate and become tax exempt, it must first select a name. Your church's name identifies your church and what it stands for. Utilize your State's search engine with the link I have provided you ([US state links here](#)) or your Secretary of State/Province can perform the search for a small fee to make sure your name isn't already taken. If your name is already taken, make a slight variance to your name, such as adding a distinguishing factor and/or the name of your city: *Fifth United Pentecostal Church of Janesville*.

### Step 2 – Establish a Post Office Box or Address

I suggest obtaining a PO Box. A church name is all you need to get a box. Some local mail shops offer boxes with an actual address rather than a box number. A PO Box is especially helpful if starting in temporary rented facilities. If you move to another facility, you will continue getting your mail to the box without interruption.

### Step 3 – Articles of Incorporation

Articles of Incorporation are like the legal birth certificate for your church. I remember the pride and security of obtaining each of our three children's birth certificate **and** the pride and security of obtaining each of the three churches' Articles of Incorporation that we birthed.

- A. A common question is "Should I incorporate? If so, why?"
- B. Church is people – not a building! A Church, Ecclesia, is a meeting or assembly of God's called-out ones: that's people! It is true that when you get to heaven God is not going to ask to see your incorporation papers. So... then, why incorporate? It is an act of stewardship of the church's assets. Incorporating is the legal step of the church in forming a corporation that is a legal entity, to manage and protect its assets.
- C. It gives you limited liability, also known as the corporate veil. In essence this means if there was a lawsuit against the church, and the church board was operating properly, the lawsuit would come against the organization and NOT the people within it. No one knows one's future – what could possibly happen – but this single act protects the church – the people – that God has given you to lead.

- D. In the case of a lawsuit, wherein a church has not incorporated as a legal corporation, the wrongful conduct of the church can be impugned upon all the known members of the church, including you. However, books that are in order and having corporate status in place act as a shield for the pastor(s), board, and congregants and will alleviate the risk of personal liability.
- E. So... how do I incorporate?
- 1) Incorporating is accomplished through your state/province's Corporation Commission or office of the Secretary of State/Province. Consider consulting a non-profit attorney who can provide you with professional advice regarding unique laws or requirements within your state. In most states/provinces, an Application for Incorporation can be downloaded online. The application template generally includes the required non-profit wording.
    - The [UPCI Manual](#) ("Resources for Local Churches," pages 241-262) provides information on *Organizing a Church Legally* in the [United States](#) and [Canada](#). These excellent resources are thorough, and I advise you pause the recording now, download the resources, and follow them explicitly.
    - **Board of Directors:** Most likely, you will be required to identify the initial Board of Directors or Elders. In Step 5 (*Develop Bylaws*), you provide further clarification of how Directors are selected and what their responsibilities are. Consider your plan for Directors before submitting your Articles of Incorporation.
    - **Non-Profit Wording:** Specific non-profit wording is required for non-profits. This wording covers specific items such as instructions on how assets will be disbursed if the organization shuts down. Get this wording correct.
  - 2) Submit Articles of Incorporation and pay the fee.

#### **Step 4 – Obtain a FEIN: Federal Employer Identification (Tax ID) Number (EIN – Canada)**

This is like the social security number of the church.

- A. For US churches, the process of obtaining a Federal Tax Number is very simple and it's FREE. [Click here](#) to apply online via the IRS web site. Be careful to obtain an EIN for a 'Church' not a 'Ministry' – this matters in the area of tax reporting. Ministry Non-Profit is required to file a Form 990 each year to IRS and report their income, whereas filing for a 'church' is exempt from form 990.
- B. For Canadian churches, visit <https://www.ic.gc.ca/eic/site/cd-dgc.nsf/eng/cs04970.html#toc-01>.

#### **Step 5 – Develop Bylaws (A Protective Shield)**

This is an important document. Bylaws define your beliefs, the operating procedures, and guidelines for the administration of your church (ecclesiastical authority). It should cover membership requirements, membership privacy, positions, responsibilities, how decisions are made, and requirements for official meetings, and record keeping. Solid Bylaws are a key factor in preventing disunity and confusion in the future. A church can be held legally responsible for failing to follow their bylaws. So, define procedures clearly and follow them consistently. Have your Bylaws reviewed and approved by a locally licensed attorney before putting them into effect.

A sample form of local church bylaws can be found in the [UPCI Manual](#), under "Local Church Government," pages 118-123.

#### **Step 6 – Affiliation and/or Obtain 501(c)(3) Recognition**

**Affiliation** is the act of a church agreeing with the Articles of Faith of the United Pentecostal Church and officially (legally) connecting or associating with the organization. This is accomplished on a motion duly made and seconded, and passed by the church board. An Application for Affiliation can be found [here](#).

Explanation: The primary benefit of affiliation is to provide procedural safeguards in times of transition or dispute. These procedures are designed to ensure adequate notice of business meetings, a fair and orderly deliberation process with proper oversight, an opportunity to hear opposing views, and respect for proponents of opposing viewpoints. The church is protected against a leader who falls into grave sin or false doctrine. It protects against a disgruntled member who seeks to undermine the pastor or Board. Affiliation does not make a local congregation liable for the actions, responsibilities, or debts of the district or the global organization. An affiliated church is still a distinct legal identity that is responsible only for its own actions. A church, at any time, can vote to disaffiliate. (Adapted from [Explanation of Affiliation](#)). Affiliation legally connects you to the central organization: UPCI. This is important when it comes to 501(c)3 status with the IRS.

### **Church Exemption Through a Central/Parent Organization.**

“A church with a parent organization may wish to contact the parent to see if it has a *group ruling* [which the UPCI does]. If the parent holds a group ruling, then the IRS may already recognize the church as tax exempt. Under the [group exemption process](#), the parent organization becomes the holder of a group ruling that identifies other **affiliated churches** or other affiliated organizations. A church is recognized as tax exempt if it is included in a list provided by the parent organization. If the church or other affiliated organization is included on the list, **it doesn't need to take further action to obtain recognition of tax-exempt status.**”

Therefore, in the United States, affiliated churches are covered by the UPCI's group exemption number. An Application for Affiliation can be found [here](#) (under the Resource tab at [upciministers.com](#)). Submit the completed UPCI Application for Affiliation to your District Secretary with a \$5.00 application fee. To document an affiliated church's federal tax exemption status [501(c)(3)], a pastor may obtain a copy of the group exemption letter of determination for the IRS in the name of his or her church at [upciministers.com](#).

- North American Missions requires church plants to be affiliated with the United Pentecostal Church prior to applying for any funding.
- A Church Board of an affiliated may still choose to file for their own 501(c)(3) status independently of the UPCI group status.

Churches who not covered by the UPCI's group exemption number must apply for their own 501(c)(3) status. Why should I obtain 501(c)(3) status?

Congress passed acts of grace that allows a church to be tax exempt. However, to protect from fraud, Congress passed a set of criteria that an organization needs to meet in order to qualify for that exemption. That list of requirements is in 501(c)(3) of the IRS Tax Code. No church is exempt from adhering to the rules and requirements of 501(c)(3) of the IRS Tax Code and yet claim tax deduction. [Click here](#) for the IRS 1023 application form. The IRS site also has separate detailed [instructions](#) for completing the form. The 501(c)(3) application is by far the most tedious and time demanding step in the organizational process. Many choose professional help with this application process.

Also, apply for State Tax Exemption, which is available in about half of the states in the US. Call your state or providence to find out if you qualify for this exemption. This allows the church exemption from state sales tax. Churches that own property will also need to file for exemption from state and local property taxes.

## Step 7 – Pastoral Compensation Agreement

A Pastoral Compensation Agreement is required for a church to operate within IRS compliance. Fines are very stiff for the lack of or an improper compensation agreement. Thankfully, there are only three keys to Pastoral Compensation Compliance:

1. Section 4958 allows the pastor to fully participate in the discussion about the compensation package. However, the pastor cannot set or vote on the salary decision. If audited, Section 4958 levies a 25% tax on a pastor-set salary.
2. The offer must be in writing (Contract or Pastoral Compensation Agreement).
3. The contract or agreement must be signed by the Board or the Treasurer.
  - a. Have agreement discussed on
  - b. Voted on
  - c. Signed and recorded in board meeting minutes

Minister's compensation should include the following five components.<sup>1</sup> Consider the tax implications of each component as you design the compensation package. The way you allocate these components can have a significant impact on the taxes.

### 1. Salary

The salary is the basic amount paid to the minister, not including housing, allowances, benefits, or reimbursable expenses. Depending on the minister's individual tax and housing situation, some or all of the salary may be subject to federal income tax and self-employment tax.

Ministers are considered, by the IRS, employees for income tax purposes and self-employed for Social Security purposes. A minister's salary can be subject to federal, state, and local income taxes.

### 2. Housing/parsonage allowance

A second, major portion of a minister's compensation is housing, which is provided either in the form of the rent-free use of a church-owned house or a housing allowance. Section 107 of the Internal Revenue Code allows ordained, licensed, or commissioned ministers to exclude from federally taxed income some or all of the cost of providing their principal residence. The amount of total salary designated for housing must be established in advance by a vote of the church or official board and reported in writing to the minister before payment of a housing allowance begins. For example, a minister receiving a cash salary of \$50,000 might have \$20,000 of the cash amount designated as a housing or parsonage allowance. Only \$30,000 would be considered taxable for federal income taxes.

The amount of the allowance should cover the cost of maintaining and furnishing the primary home:

- mortgage or rent payments
- taxes
- repairs
- insurance
- furnishings
- utilities, etc.

For federal income tax purposes, the excludable amount of the housing allowance is limited to the lesser of:

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<sup>1</sup> Adapted from <https://www.clergyfinancial.com/guide-to-minister-compensation/>

- a. The amount designated by the church, or
- b. The actual amount spent on housing by the minister for the year,
- c. The fair rental value of a furnished house, plus utilities such as gas, electricity, oil, telephone, and water.

The housing/parsonage allowance may be renegotiated as needed.

### 3. **Social Security Allowance**

While ministers are employees for federal income tax reporting purposes, they are self-employed for Social Security purposes. This “dual status” means they are not subject to withholding requirements for the employee’s share of Social Security and Medicare taxes. Instead, they pay a Self-Employment Contributions Act (SECA) tax. Churches are not permitted to pay the SECA tax for their ministers; however, most churches assist ministers by providing them with a Social Security Allowance of at least 50% of the SECA tax. This provides an equivalent of Social Security/Medicare (FICA) taxes that the church would pay on behalf of a non-clergy employee. However, note, the social security allowance must be reported as taxable income.

Example:

Salary – \$30,000

Housing – \$20,000

Total – \$50,000 x .0765 = \$3,825.00

Social Security Allowance – \$3,825.00

### 4. **Accountable Reimbursement Plan**

The church should establish an accountable reimbursement policy. Ministers are allowed to exclude all reimbursed expenses from their reportable income. The exchange of reimbursement without or not covered in an Accountable Reimbursement Plan becomes taxable income! Reimbursable expenses are those costs, reimbursable to the minister, that are incurred in the performance of their duties. They are not part of the minister’s compensation. They are “business” expenses for which the congregation is responsible.

Here are 7 Steps to Create a Reimbursement Program:

1. Create a written policy that complies with Section 62a requirements
2. Have the policy voted on and adopted by the Board of Directors
3. Have the policy signed by the Treasurer
4. Put the policy in your Ministry Corporate documents
5. Create a reimbursement form and require it to be used by all reimbursements
6. Present the filled-out form and the receipt to the Church Treasurer
7. Cut a check for the amount, keeping the filled-out form with the check number noted on it in your records for three years.

The church reimbursement policy should include the following, but not limited to:

- office supplies
- religious material
- books, publications, subscriptions
- meals
- seminars
- dues and memberships

- continuing education
- mileage
- travel, etc.

## 5. **Benefits package**

A strong benefits plan includes [retirement plan contributions](#) and medical, life and disability coverage for ministers and other employees.

Benefit packages can also include:

- Paid holidays
- Vacation and sick accruals
- PTO
- Continuing education leave
- Sabbatical leave
- Parental leave
- Bereavement leave
- Personal leave
- Military leave
- Dental and vision care

## **Step 8: Keep Good Board Meeting Minutes**

- A. Documenting your board meeting is serious business! Federal law requires minutes to be taken and preserved. In a court of law, you will live or die by your board meeting minutes. You must document the board's pertinent discussions. Without minutes you have no legal bylaws, reimbursement policy, or housing allowance provision. In fact, if you do not have actual annual board meeting minutes your church is operating illegally. Your board meeting minutes show that you are running your church in compliance.
- B. A Secretary must keep secure minutes of all board meetings.

## **Step 9: Manage Risks**

As you open your ministry's doors and invite the community to enter your building, there's an increased risk of injury, property damage, and legal action. These risks can weigh heavily on the minds of ministry staff and administrators, but proactive risk management frees your team to focus more fully on outreach.

**Look into insurance options.** Consider purchasing the following types of insurance for your church:

- Property and liability coverage
- Commercial auto coverage for church-owned vehicles
- Workers' compensation and employer's liability coverage
- Umbrella/excess liability coverage (extra protection based on your organization's needs)

The Board of Trustees should evaluate risks annually.