

Section 3 – Incorporation and Boards of Trustees

This Section covers two major issues. The first section focuses on the *Book of Order* requirements related to incorporation for congregations as well as presbyteries, synods, and the General Assembly. The second section focuses on the duties of trustees in a more general way.

Remember: Almost all corporate and trustee matters are governed by state law. An attorney familiar with your state's laws in these areas should be engaged to help you in this work. They should also review all sample forms to ensure that the forms comply with controlling state law.

I. Requirements of the Presbyterian Church (U.S.A.) Constitution

The *Book of Order* directs that whenever permitted by civil law, each congregation shall cause a corporation to be formed. G-4.0101. This is also true for the mid councils and the General Assembly. G-4.0101.

The church itself does not incorporate; instead, it causes a corporation to be formed.¹ This is a recognition of the difference between ecclesiastical jurisdiction (reserved to church courts) and civil jurisdiction (in civil courts). See **Section 1: Basic Organization of the Presbyterian Church (U.S.A.)**, for a discussion of this topic.

Corporate statutes generally refer to a board of directors. The *Book of Order* uses the term trustees instead of directors. This discussion will use trustees.

Chapter Four: The Church and Civil Authority sets out various directives regarding incorporation at the particular church level. These provisions are set out at G-4.0101 and G-1.0503:

1. Only congregation members shall be members of the corporation and eligible for election as trustees. G-4.0102.
2. Trustees shall be elected in the same manner as ruling elders and deacons. G-4.0101.
3. Where permitted by civil law, both ecclesiastical (church council) and corporate matters (as the corporate board of trustees) may be conducted at the same congregational meeting. It is the preferred model. G-1.0503. [NOTE: the minutes of such a meeting should reflect which body is taking certain actions recorded in the minutes: the council, or the corporate board.]
4. Some states, however, prohibit this dual capacity. Also, some churches choose to have a board of trustees different from the session. If either of these is the case, another method of electing trustees may be established. Any such alternate method shall provide for a nominating committee

¹ Before forming a new church corporation, church leaders should determine if a church corporation already exists for that congregation. Church leaders should consult the website for their state's Secretary of State under corporation, corporation names, to determine if a corporation exists for their congregation. In addition, if a church has been in existence for some time, it may have been incorporated at the county level, so it is important to also check with the County Recorder's Office to determine if such a corporation exists at that level (this is particularly so in New York State). Whether at the state or county level, it is possible that the congregation incorporated under a different name than that by which the church is currently known.

elected by the corporation and for trustee terms the same as those provided for ruling elders. G-4.0101. Other important elements arise when the session is different from the board of trustees:

- a. The session should designate the specific functions of the board of trustees (consistent with the *Book of Order*) so it understands its duties and authority. Such planning will help avoid disputes. G-4.0101
 - b. Always remember the session, not the board of trustees, has responsibility for the budget, mission giving, and property. G-3.0205
5. The corporation and its trustees perform their work subject to the authority of the session. G-4.0101. The power and duties of trustees shall not infringe upon the powers and duties of the session or of the board of deacons. G-4.0101.
6. Pursuant to G-4.0101, the corporation and its trustees shall have the powers to
- a. receive, hold, encumber, manage, and transfer real or personal property for the church,
 - b. accept and execute deeds of title to such property,
 - c. hold and defend title to such property,
 - d. manage any permanent special funds for the furtherance of the church's purpose

Note: The above functions are performed subject to the authority of the session and the Presbyterian Church (U.S.A.) Constitution. Moreover, when the board of trustees moves to buy, sell, or mortgage real property, it shall act only after the approval of the congregation in a duly constituted meeting. See also G-4.0206 for the circumstances where presbytery approval is also required.

Recall that the members of the corporation are the members on the church's active roll. G-4.0101. When corporate membership meetings are required, the following applies:

1. Where permitted by civil law, corporate and ecclesiastical business can be conducted at the same meeting. G-1.053.
 - a. For annual and special meetings of the congregation G-1.0501 shall apply.

Two additional points bear mention:

1. Because teaching elders are not members of the congregation (they are members of presbytery), they are not members of the corporation. G-4.0101. Generally, this means teaching elders do not serve as officers of the corporation either. Some states' civil corporation laws allow nonmembers to serve as officers of the corporation. While such a provision would allow the teaching elder to serve as an officer, the preferred method is that the teaching elder not serve in such a capacity. The corporation president, not the teaching elder, should preside at corporation meetings.
2. The *Book of Order* does not limit councils to one corporation, but this is the most common and preferred structure. Generally, a single corporation should be able to perform all the civil law functions a typical church or mid council needs. When a council chooses to establish second or third corporations, it must ensure:
 - a. all the Constitutional requirements noted above are in place;
 - b. every power of the subsequent corporation is very carefully defined, and such powers are integrated securely in the session (202nd General Assembly (1990), p. 243);
 - c. clarity between the duties and authority of the first corporation versus those of subsequent corporations.

Note: see Section 8 – Taxation. Having a second or third corporation may have tax implications.] An example of a second or third corporation includes separately incorporated camps, daycares, and

foundation/endowment boards. Once again, there is no legal necessity to separately incorporate such boards. If, however, your council chooses to do so, be certain the above requirements are met. Attention to such detail in the initial incorporation process will best prevent future disputes and drifts away from the council.

A. Forming a Local Church Corporation

The *Book of Order* directs that all councils shall cause a corporation to be formed unless incorporation is prohibited by civil law. The first step in the incorporation process should be the retention of qualified legal counsel.

Under the law, a corporation is a separate legal entity from its officers, directors, and its incorporators. Corporate powers are conferred by the articles of incorporation (sometimes called the corporate charter) and by the state corporation statute. As noted above, corporate requirements are also set out in the *Book of Order*. The corporate form provides a continuous entity for the ownership and management of property and for carrying out the business and programs of the corporation. Assertions of liability for acts undertaken by the corporation may be satisfied, if proved, from corporate assets only, rather than from personal assets of the corporate directors/trustees. Note, however, that in cases of fraud against the corporation by a director/trustee, or where corporate formalities are not followed, a case can be made that the corporation is acting as an alter ego of its directors and personal liability can be imposed.

A corporation derives its powers and existence from the state. The sources of its powers are its articles of incorporation and the state statute under which the corporation was organized. The statutes grant numerous specific powers relating to organization, the use and conveyance of property, the election of officers, the amendment of articles of incorporation and bylaws, the right of dissolution, and the like. **Care should be taken to ensure all corporate documents conform to the *Book of Order*. See the sample corporate articles (see Appendix A) and bylaws (see Appendix B).**

The express powers of a corporation are those related to the activities in which the corporation is engaged that are enumerated in its articles of incorporation. Implied powers arise out of reasonable inferences about the scope and intent of the language of the corporate articles as they relate to certain facts and circumstances. Great care should be taken by the church corporation to ensure that its acts and transactions do not extend beyond its limits of authority. Such acts are termed *ultra vires* and should be expressly barred by the corporation's articles of incorporation.

Procedures for forming and organizing corporations vary from state to state. However, general incorporation statutes in most jurisdictions allow for the issuance of articles of incorporation to certain persons by a designated state official (usually the Secretary of State) in compliance with the provisions of the corporation statute. The typical state incorporation statute requires:

1. The preparation and execution of the articles of incorporation by the incorporators, and the acknowledgment of their signatures before a notary public.
2. The delivery of the articles of incorporation to the Secretary of State, including any other required incorporation papers and payment of required organizational fees.
3. Filing of the articles by the Secretary of State, and subsequent issuance by her of the certificate of incorporation.
4. The recording of the Certificate and Articles of Incorporation with the Recorder of Deeds, or any other county officials as required in the county or parish where the corporation is located.
5. The convening of the first corporation organization meeting at the call of the directors to adopt bylaws, elect officers, and transact other business.

6. The procurement of a corporate seal and the commencement of business.

The articles of incorporation generally include the following provisions:

1. The name and address of the corporation.
2. The address of its registered agent for the service of process, notice, or demand upon the corporation. Usually, the agent will be the board of trustees, inasmuch as it manages the business of the church about property and other legal affairs.
3. The duration or tenure of the corporation, which may be perpetual or limited. Church corporations are typically perpetual in duration.
4. The names and addresses of the incorporators.
5. A statement of purpose for which the corporation is formed.
6. The names and number of trustees constituting the initial board of trustees, and the names and addresses of those who are to serve as the initial trustees.
7. Membership of the corporation.
8. The powers of the corporation.
9. Procedures for the adoption of bylaws by the board of trustees.
10. Definition of the quorum of directors needed to transact corporate business.
11. Procedures for amending the articles of incorporation.
12. Provisions for the distribution of assets upon dissolution of the corporation.

See the beginning of this Section for the specific requirements for corporations formed by Presbyterian Church (U.S.A.) councils. Also see the sample corporate articles (Appendix A) and sample corporate bylaws (Appendix B), which are set out below in the Section D.

After completion of the incorporation, care should be taken to deed all property into the new corporation. Real property can be deeded by use of quit claim deed. This transfer process presents an excellent opportunity to review the title to property, to determine if there are any limitations or reversionary interests and to make sure that the property trust clauses are put into the new deeds. See **Section 2: Property** for suggested trust language to be used in deeds.

State incorporation statutes vary. **Many states now have special not-for-profit corporation statutes or religious corporation statutes that significantly decrease the reporting requirements and filing costs for such corporations. Local counsel should be instructed to incorporate under such statutes if possible.** Some states (principally in the northeast) have incorporation statutes for the particular mainline denominations: Presbyterian, Congregational, Methodist, Lutheran, and so on.

Note: Sample corporate articles and bylaws are included in Section D. Each state has different incorporation requirements. These forms should be a useful starting point for local legal counsel.

B. Fiduciary Duty of Trustees

Church trustees have fiduciary obligation to hold property interests for the benefit of another — the local church and, per G-4.0203 of the Constitution, the denomination. A fiduciary relation is one in which the law demands of one party an unusually high standard of ethical or moral conduct with reference to another. The settlor of a trust is the person who intentionally causes the trust to come into existence. The trustee is the individual or entity which holds the trust property for the benefit of another. The trust property is the interest in property which the trustee holds, subject to the rights of another. The beneficiary is the person for whose benefit the trust property

is to be held by the trustee. The trust instrument is the document, whether a deed, agreement or will, in which the settlor expresses an intent to have a trust and sets forth the trust terms, that is the details as to beneficiaries and their rights and the duties and power of the trustee. In some cases, trusts are created without a writing and hence there is no trust instrument as such. In such a case the terms of the trust are determined by evidence of the settlor's intent.

The law imposes two basic duties on all trustees: the duty of loyalty and the duty of care. The duty of loyalty requires that the trustee take no part in an action regarding trust property in which she would have an actual or potential conflict of interest without having previously disclosed that conflict to the board. **Decisions must be made by the trustee looking only toward the interest of the beneficiaries and not to the trustee's own interest.** Any form of self-dealing is prohibited, and any profit or advantage gained by the trustee due to self-dealing transactions must be returned to the beneficiaries. When a conflict or potential conflict does arise, the trustee must disclose the conflict or potential conflict prior to any discussion of the decision to be made. Preferably, this disclosure should be in writing and given to the secretary and chair of the board. This procedure will provide protection to a trustee who might later be challenged on whether or not she actually did make the proper disclosure. **Any trustee with an actual or potential conflict of interest should abstain from any discussion or action on the issue in question.** Care should be taken to document the abstention in the minutes in order to provide a record of it in the event of a challenge on this point. Trustees who breach their fiduciary duty of loyalty may be required to reimburse the trust for any loss suffered by the trust due to that breach.

Courts often deal harshly with those who deal for their own benefit in a trust situation. Justice Cardozo, in the case of *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928), made a famous statement concerning the high standards the trustees must uphold:

“Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden by those bound by fiduciary ties. A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty ...”

This statement indicates the seriousness with which courts look at potential breaches of loyalty on the part of trustees.

In local church settings, disclosure of the actual or apparent conflict should be followed by the individual's abstention from participation in the decision. These situations can arise, for example, in building situations (where members are contractors), in financial management areas (where members are bankers or investment advisors), or in insurance (where members are insurance agents). So long as the potential conflict is properly disclosed, and the party in conflict abstains from participation in the decision or selection process, the trustees can still elect to do business with the disclosing party. However, the board of trustees collectively has a legal duty to ensure that its decisions are made in the best interests of the trust beneficiaries. This standard requires extra care when the trustees are considering doing business with an organization in which one of the trustees has a personal or professional interest.

The second primary duty of all trustees is fulfillment of the duty of care. Trustees are required to act in good faith and in a manner they believe to be in the best interests of the beneficiaries and of the trust. They should act with such care as an ordinarily prudent person would use under similar circumstances in the management of her own affairs. Thus, trustees are required to be diligent in attending meetings and in making sure they are properly informed as to that various aspects of the decisions to be made. **Trustees who do not have time to attend meetings should resign from the board.** Attendance at meetings and reading and understanding relevant materials concerning

the issues at hand are vital. To the extent that any board of trustees is making decisions, it needs a reasonable basis for making those decisions.

Given the facts available at the time of the decision, trustees are required to use their best judgment in making their decision. Trustees are not held responsible for facts that they could not have known at the time the decision was made. Decisions made in good faith and with reasonable care should be upheld if challenged even if they prove not to be the best decision in the light of later unfavorable developments. However, boards of trustees must keep track of the information available to and considered by the board in making the decision in order to answer such charges. Regular and accurate minutes, including exhibits of information considered, should be kept by boards of trustees.

Trustees are not absolved from the requirements of the duty of care by delegating their responsibility to others. For example, should a board of trustees entrusted with a large sum of money engage an investment adviser? The board still has the ultimate responsibility for the funds, even if the adviser is given broad powers to make trust investments. The trustees need to be able to demonstrate that proper procedures were used in choosing advisers. Persons engaged to handle funds or to do legal work should be trustworthy and competent in the areas for which they are engaged. Trustees may rely on delegates so long as the initial decision in choosing the delegates is well-founded and so long as the trustees have no basis for concern about relying on the delegates. Any trustee who has knowledge, from whatever source, that would cause the reliance of the board of trustees on a particular person to be unwarranted must disclose that knowledge to the board. If the trustee does not make the disclosure and allows the board to rely on a delegate she knows to be unreliable, the trustee is not considered to be acting in good faith any may be personally liable for breaching her fiduciary duty of care.

C. Investment of Funds

The local church board of trustees has broad powers in regard to investment of local church funds, including funds received from wills and bequests and funds received from operations. In regard to bequests made under a will or written gifts in trust made by living donors, the board of trustees is bound to receive and administer such bequests subject to session direction, in accordance with local law, and the terms of the bequest or trust. Where the gift or bequest is unrestricted, the trustees may make a recommendation regarding the use of the funds to the session, but it is the session that is the final decision-maker on policy to be followed. It is an excellent idea for the session to develop guidelines and to give prospective direction to the trustees in regard to receipt and administration of funds. Trustees should be cautious and consult with legal counsel about the benefits versus the burdens of accepting restricted gifts or bequests.

The essential elements of most trusts are (1) designation of a beneficiary and a trustee, (2) sufficient identification of the funds or other assets to enable the passing of good title to the trustee, and (3) actual delivery of the property to the trustee with the specific intention of passing title of the property to the trustee. In the particular church, the trustees must be sure that the terms of the trust agreement as spelled out by the donor are carried out. For example, should the trust provide funds exclusively for loans to students, only loans to students may be made. The funds could not be diverted and used for scholarships because that would be a breach of the trust agreement. Any such action taken in violation of the trust agreement by the board will subject the individual trustees and the board as a whole to liability for a breach of fiduciary duty in not following the instructions of the trust. Trustees should be extremely careful to make sure that restrictions on the use of trust monies are carefully reviewed and followed where legally permissible. Courts and juries often deal harshly with boards of trustees when trust funds are perceived to have been misappropriated or misused in contravention of express restrictions and conditions placed upon such funds.

If bequests, legacies, and trusts are encumbered with restrictive covenants which may guarantee the obsolescence of the purpose of the gift or otherwise impossible to administer, the session may wish to instruct the trustees to reject it. The session, pursuant to G-4.0101, has authority to direct the board of trustees regarding acceptance or rejection of any gift or bequest for the use and benefit of the particular church. In turn, trustees should make the council aware of the necessity for responsibility in the construction and administration of all trust bequests.

Local trustees should carefully examine any actions taken in regard to an investment or distribution of funds held in trust. If a trustee becomes aware of a situation where the funds are being improperly invested, distributed to the wrong parties, or where proper reports by investment advisers or the trustees are not being made, she should ask why proper actions are not being taken. Failure to take action in such a case could expose a trustee with such knowledge to a charge that the duty of care was breached. When necessary, reporting procedures are not followed, it is difficult to argue later that the proper standard of care was upheld in the handling of the trust or church funds.

The trustees are responsible to carry out the donor's intent, if it is expressed, for the investment of principal and distribution of income. In most jurisdictions, trustees making decisions about trust investments must assume the posture of the prudent person investing her own funds for her own purposes. The prudence required involves sufficient diversification of investments to minimize risk in order to preserve capital as well as consideration of the income potential of any investment. Funds also must be invested in conformity with the laws of the state in which the church is located.

Whenever the board of trustees is dealing with gifts and trust property, it is acting **subject to the direction of the session**. The board of trustees may make recommendations and interim decisions on management of property. However, all significant decisions and permanent actions should be approved by the session.

Routine receipts of gifts, sale of securities, and administration of the gifts is handled by the board of trustees. In the event there is some unusual question regarding a gift of securities, the session should be consulted. **Receipt of unrestricted gifts of securities in the normal course of events presents no problem. However, when considering accepting securities or other property subject to restrictions as to use or sale of the property, it is wise to obtain approval of the session or to act in accordance with previously enacted session policies regarding restricted gifts.** For example, if a donor wished to give \$500 in a restricted fund, only the income from which was to be used for scholarships for needy church members to attend a specific Presbyterian Church (U.S.A.) related college, the administrative responsibility of the choice to award this income is likely greater than the benefit it provided. Therefore, the decision might be made to encourage the donor strongly to take the restriction off the gift (explaining why administering such a bequest would be unduly cumbersome) or suggest an alternate trustee. Likewise, if a donor gave property with a restriction on sale or use, such restrictions could present a problem. The church or the board should consider developing a policy (approved by the session) to be used in accepting or rejecting gifts, bequests, and the obligations of trust administration.

When receiving a specific gift, it is important that the trustees consider the appropriateness of retaining the security or selling it and investing the proceeds. Typically, if the church portfolio contains a large percentage of investment in a single stock or security, there are problems with lack of diversification. A prudent person standard would suggest selling of the security to have a more varied portfolio mix. Also, concerns for investment return and long-term growth could dictate a more diverse portfolio. When a decision has been made to sell or purchase securities, a board resolution should be adopted.

Particular concern should be given to the handling of original stock certificates and related original evidence of ownership. It is advisable to use a stockbroker to handle stock transactions. If the broker is reputable and properly bonded, it may be easiest to keep the church's securities in street name accounts at the broker's office, i.e., the original certificates are not held by the church trustees but rather by the stock brokerage house itself. Be aware that lost or misplaced certificates are expensive and cumbersome to replace. Certificates should be mailed by certified mail or return receipt requested or, if possible, personal delivery with a receipt from the brokerage house.

Because the session has the ultimate authority over bequests, gifts, and trusts, it should consider drafting a policy for the acceptance or rejection of such property. When receiving bequests and gifts that have a restricted purpose, it is important to memorialize the terms of the bequests, keep them properly organized in the church records, and keep proper financial accounting. The board of trustees, in consultation with the session, should consider adopting investment guidelines and standards.

There are often legal and tax issues involved in dealing with property and the administration of trusts. Consult with an attorney or tax advisor to obtain an expert opinion on legal or tax questions. There are significant tax advantages to the donor who contributes appreciated securities. Donors of security or other non-cash gifts worth more than \$500 must file Internal Revenue Service Form 8283, Non-cash Charitable Contributions. This form acknowledges that a proper evaluation has been made of the property, which in the case of regularly traded securities would be straightforward. The church is required to sign Part Four of Form 8283. Under that form, the church must acknowledge receipt giving its name, Employer Identification Number, and a signature by the appropriate board representative, typically the chairperson, who is empowered to receive gifts.

Should the board decide that the church will sell the securities within two years of the date of receipt, it is necessary to file Internal Revenue Service Form 8282, Donee Information Return, with the Internal Revenue Service and send a copy to the donor. An exception applies to certain publicly traded securities and items having a value of \$500 or less if the donor identified the items and signed the statement in Part 2 of Form 8283.

The board of trustees should prepare an annual written report to the session and include in that report the amount of income received from income-producing property, a detailed list of expenditures in relation thereto, a list of all trusts in which the local church is a beneficiary, how those funds are invested, and an explanation of the use and goals for which those funds are expended or applied.

D. Church Property

G-4.0203 of the Constitution states that all property held for a particular church, presbytery, synod, the General Assembly, or the Presbyterian Church (U.S.A.) is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). The legal titles to property may be held by corporations, trustees, or unincorporated associations. When the trust is created, the rights of ownership to the property are separated into legal and equitable rights. The benefits of the property go to the holders of the equitable rights, known as the beneficiaries. Title to real property as listed on a deed is held in the name of the church corporation (unless a particular state does not allow for a church to incorporate) and the trustees, in their fiduciary capacity, manage the church's real property subject to the direction of the session and the congregation. The trustees hold the legal title to the property and are considered to be in fiduciary relationship with the beneficiaries. The fiduciary duty to the beneficiaries is very strong. It requires the trustees to administer the trust solely for the benefit of the beneficiaries. In denominational terms, a local church board of trustees must administer the property solely for the benefit of the members of the

denomination and, in particular, the members of the denomination who are members of the local church. See G-4.0203.

See Section 2: Property, for a detailed discussion of the trust clause, property transfers, and other aspects of church real property. Regarding church property, the board of trustees has certain responsibilities to the whole church as established in the Constitution. The trust clause set out at G-4.0203 has been upheld by both state and federal courts as valid expressions of the rights of the denomination, **through its presbyteries**, to retain church property where local congregations are in schism, have disbanded, or have been discontinued and the property has been abandoned. Great care must be taken to ensure that these clauses are protected in the event of legal attack. Written authorization of the presbytery is necessary for the trust clause to be released in conveyances of mortgages by the local church board of trustees. A limited exception is set out at G-4.0208. See Section 2: Property, for a full discussion. All involved must be especially aware of the risks and responsibilities inherent in the handling of real estate transactions. Competent counsel in the area of real estate law should be engaged and great care taken in any real property transaction. If such transactions are not carefully handled, questions regarding title validity and restrictions on the use of the property that could have been resolved at the outset may lie dormant for years. These questions can become major problems when future efforts are made to convey the property or to use it for other purposes. It should be noted that prior to a recommendation to discontinue the use of church property as a particular church (or before any action is taken to consider local church property abandoned), the presbytery should obtain and consider an opinion of legal counsel. This legal work will be much simpler if the groundwork has been properly laid years earlier as a part of the original real estate transaction.

Where real property is being conveyed to a local church, every effort should be made to take the property free of any encumbrances such as possibilities of reverter to the donor's heirs if the property is no longer used for church purposes. These steps should be taken because local churches may find it necessary in the future to relocate or to use the property for other purposes. Reverter or other restrictive use clauses could lead to the property reverting to the heirs of the donor with no compensation to the local church. Current deeds should be reviewed for potential restrictive clauses. An attorney familiar with real estate should be consulted about the best course of action if such clauses are included in the property deeds. Be sure the attorney is also aware of the relevant trust provisions in the Constitution. **It is strongly advised to use the following clause or similar language in deeds:**

The premises herein conveyed shall be used, kept, and maintained by the grantee for Divine Worship and other purposes of its ministry as a particular church belonging to the Presbytery of _____ (or its legal successors), subject to the provisions of the Constitution of the Presbyterian Church (U.S.A.). The grantee holds the property in trust pursuant to the provisions of the Constitution of the Presbyterian Church (U.S.A.).

Although the local church board of trustees does not have program responsibilities in the local church structure, it is responsible for maintaining and repairing the local church property so that the programs of an individual church can be carried out. The church trustees should inspect the property annually to determine upcoming maintenance needs. Record keeping of prior maintenance expenditures can be useful in planning when future expenditures can be expected, such as when a new roof might be needed, when the furnace might need to be replaced, and so on. By systematizing the repair and maintenance function through careful record keeping and annual inspections, the trustees will be able to submit budgets adequate to provide for the financing of needed repairs and maintenance. In addition, ideas for property use policies are often generated within the board of trustees. Such policies should keep program considerations in mind and be developed in conjunction with the teaching elder and the session. In preparing policies on the use

of the church buildings and property by church groups and community groups, flexibility should be a primary consideration. Factors to be considered include the purpose and nature of the groups, the possibility of additional maintenance expenses, the cleaning and locking of the property after the use is completed, the supervision of the groups using the church, and so on. It is important to remember, however, that final decisions regarding the programmatic nature of church property use are not vested in the board of trustees but in the session. See Section 2: Property, for a detailed discussion of leasing the church's property.

E. Annual Report and Record Keeping

It is advisable for the board of trustees to make an annual report to the session. Elements of an annual report might include the following and should be recorded in the minutes:

- a. The legal description and the reasonable valuation of each parcel of real estate owned by the church.
- b. The specific name of the titleholder in each deed of conveyance of real estate to the local church.
- c. An inventory and the reasonable valuation of all personal property owned by the local church.
- d. The amount of income received from any income-producing property and a detailed list of expenditures in connection therewith.
- e. The amount received during the year for building, rebuilding, remodeling, and improving real estate, and an itemized statement of expenditures.
- f. Outstanding capital debts and how contracted.
- g. A detailed statement of the insurance carried on each parcel of real estate, indicating whether restricted by co-insurance or other limiting conditions and whether adequate insurance is carried.
- h. The name of the custodian of all legal papers of the local church, and where they are kept.
- i. A detailed list of all trusts in which the local church is the beneficiary, specifying where and how the funds are invested, and in what manner the income is expended or applied.

An annual report with these elements will keep the trustees and session well informed about the church's assets and liabilities. Each church board of trustees should have a system of record maintenance to establish the chain of ownership of all church-owned properties. A title company can perform a title search on all church real estate. This report will inform the trustees what the property status is — whether the title is clear or if flaws or restrictions exist. In the event that conveyances, mortgages, or other actions concerning the local church property are contemplated, these records will be vital in preventing delays in the transactions. When real estate transactions are undertaken, this information will be required by potential buyers and/or financial institutions. An up-to-date inventory of local church and manse contents is also advisable. Retain records of purchases; consider supplementing the list with a videotape of contents and keep inventory materials off-site in a fireproof place such as a bank safe-deposit box where other vital church papers are kept.

F. Building Committees and Programs

Care should be taken to select individuals qualified to assess building needs, plans, and financial arrangements. The committee should make diligent efforts to ascertain from within the local community assessments of the reliability and competence of architects and general contractors under consideration for the project. Price, reputation, and quality of work as well as experience in working on church projects are all factors to be considered. **Careful selection of the architect**

and contractor can do much to make the project run smoothly and be completed on schedule. Make sure the contractor is bonded and has insurance coverage for worker's compensation and general liability. Request the contractor provide a certificate of insurance before the work is to begin. A payout schedule contingent on the percentage of work completed can provide protection for the church.

II. Sample Articles of Incorporation and Corporate Bylaws

These are samples. Each state has different nonprofit incorporation laws. Use a local attorney familiar with your state's incorporation requirements to draft the corporate articles and the corporate bylaws. The samples at Appendix A and Appendix B should be a useful starting point for your legal counsel.

APPENDIX A**Articles of Incorporation**

of

_____, **Inc.**

(name of congregation's corporation)

[**Note:** The Secretary of State's Office generally has a list of names that have already been used or reserved. Check that list. It may be necessary and advisable to include the city's name in the name of the church corporation.]

Article I***Name***The name of the corporation is _____, **Inc.**

(name of congregation's corporation)

Article II***Type***

The Corporation is a nonprofit religious corporation.

Article III***Duration***

The period of duration of the Corporation is perpetual.

Article IV***Purposes***

The purposes for which the Corporation is formed are as more fully set forth in the Constitution of the Presbyterian Church (U.S.A.) (citations to the *Book of Order*), including:

The Great Ends of the Church (Book of Order F-1.0304):

- the proclamation of the gospel for the salvation of humankind;
- the shelter, nurture, and spiritual fellowship of the children of God;
- the maintenance of divine worship;
- the preservation of the truth;
- the promotion of social righteousness; and
- the exhibition of the kingdom of heaven to the world.

In furtherance of the Constitution of the Presbyterian Church (U.S.A.) and the purposes stated above, the Corporation shall exercise powers as set out herein.

Article V

Support and Conform to the Constitution of the Presbyterian Church (U.S.A.)

The Corporation shall support, at all times and in all respects, the Constitution of the Presbyterian Church (U.S.A.). The Corporation and all of its property, both real and personal, shall be subject to the Constitution of the Presbyterian Church (U.S.A.), as it is now or shall be, from time to time, amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.). The business of the Corporation shall be conducted in conformity with the Constitution of the Presbyterian Church (U.S.A.), as it is now or shall be, from time to time, amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.).

Article VI

All Property Held in Trust for the Presbyterian Church (U.S.A.)

All property, both real or personal, held by or for a congregation, whether legal title is lodged in the Corporation, the Board of Trustees or a trustee, or an unincorporated association, and whether the property is used in programs of the congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0203).

Article VII

Powers and Duties

The Corporation shall have the powers and duties granted by the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0101):

To receive, hold, encumber, manage, and transfer property, real or personal, for the congregation provided that in buying, selling, and mortgaging real property, the trustees shall act only after the approval of the congregation, granted in a duly constituted meeting and subject to the congregation obtaining written permission of the presbytery transmitted through the session of the congregation; To accept and execute deeds of title to such property; To hold and defend title to such property; To manage any permanent special funds for the furtherance of the purposes of the congregation.

All of above are subject to *Book of Order* G-4.0101 and *Book of Order* G.4.0206 (a.)

In addition, to the extent not included in the above and not inconsistent with the Constitution of the Presbyterian Church (U.S.A.), the Corporation shall have all of the general powers of a nonprofit religious corporation organized under

(state religious nonprofit incorporation statute)

The powers and duties of the trustees shall not infringe upon the powers and duties of the Session and the Board of Deacons of the congregation and such powers and duties shall be exercised in conformity with the Constitution of the Presbyterian Church (U.S.A.) (*Book of Order* G-4.0101, G-3.0201).). In addition, the Corporation shall not engage in ultra vires acts.

Article VIII
Members

Only members on the active role of the _____ (name of congregation) shall be members of the Corporation and eligible for election as Trustees. (*Book of Order* G-4.0102).

Article IX
Trustees

The directors of the Corporation are designated Trustees. The Trustees shall be those persons who are elected, installed, and serving as ruling elders of the Session of _____ (name of congregation). They must also be eligible under civil law. (*Book of Order* G-4.0102).

[Note: The preferred and most efficient model is this one: The session of the congregation and the board of trustees is identical. Some states may prohibit this dual capacity; your local attorney should check state law in this regard. Also, some congregations may simply choose to have a separate board of trustees. If the congregation designates a trustee board other than the elders of session, then different language should be used for this article as determined by the congregation. See G-4.0102 for particular requirements when another board is designated.]

Article X
Officers

The bylaws identify and provide for the method of election or appointment of the officers of the Corporation.

Article XI
Bylaws

The bylaws of the Corporation shall be in conformity with the Constitution of the Presbyterian Church (U.S.A.), as it is now or shall be, from time to time, amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.). The bylaws will be adopted by the members of the Corporation and may be amended or repealed by the members of the Corporation and may be amended or repealed by the members of the Corporation but must at all times and in all respects remain in conformity with the Constitution of the Presbyterian Church (U.S.A.).

Article XII
Initial Board of Trustees

The number of Trustees constituting the initial Board of Trustees shall be _____ [not less than three] and the names and addresses of the persons who are to serve as the initial Trustees and until their successors are elected and installed are:

(name)

(address)

Article XIII
Incorporators

The names and addresses of the incorporators are:

(name)

(address)

Article XIV
Initial Registered Office and Agent

The address of the Corporation’s initial Registered Office and the name of its initial Registered Agent at this address is:

(Clerk of Session)

(Street Address of Particular Church)

(City, State, Zip Code)

Article XV
Amendments

The articles of incorporation of the Corporation may be amended or added to, or new articles of incorporation may be adopted, by the affirmative vote of two-thirds of the members of the Corporation; provided that the articles of incorporation must at all times and in all respects remain in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0101, G-4.0203).

[**Note:** Your attorney should determine if state law requires a different articles of incorporation amendment process.]

Article XVI
Restrictions on Corporations Exempt from Federal Taxation

No part of the assets of the Corporation shall inure to the benefit of, or be distributable to its members, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office. Notwithstanding any other provision of these articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code, or corresponding section of any future federal tax code.

Article XVII
Dissolution

If the congregation is formally dissolved by the Presbytery of which it is a member, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or any other cause, such property, both real and personal, as the Corporation may have shall be vested in and be the property of the Presbytery of _____ (name of Presbytery of membership) of the Presbyterian Church (U.S.A.), pursuant to the Constitution of the Presbyterian Church (U.S.A.), said Presbytery being an organization qualified under section 501(c)(3) of the Internal Revenue Code of the United States. In the alternative, said property of the Corporation shall be held, used and applied for such

uses, purposes and trust as the Presbytery may direct, limit and appoint, or such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0204, G-4.0205, G-3.0301).

APPENDIX B

Corporate Bylaws

of

_____, Inc.
(name of congregation)

Article I

Objectives, Purposes, Formation, Limitations, Powers and Duties, Property

Section 1. **Purpose.** The purposes for which the Corporation is formed are as more fully set forth in the Constitution of the Presbyterian Church (U.S.A.) (*Book of Order* G-4.0101), including the Great Ends of the Church (*Book of Order* F.10304), and in the Articles of Incorporation (Article IV).

Section 2. **Formation.** The Corporation is formed by _____ (name of congregation) pursuant to the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0101) The _____ (name of congregation) is a member congregation of the Presbytery of _____ (name of presbytery) in the Synod of _____ (name of synod).

Section 3. **Authority.** In carrying out such purposes, the Trustees and the Corporation shall be under the authority of the Session and the congregation and shall, at all times and in all respects, conform to and support the Constitution of the Presbyterian Church (U.S.A.) as it is now or shall be, from time to time amended, established, made, and declared by the authority of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0101; Articles of Incorporation V, VI, VII).

Section 4. **Limitation of Powers and Duties.** The powers and duties of the Corporation and its Trustees shall not infringe upon the powers and duties of the Session or of the Board of Deacons of the congregation. (*Book of Order* G-4.0101., G-3.0201; Article of Incorporation VII).

Section 5. **Powers and Duties.** The Corporation shall have the powers and duties granted by the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0101):

- To receive, hold, encumber, manage, and transfer property, real or personal, for the congregation provided that in buying, selling, and mortgaging real property, the Trustees shall act only after the approval of the congregation, granted in a duly constituted meeting and subject to the congregation obtaining written permission of the presbytery transmitted through the Session of the congregation;
- To accept and execute deeds of title to such property;
- To hold and defend title to such property;
- To manage any permanent special funds for the furtherance of the purposes of the congregation.

All of above are subject to *Book of Order* G-4.0101 and *Book of Order* G-4.0206(a.)

In addition, to the extent not included in the above and not inconsistent with the Constitution of the Presbyterian Church (U.S.A.), the Corporation shall have all of the general powers of a nonprofit religious corporation organized under

(state religious nonprofit incorporation statute)

Section 6. **All Property Held in Trust.** All property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0203; Article of Incorporation VI).

Section 7. **Particular Property Requirements.** When buying, selling, and mortgaging real property, the Board of Trustees shall act only after the approval of the congregation granted in a duly constituted meeting. (*Book of Order* G-4.0101). The Board of Trustees shall not sell, mortgage, or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the Session of the congregation. (*Book of Order* G-4.0206). The Corporation shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the Session of the congregation. (*Book of Order* G-8.0502).

Section 8. **Property Conveyances.** As set forth in Section 6 above all of the congregation and this corporation property, both real and personal, is held in trust for the use and benefit of the Presbyterian Church (U.S.A.). To that end any and all deeds or instruments of conveyance shall include the following language in the deed:

The premises herein conveyed shall be used, kept, and maintained by the grantee for Divine Worship and other purposes of its ministry as a congregation belonging to the Presbytery of _____, subject to the provisions of the Constitution of the Presbyterian Church (U.S.A.).

Article II Members

Section 1. **Eligibility for Membership.** Only members on the active roll of the congregation shall be members of the Corporation and eligible for election as Trustees. (*Book of Order* G-4.0102; Article of Incorporation VIII).

Section 2. **Active Members.** The roll of active members established and maintained by the Session as prescribed by the *Book of Order* (G-3.0204) shall determine those individuals who are active members from time to time.

Article III Trustees

Qualification; Election; Removal. The directors of the Corporation are designated Trustees. The initial Board of Trustees shall be those persons named in the Articles of Incorporation. Thereafter, the membership of the Board of Trustees shall be identical to the membership of the ruling elders on the Session of the congregation in active service. Election by the congregation and installation as Ruling Elder of the congregation shall constitute a person a Trustee of the Corporation. They must also be eligible under civil law.

[**Note:** Have your local attorney determine the minimum age under state law; insert that requirement, if any, here.] Termination for any cause of the active service of a person on Session shall automatically

terminate such person as a Trustee of the Corporation. (*Book of Order* G- 2.0405; Article of Incorporation IX).

[**Note:** The preferred and most efficient model is this one: The session of the congregation and board of trustees is identical. Some states may prohibit this dual capacity; your local attorney should check state law in this regard. Also, some congregations may simply choose to have a separate board of trustees. If the congregation designates a trustee board other than the ruling elders of session, then different language should be used for this article.]

Article IV Meetings of the Board of Trustees

Section 1. **Annual Meeting.** The annual meeting of the Board of Trustees shall be held in conjunction with or immediately following the first meeting of the Session of the congregation held after the annual meeting of the congregation of the congregation.

Section 2. **Procedures.** The meeting requirements and provisions of the Constitution of the Presbyterian Church (U.S.A.) shall govern. In addition to those requirements and provisions, these bylaws provide specific guidance for the Corporation.

Section 3. **Notices.** Notice of the time and place and, in case of special meeting, the purpose of every meeting of the Board of Trustees shall be in writing and shall be duly sent, mailed or otherwise delivered to each Trustee not less than ten (10) days before the meeting; provided, that no notice of any regularly scheduled or adjourned meeting need be given.

Meetings may be held at any time without notice if all of the Trustees are present or if those not present waive notice of the time, place, and purpose of the meeting, either before or after the holding thereof.

Section 4. **Quorum.** A majority of the Trustees shall constitute a quorum for the transaction of business, and the action of the Board of Trustees present at any meeting at which a quorum is present shall be the action of the Board of Trustees; provided, that, if the Trustees shall unanimously consent in writing to any action to be taken by the Corporation, such action shall be valid as corporate action as though it had been authorized at a meeting of the Trustees. If at any meeting of the Board of Trustees there shall be less than a quorum present, a majority of those present may adjourn the meeting from time to time until a quorum shall have been obtained.

Section 5. **Special Meetings.** Special meetings of the Board of Trustees may be held simultaneously with meetings of the congregation or immediately thereafter. Special meetings may be held at any time upon the call of Session, the President or Vice-President, or of not less than one-third of the Trustees then in office.

Section 6. **Power and Authority.** The board of trustees shall have power and authority to carry out the affairs of the Corporation and in so doing may elect or appoint all necessary officers or committees; may employ all such employees as shall be requisite for the conduct of the affairs of the Corporation; may fix the compensation of such persons; may prescribe the duties of such persons; may dismiss any appointive officer or agent of the Corporation without previous notice. The Board of Trustees may, in the absence of an officer, delegate that officer's powers and duties to any other officer or a Trustee for the time being.

Section 7. **Executive Committee.** The officers of the Board of Trustees shall constitute the Executive Committee. The Executive Committee shall have and exercise the authority of the Board of Trustees in the management of the business of the Corporation between the meetings of the Board. The Board of Trustees may appoint such other committees, including therein persons who are not members of the

Board of Trustees, as in the judgment of the Trustees will be helpful in carrying on the work of the Corporation.

Article V Meeting of Members

Section 1. **Annual Meeting.** There shall be an annual meeting of the members of the Corporation.

Section 2. **Place and Time.** Such meeting shall be held at the same place and time as the annual meeting of the congregation or immediately thereafter. Whenever permitted by civil law, both ecclesiastical and corporate business may be conducted at the same meeting. (*Book of Order* G-1.0503). Any stated or called meeting of the congregation shall be a meeting of the Corporation, and any business may be conducted that is appropriate to the Corporation.

[**Note:** This section sets out the preferred form: The corporate meeting is contemporaneous with the congregational meeting. Some states may prohibit this dual capacity. Your local attorney should check state law. If your state prohibits this dual capacity, different language should be used in this section.]

Section 3. **Notices.** Notice of all meetings of members of the Corporation shall conform in all respects to the notice requirement of meetings of the congregation. (See *Book of Order* G--1.05 and G-1.0502).

Section 4. **Procedural Requirements.** The meetings of the members shall be conducted to conform to the procedural requirements of meetings of the congregation and the provisions of the Constitution of the Presbyterian Church (U.S.A.). (See *Book of Order* G-1.0503). In addition to those requirements and provisions, these bylaws provide specific guidance for the Corporation.

Article VI Officers

Section 1. **Officers.** The Board of Trustees, as soon as may be practicable after the election of Trustees in each year, shall elect from their number a President of the Corporation, and may from time to time select one or more Vice-Presidents, Assistant Secretaries, and Assistant Treasurers. The Clerk of Session shall serve as Secretary of the Corporation. The Treasurer elected by the session shall serve as Treasurer of the Corporation (See *Book of Order* G-3.0205). The same person may hold any two offices except those of President and Secretary. The board may also appoint such other officers and agents as may be deemed necessary for the transaction of the affairs of the Corporation. (Article of Incorporation X).

[**Note:** This is a recommended configuration and process to elect the corporate officers. Your congregation may choose a different configuration and process. See G-3.0205 regarding the requirements for the treasurer of the congregation and G-3.0104 regarding the duties of the clerk of session.]

Section 2. **Term.** The term of office for all officers shall be one (1) year or until their respective successors are chosen. Any officer elected by the Board of Trustees may be removed from the office at any meeting of the Board of Trustees by the affirmative vote of a majority of the Trustees then in office, whenever in their judgment the interest of the Corporation will be served thereby. The Board of Trustees shall have full power to fill any vacancies in any offices it is authorized to elect occurring for any reason whatsoever.

Section 3. **Powers and Duties.** The officers of the Corporation shall respectively have such powers and perform such duties in the management of property and affairs of the Corporation, subject to the control of the Trustees, as generally pertain to their respective offices, as well as such additional powers and

duties as may from time to time be conferred by the Board of Trustees. No action taken by the officers shall infringe upon the authority of the Session of the congregation or of the Board of Deacons and all actions shall be in conformity with the Constitution of the Presbyterian Church (U.S.A.). Subject to this Section, these bylaws and the articles of incorporation of the Corporation, the officers shall have the following powers and duties in regards to the Corporation:

A. The President shall: (1) preside at meetings of the Corporation and the Board of Trustees; (2) make such appointments as directed, authorized, or required, including appointing Trustees to serve on committees who shall be responsible for reporting to the Board of Trustees of the activities of their respective committees; (3) execute any and all documents of whatsoever kind and nature necessary to carry out the purpose and functions of the Corporation; (4) be responsible for carrying out the directives and requirements of applicable law, these bylaws, and the articles of incorporation; (5) in general, perform all duties incident to the office of president; and (6) perform such other duties as may from time to time be assigned by the Board of Trustees.

B. The Vice President(s) shall: (1) assist the President in the exercise of his or her duties; (2) in the absence or inability of the President, execute the duties of the President; (3) in general, perform all duties incident to the office of Vice President; and (4) perform such other duties as may from time to time be assigned by the Board of Trustees.

C. The Secretary (Clerk of Session) shall: (1) perform for the Corporation those duties set out in the Constitution of the Presbyterian Church (U.S.A.) (see *Book of Order* G-3.0104); (2) record all votes by the Board of Trustees; (3) be the custodian of the corporate seal, if any, and affix it to all documents to be executed on behalf of the Corporation under its seal; (4) in general, perform all duties incident to the office of secretary; and (5) perform such other duties as may from time to time be assigned by the Board of Trustees.

D. The Treasurer (elected by the Session) shall: (1) perform for the Corporation those duties set out in the Constitution of the Presbyterian Church (U.S.A.) (see *Book of Order* G-3.0205); (2) be responsible for the safekeeping of all funds and assets, except for those funds expressly assigned to the trusteeship of another; (3) be responsible for the filing of any and all tax and other financial reports as required by applicable law; (4) deposit all monies, drafts, and checks in the name of or to the credit of the congregation or Corporation at such banks or depositories as the Board of Trustees shall designate; (5) in general, perform all duties incident to the office of treasurer; and (6) perform such other duties as may from time to time be assigned by the Board of Trustees.

E. Assistant Secretaries shall perform those duties of the Secretary as directed by the Board of Trustees.

F. Assistant Treasurers shall perform those duties of the Treasurer as directed by the Board of Trustees.

[**Note:** This is a recommended configuration and listing of corporate officers' powers and duties. Your congregation may choose a different configuration and different powers and duties. Or, you may choose to list none of these powers and duties and accomplish them by corporate resolution. Always keep in mind the requirements for the Treasurer of the congregation (*Book of Order* G-3.0205) and the clerk of session (*Book of Order* G-3.0104).]

Section 4. **Checks, Notes, Drafts, Etc.** The Board of Trustees may, from time to time, prescribe the manner of making signature or endorsement of bills of exchange, notes, drafts, checks, acceptances, obligations, and other negotiable paper or other instruments for the payment of money and designate the officer or officers, agent or agents, who shall from time to time be authorized to make, sign, or endorse the same on behalf of the Corporation.

Article VII
Fiscal Year; Seal; Office

Section 1. **Fiscal Year.** The fiscal year of the Corporation shall be _____ [Choose a twelve-month period. Many congregation corporations choose the calendar year: January 1–December 31. Some choose July 1–June 30. You should choose the twelve-month period that best serves your accounting needs.]

Section 2. **Seal.** The Board of Trustees shall provide a suitable corporate seal for use by the Corporation if deemed appropriate.

Section 3. **Office.** The principal office and mailing address of the Corporation is _____
_____ (address of congregation).

Article VIII
Amendments

The bylaws of the Corporation may be amended or added to, or new bylaws may be adopted, by the affirmative vote of two-thirds of the members of the Corporation; provided, that the bylaws must at all times and in all respects remain in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0101, G-4.0102, G-4.0203; Articles of Incorporation IV, V, VI, XI).

[**Note:** Your attorney should determine if state law requires a different bylaws amendment process]

Article IX
Indemnification of Trustees and Officers

Each Trustee and officer of the Corporation shall be indemnified by the Corporation against expenses reasonably incurred in connection with any action, suit, or proceeding to which the Trustee or officer may be made a party by reason of being or having been a Trustee or officer of the Corporation (whether or not he or she continues to be a Trustee or officer at the time of incurring such expenses), except in relation to matters as to which he or she shall finally be adjudged in such action, suit, or proceeding to be personally liable. The foregoing right of indemnification shall not be exclusive of other rights to which any Trustee or officer may be entitled as a matter of law.

Article X
Dissolution

If the congregation is formally dissolved by the Presbytery of which it is a member, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or any other cause, such property, both real and personal, as the Corporation may have shall be vested in and be the property of the Presbytery of _____ (name of presbytery of membership) of the Presbyterian Church (U.S.A.), pursuant to the Constitution of the Presbyterian Church (U.S.A.), said Presbytery being an organization qualified under section 501(c)(3) of the Internal Revenue Code of the United States. In the alternative, said property of the Corporation shall be held, used, and applied for such uses, purposes, and trust as the Presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the Presbytery may direct in conformity with the Constitution of the Presbyterian Church (U.S.A.). (*Book of Order* G-4.0205, G-3.0301; Article of Incorporation XVII).