

LEGAL AND PRACTICAL STEPS TO PREPARE FOR A CHURCH MERGER

Getting started. This checklist, created by attorney [Erika E. Cole](#) as part of her church merger article series for Church Law & Tax, provides key tasks that should be completed as your church evaluates a possible merger with another church or churches. The order given for completing various tasks is intentional and certain tasks need to be accomplished before moving on to others. However, some likely can be handled simultaneously.

While an attempt has been made to cover all areas as comprehensively as possible, church leaders should work through this checklist—including the order of tasks—in consultation with a qualified legal professional. Similarly, if your church happens not to have one/some of the documentation referenced below, likewise, your legal counsel can provide direction as to addressing such matters.

Gather key documents and information upfront

- Articles of incorporation and all amendments
- Bylaws
- Constitution
- All policies and procedure documents
- All exemption records, including Internal Revenue Service (IRS) letter of determination, state sales tax certificate, and real property exemption
- Copies of all property deeds and related records
- Other documents and information
 - Governing board and senior leadership: Create a list and indicate titles, officers, and their roles. These are the individuals who will likely need to make the final decision (or submit the decision to the congregation).
 - Church staff: Create a list that includes titles, roles, responsibilities, years employed, and training. Gather related written agreements.
 - Ministries: Create a list that includes ministry leaders' names, titles, and years served. Include information on the purpose and accomplishments of each ministry.
 - Ancillary ministries: For each separately incorporated ministry (such as a school, childcare center, and so on), include all documents noted above.
 - Ministry employees and volunteers: Create a list of employees and volunteers working in the various ministries and ancillary ministries. Include names, titles, roles, wages, years employed, written agreements, and hours worked per week—even for those who are not paid.
 - Assets: Create a list of assets that includes pertinent related details, such as market value, age, condition, repairs needed, deeds, titles, insurance policies, and service contracts. Also include any known grants, bequests, and promised gifts.

- Debts: Create a list of all debts owed, including pay-off amounts. Gather related loan documents. Include all service contracts not listed above.

Make these decisions

- Name: Options include continuing one church's name, creating a new name incorporating both church names, or opting for a new name.
- Location: Options include using space already owned or leased by one of the churches or selecting a new location.
- Pastoral staff: Which pastor will take the lead? Which of the staff will continue and in what roles?
- Ministries and ministry leadership: Many of each churches' ministries will be duplicates. Decide what ministries to continue, refocus, or discontinue and who will lead the new and continuing ministries.
- Governance: What governance style will be followed after the merger? How will the board be chosen?
- Communications: How and when will news about the merger get shared internally, locally, and, if needed, beyond?
- Mourning: Plan how each church's members can say goodbye to the individual churches as they knew them.
- Honor: Decide how to honor the church after the merger by including a key, beloved ritual or item signifying unity.

Take these actions

Theology

- Discuss tenets of faith at the outset to ensure the existing churches agree on underlying theology before they merge.

Vision, Strategy, and Culture

- Ensure congruence exists among the leadership of the merging churches—that you are on the same page regarding vision, strategy, and culture. If churches don't agree as to these critical methods of approach, there is little likelihood of moving forward.

Legal formation

Note: *Depending upon the legal structure of the merger, the actions needed will vary.*

- If one church will dissolve, while the other will continue legally but with a new name, the articles of incorporation will need to be amended by the board. If the continuing church is not in good standing or forfeited (i.e., the right to exist in the state has been lost because of the failure to comply with some administrative requirement), this must be first rectified. The church planning to dissolve must do so only at the right time based on legal considerations.

- If neither of the existing churches will remain after the merger, a new church must be formed to bring them together, including new articles of incorporation, new bylaws, and a new board. The existing churches then should be dissolved at the appropriate time.

Governance

Note: *Governance styles differ from church to church. Do not assume all churches envision this the same way.*

- Review articles of incorporation and bylaws for the current governance style of each church and discuss whether those documents reflect actual operations. This will help shape what should be formed going forward.
- Discuss and choose the governance style to be used after the merger.
- Draft bylaws to reflect the governance style chosen. Bylaws must be formally adopted by the new board and/or in the manner required. Unlike articles of incorporation that must be filed with the secretary of state for the state in which the church is to be formed, bylaws are adopted internally.

Location and property

- If one church owns property that will be used, but the church after the merger will have a different name, land records must be updated. In many jurisdictions, a deed has to be prepared by an attorney.
- If one church leases property that will be used, but the newly formed church will have a different name, terms of the lease must be reviewed to determine whether and how amendments must be provided.
- If any owned property will be sold, the church listed on the title must not dissolve until the sale is completed.
- If any leased property will not be used post-merger, this issue must be addressed with the property owner.

Pastoral staff

- Review all written agreements with pastors and pastoral staff. Severance and/or pay through an agreed-upon date may be required for those not staying on after the merger.
- Discuss pastoral staffing needs of the merged congregations.
- Discuss pastoral titles, roles, and responsibilities since titles and related roles often differ among churches.
- Discuss required compensation and benefits from staff in consideration for retention.
- Review any retirement plans or related matters that may need to be properly revised.

Employees

- Review all employee contracts, handbooks, and local laws for terms, notice requirements, and benefits.
- Determine the paid staffing needs of the church after the merger, including pastoral, ministerial, and administrative roles, and so on.
- Understand the implications of worker designations and classifications (e.g., employees vs. independent contractors) based on IRS and state requirements.

Other transitional considerations

- The leaders of both churches should sign nondisclosure agreements, due to the confidential and sensitive nature of the information shared leading up to the merger.
- Work with legal counsel to prepare communications internally and externally to announce the merger.
- Prepare a celebration to remember and honor each church, along with each one's founders and supporters.
- Publicly express gratitude to the ministry leaders and pastoral staff who led the process from start to finish.
- Work with legal counsel to cancel or transfer contracts, insurance policies, and other agreements after the merger.
- Make and carry out a plan to retain or destroy any unneeded records, recognizing some records likely need to be permanently kept, including each church's articles of incorporation, bylaws, insurance policies, and personnel and volunteer files kept before the merger.
- Properly distribute any remaining assets to another tax-exempt organization consistent with state and IRS regulations.
- Work with legal counsel to ensure state and federal filings are made to reflect the legal change and any changes to name, address, registered agent and address, and responsible party.
- Issue W-2s and/or 1099s for the final tax year for the dissolving entity.
- File a change of address with United States Postal Service (USPS).

This information is provided by Erika E. Cole, Esq., who heads the Churches & Faith Based Organizations Group of Whiteford, Taylor & Preston, LLP, and serves as a senior editorial advisor for Christianity Today's Church Law & Tax. This information is general legal information and does not constitute legal advice. Laws vary based on jurisdiction. If you are in need of legal advice, contact an attorney licensed in the jurisdiction in which your church is situated to provide guidance specific to your particular issues and circumstances.

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