



## Randle S. Davis

Randle S. Davis was born in Corinth, Mississippi. After high school, Mr. Davis obtained a B.S. from Mississippi State University in 1980, where he majored in business administration with a strong emphasis in accounting. After receiving a Pre-Law Award at Mississippi State, he obtained his law degree

in 1983 at the University of Mississippi School of Law, and his Master of Law (taxation) in 1984 at Southern Methodist University. He was admitted to the Mississippi Bar in 1983 and the Tennessee Bar in 1985. He is a member of the Nashville Bar Association and the Mississippi State Bar Association.

During the Summer of 1983, Mr. Davis clerked at the law firm of Stennett, Wilkinson & Ward in Jackson, Mississippi. From 1984 to 1987, he worked as an associate attorney dealing primarily with estate planning, business, corporate law, and taxation for King & Ballow in Nashville, Tennessee. Mr. Davis is now a partner with the law firm of Lassiter, Tidwell & Hildebrand, PLLC (formerly known as Lassiter, Tidwell & Trentham), where he began as an associate attorney in 1987.

Mr. Davis is general counsel for the Executive Board of the Tennessee Baptist Convention and for the Tennessee Baptist Foundation. He also works extensively with non-profit, tax-exempt organizations such as private foundations and public charities, and represents numerous Christian schools and churches.

Mr. Davis is an active member, deacon, and decision counselor of First Baptist Church located in Hendersonville, Tennessee. He also teaches 12<sup>th</sup> grade Sunday School and serves in the prayer ministry. He serves on the Board of Trustees for Davidson Academy, a private, Christian college preparatory school, and is a member of the Board of Directors for Tennessee Baptist Homes for Exceptional Persons, a private organization devoted to Christian alternatives for the institutionalization of mentally handicapped adults. He and his wife, Brenda, have four young children.

# Church Incorporation & Related Legal Issues

by  
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and  
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of the Tennessee Baptist Convention

**Disclaimer Notice:**

The information provided in this booklet is accurate to the best of our knowledge as of the date of printing. However, changes in the law commonly occur and should be thoroughly researched before any action is taken.

## Table of Contents

Preface .....	5
Questions & Answers .....	7
Step-by-Step to Incorporating Your Church .....	10
Ongoing Activities of a Corporation .....	14
Other Legal Issues .....	15
The Church as Employer .....	15
IRS Group Exemption .....	15
Sales Tax Exemption .....	16
Third Party Purchasing .....	16
Property Tax .....	17
Sample Charter .....	18
About the Authors .....	21

## About the Authors



### William F. Maxwell

William F. Maxwell is a native of Crawford, Georgia. In 1982, Mr. Maxwell received his Bachelor of Business Administration Degree from Georgia College, where he majored in Management and Business Information Systems. He then earned a Master of Divinity Degree from

The Southern Baptist Theological Seminary in 1986, and a Master of Business Administration Degree from Millsaps College in 1990. He was licensed to the Gospel Ministry by Crawford Baptist Church in 1982.

Mr. Maxwell has served as a Campus Minister Intern at Dalton Junior College and as a Minister of Youth at Tunnel Hill Baptist Church, Tunnel Hill, Georgia. He has also served as an Accounting Assistant on the staff of the Kentucky Baptist Convention. From 1986 through 1993, he served as Director of Accounting and Personnel Services for the Mississippi Baptist Convention. Mr. Maxwell is now the Administrative Director of the Executive Board of the Tennessee Baptist Convention. In this role he is responsible for all business-related activities at the Convention, including assisting churches in dealing with business, financial and legal issues.

Mr. Maxwell is an active member and deacon of Crieveewood Baptist Church in Nashville, Tennessee, where he also serves as the leader for the Adults on Missions Group. He and his wife, Faith, have three young children.

connection with a proceeding by or in the right of the Corporation in which the trustee was adjudged liable to the Corporation, or in connection with any other proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him. The corporation shall pay for or reimburse the reasonable expenses, including reasonable attorneys' fees, incurred by a trustee who is a party to a proceeding in advance of final disposition of the proceeding if (a) the trustee furnishes the Corporation a written affirmation of his good-faith belief that he has met the standard of conduct previously set forth herein and in S 48-58-502 of the Act, (b) the trustee furnishes the Corporation a written undertaking, executed personally or on his behalf, to repay the advance if it is ultimately determined that he is not entitled to indemnification, and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under the law of the State of Tennessee then in effect. The indemnification and advancement of expenses will be undertaken in accordance with S 48-58-501, et seq., of the Act.

(iv) To the fullest extent permitted by the provisions of s 48-58-507 of the Act, as amended or modified from time to time, this Corporation shall indemnify and advance expenses to an officer to the same extent as to a trustee.

(b) Notwithstanding the above and since the Corporation is exempt from federal income taxation under S 501(c)(3) of the Code, each trustee of the Corporation in accordance with the intent of SS 48-58-601 (b) and (c) of the Act, shall be immune from suit arising from the conduct of the affairs of the Corporation, provided that said trustee's conduct does not amount to willful, wanton, or gross negligence.

(c) Any repeal or modification of this Paragraph 13 by the members of the Corporation shall not adversely affect any right or protection of a trustee or officer of the Corporation existing at the time of such repeal or modification or with respect to events occurring prior to such time.

14. All words used herein referring to the masculine, feminine, or the neuter shall include all genders, and all words used in the singular or the plural shall include the singular or the plural, unless the context specifically requires otherwise.

15. This charter shall be effective upon filing with the Secretary of State, or as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

DATED THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

Incorporator

### LEGAL DISCLOSURE NOTICE

This booklet has been prepared specifically for churches seeking to incorporate in the State of Tennessee. It is not meant to provide legal advice. Any user of this booklet is encouraged to seek appropriately trained, professional, legal advice prior to taking the step of incorporation.

- on any activities not permitted to be carried on (a) by a corporation exempt from federal income tax under Section 501(c)(3) of the Code or (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the code and shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the purposes of this Corporation.
12. (a) This Charter may be amended at any time or times upon the affirmative vote of a majority of the members of the Corporation represented in person and voting at any regular meeting of the members or any special meeting of the members called for that purpose, provided that the quorum requirements have been satisfied and provided that no amendment shall authorize action in any manner or for any purpose contrary to the provisions of Section 501(c)(3) of the Code or the laws of the State of Tennessee. All other questions shall be determined by a majority vote of the members of the Corporation present in person and voting at such meetings (provided that the quorum requirements have been satisfied) unless otherwise provided herein or in the Bylaws.
- (b) ( \_\_\_ percent ( \_\_\_%) or # of members) must be represented at a meeting (regular or special) of the members of the Corporation to constitute a quorum. Once a quorum has been established for any meeting (regular or special) of the members of the Corporation, then a quorum shall be deemed to continue throughout said meeting whether or not there remains present at said meeting enough members to satisfy said quorum requirement.
13. (a) (i) Pursuant to S 48-52-102(b)(3) of the Act, as amended or modified from time to time, a trustee of the Corporation shall not be personally liable to the Corporation for monetary damages or breach of his fiduciary duty as a trustee; provided, that this provision shall not eliminate or limit the liability of a trustee (1) for any breach of the trustee's duty of loyalty to the Corporation; (2) for acts of omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or (3) for unlawful distributions pursuant to S 48-58-403 of the Act. (ii) Pursuant to SS 48-58-301 and 48-58-403 of the Act, no trustee or officer of the Corporation shall be liable for any action taken as a trustee or an officer or any failure to take any action, if said trustee or officer performed the duties of his or her office in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, in a manner said trustee or officer reasonably believed to be in the best interest of the Corporation, and in compliance with the standards of conduct set forth in SS 48-58-301 and 48-58-403 of the Act, as amended or modified from time to time. (iii) To the fullest extent permitted by the provisions of SS 48-58-501, et seq., of the Act, as amended or modified from time to time, this Corporation shall indemnify an individual made a party to a proceeding because he or she is or was a trustee against liability incurred in the proceeding if (1) said individual conducted himself in good faith and (2) said individual reasonably believed: (i) in the case of conduct in his official capacity with the Corporation, that his conduct was in its best interests, and (ii) in all other cases, that his conduct was at least not opposed to its best interests; and (3) in the case of any criminal proceeding, said individual had no reasonable cause to believe his conduct was unlawful. The termination of proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent shall not, of itself, be determinative that the trustee did not meet the standard of conduct previously set forth in this Paragraph. The Corporation will not indemnify a trustee in

# Appendix A SAMPLE CHARTER

The Executive Board of the Tennessee Baptist Convention is providing no legal advice. This document is a SAMPLE only as a help-mate in conjunction with your legal advisor in preparing documents specifically designed for your church.

## CHARTER OF \_\_\_\_\_ BAPTIST CHURCH

The undersigned person under the Tennessee Nonprofit Corporation Act (hereinafter referred to as the "Act") adopts the following charter for the above listed corporation:

1. The name of the Corporation is : \_\_\_\_\_ BAPTIST CHURCH.
2. (a) This Corporation is a public benefit corporation.  
(b) This Corporation is a religious corporation organized and operated primarily for religious purposes.
3. (a) The complete address of the Corporation's initial registered office in Tennessee is: \_\_\_\_\_, \_\_\_\_\_, TN \_\_\_\_\_,  
County of \_\_\_\_\_.  
(b) The name of the initial registered agent, to be located at the address listed in 3(a) is \_\_\_\_\_.
4. The name and complete address of each incorporator is:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
5. The complete address of the Corporation's principal office is:  
\_\_\_\_\_, \_\_\_\_\_, Tennessee  
\_\_\_\_\_, County of \_\_\_\_\_.
6. This Corporation will exist perpetually unless dissolved in the manner prescribed by law.
7. (a) The Corporation is not for profit.  
(b) The Corporation will have members.
8. The Corporation shall have all general powers possessed by corporations organized under the Act, including all powers necessary or convenient to effect any or all of the corporate purpose determined by its members.
9. Upon dissolution, the Corporation shall, after paying or making provision for the payment of all liabilities of the Corporation, dispose of all of the assets of the Corporation exclusively for the purposes of the Corporation in such manner, or to such organization or Organizations organized and operated exclusively for charitable, educational, or religious purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Internal Revenue Code of 1986, or the corresponding provisions of any later federal tax laws (hereinafter referred to as the "Code"), as the members of the Corporation shall determine, any such assets not so disposed of shall be disposed of by a Court of competent jurisdiction of the county in which the principal office of the Corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.
10. The Corporation is organized primarily for religious purposes, but is also organized for charitable and educational purposes, including, without limitation, the making of distributions in furtherance of such purposes or to organizations that qualify as exempt organizations under Section 501(c)(3) of the Code.
11. Notwithstanding any other provision of this Charter, the Corporation shall not carry

# Questions & Answers on Church Incorporation

## 1. What does it mean to be incorporated?

**A:** To become incorporated means to change the form of the entity in which you are conducting business. For churches, this means going from an unincorporated association of members to a corporation.

## 2. Why incorporate:

**A:** As an unincorporated association of members, each member of the church may be personally liable for the debts, obligations, or liabilities of the church. This liability would not be limited to the amount of the debt divided by the number of members. The creditor could seek satisfaction of the debt from one member who would, in turn, have to sue all the other members in order to get each of them to reimburse said member for a proportionate share of the debt. By incorporating the church members have no personal liability for debts, obligations, and/or liabilities of the church. Also, a number of third parties (i.e., financial institutions) prefer to do business with an entity that is incorporated as opposed to unincorporated. When liability is discussed most people think about lawsuits by "outsiders". Liabilities can come from inside the church membership as well.

The advisability of church incorporation was recently reemphasized when the Tennessee Supreme Court, by unanimous decision, ruled that a member of a church that is operating as an unincorporated association could sue the church. Previously, it was a common belief that a "member" of an unincorporated association could not sue the association. In the case at hand, a member of a Catholic Church fell and hurt himself in the parking lot of his church. The member sought reimbursement for the medical expenses incurred and damages for the personal injury suffered. This unanimous decision by the Supreme Court effectively removes one, if not the greatest, of the justifications for not incorporating.

### 3. When should a church consider incorporating?

**A:** This is a question to be answered on a church by church basis. There is no hard and fast rule or objective standard in this respect. Small churches incorporate just like large churches. Churches, however, should “consider” incorporating when their activities present an increased probability of liability exposure to the membership.

The following items can be used as a rule of thumb to indicate increased probability of liability exposure:

- a. 200 members in Sunday school
- b. A family life center
- c. A bus ministry
- d. Counseling services
- e. Day care/Mother’s Day Out/School Ministry
- f. Extremely active Youth Ministry

### 4. Do we have to use the word incorporated, corporation, Inc., or any other word which would so identify us as a corporation?

**A:** Under Tennessee law, a nonprofit corporation is not required to utilize any such designation in its name. However, the name to be utilized must be significantly different from any other name on file with the Secretary of State in order to be acceptable. It would be prudent for someone to call the Secretary of State in advance to check on the availability of the intended name. Common church names such as Calvary Baptist Church can be changed to Calvary Baptist Church of Nashville in order to provide proper clarification.

activity centers) may not be exempt from sales tax.

## Property Tax

Churches acquiring new real estate should immediately file for property tax exemptions with state Board of Equalization. In order to qualify for such exemption, the property must be owned and used by the church for its exempt purpose. If the church applies within 75 days after both of these criteria are satisfied, then the exemption will be effective retroactively to the date said criteria was satisfied.



one or more of the programs of the Tennessee Baptist Convention and be in friendly cooperation with the programs, practices and policies of the Tennessee Baptist Convention.

## Sales Tax Exemption

Under Tennessee law churches are exempt from paying sales tax on goods and services when purchasing items for use by the church in accordance with the church's tax exempt purpose. Sales tax exemption is administered by the Tennessee Department of Revenue. To secure a sales tax exemption number, call the Department of Revenue and request an application.

## Third Party Purchasing

16

Some contractors and others who perform work for churches mistakenly believe that they may purchase building materials and other materials for use by the church on a tax exempt basis by using the church's tax exemption number. This is not true. If a church wishes to take advantage of the sales tax exemption for building products and other materials that may be used by a third party, it is necessary that the church purchase the materials directly. Furthermore, that the material must be picked up by the church or delivered to the site, and the final product be used in accordance with the church's exempt purpose.

Purchase of materials for certain church buildings (most commonly,

### 5. **What fees/costs/expenses may be incurred each year for being a corporation!**

**A:** Upon incorporation the one-time fee for filing your charter with the Secretary of State is \$100. The fee for filing with the Register of Deeds is usually around \$5. Each year thereafter, the Secretary of State will send you an annual statement for filing. It is important to file this document properly. The primary objective of this form is for the state to obtain the \$20 filing fee each year, and to get updated, factual information about the corporation (i.e., address, etc.). For the most part, any other fees and/or costs would be no different than those being incurred as an unincorporated entity.

### 6. **What is the range of legal fees resulting from incorporating!**

**A:** Most attorneys work on an hourly basis. A normal fee range for the incorporation documents would range from \$250-\$500 depending upon a myriad of factors including, but not limited to (a) the experience of the attorney, (b) the number of meetings with the parties, (c) the number of documents required by the church and (d) the number of modifications requested. It is very important to use an attorney who is experienced with not-for-profit corporations and the special issues which affect churches.

9

## Step-by-Step to Incorporating Your Church

### Step 1

**Prepare a Charter.** Every incorporated body must have a charter.

The church should develop its charter based on its specific needs and requirements. A sample charter is in Appendix A of this document, which has been prepared especially for churches to use as a guide. The following items relate to the numbered paragraphs of this sample charter. The items with an asterisk indicate that which must be included in the charter according to state law.

- \*1. **The legal name of the church.**
- \*2. **The tax exempt nature and classification of the corporation.**
- \*3. **The name and address of the registered agent and office.** The registered agent is simply the individual who receives official notification on behalf of the organization (i.e., IRS, state tax, Secretary of State, legal notices, etc.). This may be anyone, but the pastor, chairman of deacons, or the church's attorney are most often used.
- \*4. **The name and address of each incorporator.** The incorporator is one who signs the charter and other relative incorporation documents related to the incorporation.
- \*5. **The street address of the corporation's principal office, including county.**
6. **The anticipated duration of the existence of the corporation.** Normally, this is perpetual.
- \*7. **The type of Corporation.** The Corporation must specify (a) that it is a public benefit Corporation; (b) that it is a religious Corporation; (c) and that it will have members.
8. **The powers of the corporation.**
- \*9. **The process for distributing the corporate assets upon dissolution of the corporation.** All assets of a 501 (c)(3)

## Other Legal Issues for New Churches or Newly Incorporated Churches

### The Church as Employer

The church will need an employer identification number (EIN). The EIN is issued by the Internal Revenue Service. To receive an EIN, complete Form SS-4 of the Internal Revenue Service and submit as instructed. The IRS will return this nine digit number to the individual indicated. This number will be used on all correspondence to the Internal Revenue Service, including W-2 forms.

### IRS Group Exemption Letter

Churches are, by definition, exempt from Federal Income Taxes under Section 501(c)(3) of the Internal Revenue Service Code. Under this exemption they are allowed to receive tax deductible charitable contributions.

Even though all churches are automatically exempt from taxes, it is sometimes necessary for the church to produce a letter from the Internal Revenue Service documenting this tax exemption. This is often requested by the Post Office and others who are providing some special rate or services to nonprofit organizations. The Internal Revenue Service has issued the Executive Board of the Tennessee Baptist Convention what is known as a Group Exemption Letter. Churches and organizations which are affiliated with the Executive Board of the Tennessee Baptist Convention are covered under this Group Exemption Letter. A copy of the Group Exemption letter may be obtained by writing the Administrative Director of the Executive Board of the Tennessee Baptist Convention. In order to qualify as an affiliated church, the church must have contributed financially to



# Ongoing Activities of a Corporation

## Step 10

**Act as a corporation.** The entity must recognize itself as a corporation in order for the public to be obligated to recognize it as a corporation. This means that the church must conduct itself as a corporation. The entity must have at least one meeting each year of its members. This is accomplished by designating one of the regular business meetings as the annual members' meeting. At this meeting, officers of the corporation are elected among other things.

## Step 11

**Pay an annual fee to the state.** Each year you will receive notification from the state of the annual filing fee. This fee is normally \$20. It requires the completion of a form updating information on the status of the corporation. The annual report will request names, addresses and phone numbers of governing body. By law, churches are exempt from disclosing this information.

corporation are forever committed to the benefit of a like organization. In other words, the assets of a church may never revert to any individual and may only be passed on to another tax-exempt organization at the time of dissolution. A church may wish to put into its charter that upon dissolution its assets will revert to another church, a local association or the state convention. The church may choose to include only the process for decision making at the time of dissolution. It is strongly recommended that the proposed recipient be notified at the time the charter is prepared.

### 10. Primary Purpose Statement.

### 11. Statement of prohibited activities.

- 12. A. The process for amending the charter.** Charters are meant to be permanent documents, and any changes should be rare and require a significant approval of members of the corporation.
- B. Quorum requirement.** This paragraph dictates the number of individuals within the membership of the corporation who are required to be present when any business of the corporation is conducted. Tennessee law will default the quorum requirement to be 10% of all church membership. Unless specifically stated otherwise, the term "church membership" includes all members whether active or not. Churches should give careful consideration to the appropriate number for their congregation. If business meetings are held on Wednesday evenings when the choir or mission organizations are meeting, it may be difficult to achieve a significant number. Either a percentage or fixed number may be inserted. A church should not set the number or percentage so low that lawful, binding acts could be approved by less than a fair representation of its membership.
- 13. Indemnification of Parties.** This provision protects officers and trustees in case a liability claim arises from actions carried out within

their authority.

**14. Clarification on Gender Specification.**

**15. Effective Date of Charter.** This may be delayed up to 90 days.

**16. Signature.** The charter will need to be signed by whoever is designated as the incorporator for the church body.

## Step 2

**Request a lawyer to prepare or review the charter as drafted by the incorporator.**

## Step 3

**File the charter with the secretary of state's office.** The filing fee is \$100. Mail charter with cover letter to the TN Secretary of State, located in Nashville.

12

## Step 4

**Secretary of State will return the charter to the church.** The charter must then be filed with the register of deeds in the county in which the corporation's principal address is located.

## Step 5

**If the church is changing its form of organization and already owns assets, it will be necessary for all of those assets to be transferred to the new entity.** This is accomplished either by a simple assignment of those assets not subject to titling (i.e., equipment, hymnals, etc.), or by retitling those assets which ownership is evidenced by a title (i.e., automobile, van, bus, real estate, etc.). Real estate may be titled to the trustees of the church or to the corporation. If already held by the

trustees, the deeds may remain as they are, or be transferred into the corporate name of the church.

## Step 6

**The church will need to prepare a set of bylaws which states how the corporation will conduct its operations (i.e., hold meetings, elect officers and trustees, allow voting, etc.).** This document should be drafted or at least reviewed by an attorney. The church may already have a lot of information on which to base its bylaws. In all probability, the church will already possess a Constitution and Bylaws. These can be retained, but would need to be reviewed by legal counsel experienced in the area to insure compliance with corporate law. The bylaws would include a description of the officers of the corporation. Tennessee law requires a president and secretary for every corporation, and the same person cannot hold both positions at the same time. The officers are the individuals who act on behalf of the corporation.

For example, if the church voted through its members to take a loan from a financing institution, the officers would be the ones who would sign the loan papers on behalf of the church.

## Step 7

**Notify the Internal Revenue Service of the change in status.** The letter would state that the church is now a corporation. Be sure to include Employee Identification Number.

## Step 8

**Notify the Tennessee Department of Revenue of the church's change in corporate status.** Call the Tennessee Department of Revenue and request proper forms to request change in status.

## Step 9

**Notify the church's insurance carrier of change in status.**

13