

Legal Issues in Church Planting

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1. Obtain a Checking account in the new church's name.

Prerequisite: Employee Identification Number (EIN). Obtain from the IRS, (Form SS-4). Visit www.irs.gov. Click on "forms and pubs," then "Forms and instructions," highlight "Form SS-4 Application for Employer identification," for the appropriate form. When applying for a checking account **do not use the social security number of the church planter! Use the EIN number.**

2. Develop sound guidelines for handling finances.

A good resource for this is "Managing Your Church Finances...Made Easy" by J.David Carter. This publication is available through the Stewardship Department of the Kentucky Baptist Convention or through Lifeway Christian Resources (O-7673-9442-9).

3. Develop a ministry budget.

A good resource for this is "Church Ministry Budgeting" (0-7673-2420-X) from Lifeway Christian Resources.

Some possible percentages to use in budgeting are:

- World Missions 10% (Cooperative Program 8%; Associational Missions 2%)
- Personnel expenses (salaries and housing allowances) 35%
- Education, outreach, local ministries expenses 20%
- Building (rental, purchase, utilities, insurance, etc.) 35%

4. Obtain a post office box if needed.

If the new church office is in the church-planter's home, it might be wise to have a post office box. Fill out appropriate application and forms at post office.

5. Acquire a bulk rate permit.

If the church is planning to do a mass mailing they will need a bulk rate permit. Visit <http://new.usps.com/cgi-bin/uspsbv/scripts/content.jsp?D=17447&X=&B=mailing101> for more information.

Prerequisite: An EIN number; A 501(c)(3) blanket exemption letter covering the state convention and affiliated churches; Possibly articles of incorporation and or constitution.
Do not use the partner churches bulk rate permit. This is illegal.

6. Obtain Insurance coverage.

A new church can operate under the partner church's coverage with a special rider, but this needs to be in writing from the insurance company. Otherwise the new church needs to obtain its own coverage. If a church is using rental property (school, theater, restaurant, etc.) an insurance binder will be required as a condition of the rental agreement. It is also advisable to have this when meeting in a private home to relieve the homeowner's liability.

Obtain malpractice insurance on pastor and all staff members.

7. Develop a responsible screening process for those working with preschoolers, children, and youth.

Contact Wendy Dever or Karen Strader at Kentucky Baptist Convention for more information and for appropriate forms. You can download free background check forms at <http://www.kybaptist.org/backgroundcheckform>

8. Obtain worker's compensation for all staff and employees.

The state of Kentucky requires churches to cover all staff and employees under worker's compensation insurance. The sponsoring church could provide this coverage when a mission pastor is considered an employee of the sponsor church. A good rule of thumb is "the person who writes your check is responsible for providing your worker's compensation coverage."

For a information on Workers Compensation laws and a guidebook visit
<http://dwc.state.ky.us/pubnew.htm>

9. Obtain tax-exempt status.

To obtain tax exempt status secure a 501(c)(3) exemption using the following options.

- a. Obtain a legal or tax counselor and for a fee apply for tax exempt status after the church has incorporated.

or

- b. Obtain an exemption letter from the Executive Committee of the Southern Baptist Convention, which will state that the church is exempt under a 501(c)(3) group exemption issued to the Convention, which covers all churches affiliated with the convention. The Executive Committee letter should satisfy the Post Office, since this technique has operated successfully in many prior instances.

Churches can get the 501(c)(3) exemption letter from the Southern Baptist Executive Committee. Until the new church constitutes, it needs to get the partner church to request this on behalf of the new church. The partner church

needs to be a cooperating church that is contributing to the Cooperative Program.

After the new church constitutes, it may request the 501(c)(3) letter in their own name. Requests for such a letter from the Executive Committee should be addressed to: Jack Wilkerson, Executive Committee/Southern Baptist Convention, 901 Commerce Street, Seventh Floor, Nashville, TN 37203-3699

or

- c. The Kentucky Baptist Convention possesses a 501(c)(3) exemption from the IRS that covers all affiliated churches *which have sought Exemption* by official church request.

In order to be officially affiliated with the Kentucky Baptist Convention, a congregation must 1) legally *constitute* as a congregation, 2) *make application to the Kentucky Baptist Convention* in time to return completed materials by September 10 of the year of application to be reviewed by the KBC Credentials Committee, 3) and *be presented to and accepted by the messengers* of the Kentucky Baptist Convention's annual meeting in November. In order to apply for official affiliation with the Kentucky Baptist Convention, send a letter of request for an "affiliation packet" to the Executive Office, Kentucky Baptist Convention, P.O. Box 43433, Louisville, KY 40253-0433.

Once the church is affiliated with KBC, it may request an exemption letter. Each church needs to keep on file a copy of this letter for use in relation to IRS and other government entities.

10. Obtain employee tax and employment records

Each church employee should complete a W-4 form. The church must maintain these forms in a permanent file. The church must provide W-2 forms for all staff and employees, and 1099 forms for all contract workers receiving \$600 or more in a year. This information should be transmitted on appropriate forms to the IRS and state Revenue Cabinet. For non-ordained employees, such as secretaries, the church is responsible for withholding FICA and income tax, and for forwarding these monies to the IRS on a timely basis. If the total withholding is less than \$500 per quarter, it can be filed with a check and form 941 quarterly. If the amount is larger than \$500 per quarter, other rules apply. Check with IRS for current guidelines and amounts.

Visit www.irs.gov. Click on "forms and pubs," then "Forms and instructions," highlight the appropriate forms for downloading.

11. Keep and Prepare contribution records

Provide to Contributors who wish to use itemized deductions documentation of contributions of \$250.00 or more. The receipt should note (in some manner) that “no goods or services were provided to the contributor in connection with the contributions” or that “their value consisted entirely of an intangible religious nature.” There are additional regulations affecting the valuation of contributions of non-cash property and quid pro quo contributions. (See IRS Publication 1771).

For more help in this area refer to “Managing Your Church Finances” by J.David Carter (Lifeway Publication # 0-76-73-9442-9) page 28-33.

12. Secure Kentucky State Sales Tax Exemption

Kentucky state government can supply the church a tax-exempt number to certify that the church does not have to pay state sales tax on purchases. New churches can operate under the partner church, association, or state convention's tax-exempt number until it incorporates or constitutes.

Prerequisite: Complete an application form. For Sales Tax Exemption Information and forms visit www.state.ky.us/agencies/revenue/nondatedsalestaxforms.htm

Click on form 51A125. A copy of the Articles of Incorporation and a detailed schedule of receipts and disbursements must be attached to the application. Also the letter from the IRS which determines that your church is exempt from income taxation under section 501(c)(3) on the Internal Revenue Code must be attached to the application.

13. Property Tax Exemption

Kentucky exempts churches from paying property taxes on their lands and buildings *used for religious purposes*. Land or buildings not used, or not used for religious purposes, *are taxable*. The County Judge-Executive's office can supply any information needed for questions about property taxes.

14. Constituting

Constituting is a traditional, ecclesiastical, and legal process defining the church's organization and membership, and marking the culmination of the church's initial development. In Baptist tradition, the process of constituting marks the movement of a new congregation from dependence to an autonomous-but-cooperative status. This stage usually involves the congregation's writing and formal adoption of documents called a constitution and bylaws. A major step in this process of constituting includes a special service or worship for formalizing the culmination of the initial development. This event often includes a time in which the new church initiates or even recognizes its new role as a member of the family of churches within the local Baptist association or state convention. For the protection of the church in the future even if it is not legally required the church should file its constitution and bylaws with both the state government's incorporating department and the Baptist state convention.

Visit www.newchurches.com for a sample of a constitution and by laws. Visit <http://www.thevillage.cc/resources/financial/constituting.asp> for a constitution guide.

15. Incorporating

Incorporation is a formal action taken as a legality whose timing varies from state to state. However, it should not be confused with the *denominational* process of constituting. The most important legal issue in deciding to incorporate is that of liability. According to California attorney Nolan Kennedy, "Potentially, the most important reason to incorporate is that the corporate form of organization means the members of the church are not personally liable for its debts. Without a corporation, the church members are personally responsible for any obligation of the church" (*A Manual for Incorporating a Baptist Church in California*, p. 3).

Two additional reasons for incorporating are (1) greater ease in doing business (e.g., signing leases, establishing credit for supplies, opening bank accounts, owning property) and (2) greater ease in meeting requirements for tax-exempt status.

In some states, new churches may operate under the partner entity's incorporation documents. In other states, such an arrangement is not permitted or suggested. In many states, incorporation may and should be done early in the church's life, in others, only after constitution. Some states have special laws related to ecclesiastical corporations; others lump all nonprofit corporations together. Additionally, the issue is confusing because the state department dealing with this is different in various states (e.g., in Michigan it is the Department of Commerce; in California, the Secretary of State).

(NOTE: Some states require filing an annual form to maintain incorporation status. Do not neglect those filings!)

16. Employment Eligibility Forms

The church *must* complete and retain I-9 (Employment Eligibility Verification) forms for all staff and people employed by the congregation. Failure to do so may bring about embarrassing and very costly legal action.

17. Obtain Copyright Licensing

The church needs to deal responsibly with copyright issues. One of the major areas of violation in many churches is in the area of music and video clips. CCLI is an organization for licensing. The cost of the license varies according to the regular attendance at your main service(s). If your church holds multiple services, use the combined attendance figure. The total fee includes license and service fees.

Visit <http://www.ccli.com/UnitedStates.cfm>



18. Contracts

The new church may have to deal with a variety of legal contracts, for example, purchasing equipment, leasing space, or securing various kinds of professional services. In Kentucky, the church trustees are *legally charged* with the authority to execute contracts. For this reason, trustees should be especially knowledgeable of legal matters, and should be prudent persons who can enter into contractual agreements with wisdom and thoroughness. Trustees should read all contracts carefully and secure explanations and/or written clarification on unclear elements of all contracts.