

Minnesota Church Corporation Law

Governing Statutes

Minnesota church organizations are generally governed by either **Chapter 315**, or **Chapter 317A**, of the Minnesota Statutes:

- ◆ **Chapter 315**, is a body of quasi-corporate law which governs Minnesota religious corporations and societies.
- ◆ **Chapter 317A** is a body of corporate law which has governed all Minnesota “non-profit corporations” since 1991 - including, but not limited to, many churches.

History of Chapter 315

Minnesota Statutes, Chapter 315 is a hodgepodge collection of statutes dating from Minnesota’s early days, which govern a variety of religious entities ranging from:

- ◆ those with congregational structures,
to
- ◆ those which are more hierarchical in nature.

However, the provisions of Chapter 315 have limited application, since many of its statutes only govern certain forms of religious entities.

Few, if any, new churches elect to be formed under Chapter 315. Most, if not all, are now formed under Chapter 317A.

Chapter 315 - Filing a Certificate of Incorporation

Many Chapter 315 religious corporations came into existence by filing a “Certificate of Incorporation” with the county recorder where the church was located, which Certificate:

- ◆ identified the official name of the church,
- ◆ specified the qualifications for trustees - who serve a function equivalent to corporate directors,
- ◆ identified the initial “trustees” of the church,
and
- ◆ perhaps identified which church synod or denomination with which the Church would be affiliated.

Chapter 315 - Corporate Documents

In addition to being subject to the provisions of Chapter 315, a religious corporation or society generally has two, and sometimes three, documents which govern its affairs:

- ◆ a **Certificate of Incorporation**, which:
 - contains certain statements required by Chapter 315, and which
 - is filed with the county recorder where the church is located.
- ◆ a **Constitution**, which is:
 - ◆ an internal church document not filed with any governmental entity, and which
 - ◆ contains:
 - provisions governing the church's internal affairs, and
 - sometimes doctrinal statements of the church.
- ◆ some churches also have **Bylaws** - another internal church document which is not filed with any governmental entity - which contains provisions governing the church's affairs which are generally less important than those contained in the **Constitution**.

Chapter 315 corporations that have both a **Constitution** and **Bylaws** tend to have their more important provisions listed in their **Constitution**, and their less important provisions in **Bylaws**.

Often, there is a different, and more difficult, procedure required to amend a church's **Constitution** than its **Bylaws**.

In general, **Constitution** and **Bylaw** provisions cannot be in conflict with any terms in the church's **Certificate of Incorporation**, and neither the **Certificate of Incorporation**, nor the **Constitution** and **Bylaws**, can be in conflict with the provisions of Chapter 315.

Chapter 315 - Management

Many Chapter 315 corporations are under the direction and control of "trustees" or "elders".

However, sometimes, churches limit the powers of such trustees or elders by first requiring that resolutions on certain types of actions pass a vote of the members of the congregation.

History of Chapter 317A

Chapter 317A became effective on August 1, 1989, and governs all non-profit corporations, many of which are churches.

Prior to January 1, 1991, some Minnesota non-profit corporations were governed by Minnesota Statutes, Chapter 317, the predecessor body of non-profit law to Chapter 317A.

Chapter 317A required that all Chapter 317 corporations which had not elected to be governed by Chapter 317A would automatically become subject to its provisions on January 1, 1991.

Many religious corporations originally formed under Chapter 315 converted to Chapter 317 at some point in their history, and later to Chapter 317A - either voluntarily, or involuntarily.

Corporations which were governed by either Chapter 315 or Chapter 317 could elect to be governed by Chapter 317A by filing a resolution approved by its members with the office of the Minnesota Secretary of State.

Chapter 317A - Filing Articles of Incorporation

Chapter 317A non-profit corporations are formed by filing Articles of Incorporation with the office of the Minnesota Secretary of State, which must contain the following information:

- (1) the name of the corporation;
 - (2) the address of the registered office of the corporation;
 - (3) the name of its registered agent, if any, at the registered office address;
 - (4) the name and address of each incorporator;
- and
- (5) a statement that the corporation is organized under Chapter 317A.

Chapter 317A - Corporate Documents

In addition to being subject to the provisions of Chapter 317A, a church non-profit corporation generally has two documents which govern its affairs:

- ◆ **Articles of Incorporation**, which:
 - contain statements required by Chapter 317A, and which
 - are filed with the Minnesota Secretary of State.
- ◆ **Bylaws**, which are an internal church document not filed with any governmental entity, containing:

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- provisions which govern the church's affairs, and sometimes,
- doctrinal statements of the church.

Chapter 317A - Articles

Chapter 317A defines the term “**articles**” to include one or more of the following documents:

- ♦ articles of incorporation;
- ♦ articles of amendment;
- ♦ a resolution of election to become governed by Chapter 317A;
- ♦ a statement of change of registered office, registered agent, or name of registered agent;
- ♦ articles of merger;
- ♦ articles of consolidation;
- ♦ articles of abandonment;
- and
- ♦ articles of dissolution.

Chapter 317A - Bylaws

Chapter 317A defines the term “**bylaws**” to mean the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.

Church corporations which converted from Chapter 315 to Chapter 317A generally remained subject to the same **Constitution** and **Bylaws** they had when they were governed by Chapter 315.

However, Chapter 317A does not recognize a **Constitution** as being substantively different than **Bylaws**.

Therefore, under Chapter 317A a document which is identified as a **Constitution** is merely a section of the organization's Bylaws.

Even though the internal governing documents of the church may be separately referred to as its “Constitution” and “Bylaws”, under Chapter 317A, both documents are of the same nature, and are classified as bylaws.

Chapter 317A provides that bylaws may contain any provision relating to the management or regulation of the corporation consistent with law or the articles, including, but not limited to, provisions relating to property, voting, and other rights and privileges of members.

Bylaw provisions cannot be inconsistent with any terms contained in the **Articles of Incorporation**, and neither the **Articles of Incorporation** nor the **Bylaws** can be in conflict with Chapter 317A.

However, Chapter 317A does provide that a corporation's statutory powers are subject to such limitations as are provided in its articles or bylaws.

Chapter 317A - Amendment of Articles and Bylaws

Under Chapter 317A, the method required to be used for amending **articles** is different, and more restrictive than, the method used for amending **bylaws**.

The procedure for the amendment of **articles** may require the approval of both:

- ◆ the members,
and
- ◆ the board of directors.

However, unless reserved by the articles to the members, the power to adopt, amend, or repeal the **bylaws** is vested in the board of directors.

Nevertheless, any such power of the board of directors is subject to the power of the voting members (usually the congregation) to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board of directors.

Chapter 317A - Board of Directors

Chapter 317A provides that:

- ◆ the business and affairs of a corporation must be managed by, or under the direction of, a board of directors,
and that
- ◆ all directors are entitled to vote, and have equal rights and preferences, except as otherwise provided in the articles or bylaws.

Evangelical Lutheran Church in America (the “ELCA”)

Any Lutheran church desiring to terminate its membership with the Evangelical Lutheran Church in America (the “ELCA”) should fully address the following issues, and perhaps others, before such termination:

1. What recourse would the ELCA have against the church if the church elects to terminate its membership with the ELCA?
2. What risks will the church assume if it elects to terminate its membership with the ELCA?
3. Does the ELCA have any right to the church’s property if the church elects to terminate its membership with the ELCA?
4. What effect will an election by the church to terminate its membership with the ELCA have on the church’s 501(c)(3) tax exempt status?
5. What effect will an election by the church to terminate its membership with the ELCA have on the church’s governing documents?

While the answers to such issues cannot be fully addressed here, according to the terms of the ELCA constitution, congregations which:

- ◆ were formerly members of the **Lutheran Church in America** organization,
or
- ◆ were established by the **Evangelical Lutheran Church in America**,

are unable to leave the ELCA without the consent of the synod.

However, congregations which were formerly members of the **American Lutheran Church** organization may not be required to obtain the approval of the ELCA before terminating their membership in the ELCA.

What is Attorney Gary C. Dahle’s Experience in Representing Minnesota Churches?

Since 1992, Attorney Gary C. Dahle has represented Minnesota churches - primarily, but not exclusively, Lutheran churches - with respect to:

- ◆ application for IRC Section 501(c)(3) tax exempt status,
- bond financing for construction purposes,
- bond “refinancing” in order to obtain a lower interest rate on church debt,

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- clergy issues,
- employment issues,
- insurance issues,
- on-site day care issues,
- probate matters,
- property tax exemption issues,
- real property easements,
- real property title issues,
- school issues,
- termination of membership with the ELCA,
- ◆ the sale of church real property - including property acquired by gift,
and
- ◆ the drafting and revising of Articles of Incorporation, Constitutions and Bylaws,

for churches located in the Minnesota cities of **Arden Hills, Blaine, Bloomington, Chaska, Corcoran, Coon Rapids, Mounds View, Roseville, and Wyoming**, in Anoka, Carver, Hennepin and Ramsey counties.

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