



Western North Dakota Synod

Evangelical Lutheran Church in America

God's work. Our hands.

Memorandum

To: Congregation Councils in the Western North Dakota Synod
Copy: Bishop Mark Narum
From: Murray G. Sagsveen, Synod Attorney
Subject: Updating Each Congregation's *Articles of Incorporation*
Date: November 30, 2016

It is my recommendation that each congregation in the synod consider updating its *Articles of Incorporation*.

Each congregation in the synod is a nonprofit corporation incorporated in the State of North Dakota. Each corporation was established when the congregation filed its *Articles of Incorporation* with the North Dakota Secretary of State and the corporation will continue indefinitely **IF** the corporation files a required report with the Secretary of State by February 1 each year. The registered agent for the corporation should receive the annual report form in the mail in December (the registered agent can be identified by searching the Secretary of State's website at https://apps.nd.gov/sc/busnsrch/busnSearch.htm#Search_Results).

The Internal Revenue Service (IRS) recognizes the Evangelical Lutheran Church in America (ELCA) as a 501(c)(3) organization, which means that it is exempt from federal income tax *and* that donors (who itemize on the federal tax return) may deduct their donations as a charitable contribution.

The IRS has a procedure by which a parent organization (in this case the ELCA) can establish for its subordinate organizations (such as synods, congregations, campus ministries, etc.) group ruling tax-exempt status for federal income tax purposes. The synod office manages this matter so that congregations need not, and should not, separately apply for 501(c)(3) tax-exempt status. Also, the synod office periodically checks the IRS group ruling list to ensure that all synod congregations are included on the list.

In order to be included in the ELCA's group ruling, a synod congregation must:

1. have a nine-digit federal employer Identification number (EIN); and
2. have, in its *Articles of Incorporation*, appropriate clauses that establish its character as a public charity. These clauses include a prohibition against any of the assets or income inuring to the benefit of private persons and a provision that upon dissolution of the organization its assets will go to

another organization qualifying as tax-exempt under 501(c)(3) of the Internal Revenue Code.

Many synod congregations were incorporated a century ago, but have never updated the *Articles of Incorporation* to include the required provisions. Accordingly, the *Articles of Incorporation* should be updated to protect the congregation's tax-exempt status.

The process to update a congregation's *Articles of Incorporation* is not difficult and is not expensive. A step-by-step checklist is provided at Enclosure 1. Also, Enclosure 2 is a template that can be used to draft *Restated Articles of Incorporation* for the congregation; this template can be downloaded from the synod's website. Each congregation's *Restated Articles of Incorporation* must include the language at articles 6, 7, and 8 in the template.

If you have questions or request assistance, contact me at 701-426-1905 or Murray@WNDSynod.org.

Enclosure 1

Guidelines **Updating a Congregation's Articles of Incorporation**

1. Locate the Congregation's *Articles of Incorporation*.
2. Information about the congregation's corporation can be found on an EXCEL spreadsheet at <http://wndsynod.org/governance/congregations/>. The spreadsheet was prepared by the synod attorney and is periodically updated.
3. Information about the congregation's corporation can also be found on the ND Secretary of State's website at https://apps.nd.gov/sc/busnsrch/busnSearch.htm#Search_Results. You may need the official corporation name or the system ID from the synod attorney's spreadsheet to access the information on the Secretary of State's website.
4. Key information on the congregation's *Articles of Incorporation* and the Secretary of State's website should match (e.g., incorporation date and official name of the corporation).
5. If the corporation's *Articles of Incorporation* do not include the text in articles 6, 7, and 8 of the *Restated Articles of Incorporation* template (enclosure 2), the congregation should proceed to the next step.
6. The *Restated Articles of Incorporation* template (enclosure 2) is a model that can be used to update the congregation's *Articles of Incorporation* to comply with current IRS requirements. The template in MS Word format can be downloaded at <http://wndsynod.org/governance/congregations/>. The congregation can request the synod attorney to prepare the *Restated Articles of Incorporation* or the congregation can prepare it as follows:
 - a. Insert the congregation's official corporate name in the title and article 1.
 - b. Insert the name and mailing address of the corporation's registered agent in article 2. The current registered agent is on the Secretary of State's website (paragraph 3, above).
 - c. Insert the mailing address of the church building in article 4. If mail is not delivered to the church building, use the mailing address of the registered agent.
 - d. Insert the name of the congregation/council president in the signature block on page 2.
7. The congregation's *Articles of Incorporation* may include an article that governs the amendment process. If so, that process must be followed. If not, state law [ND Century Code section 10-33-15(2)] governs:

Amendments to the articles must be approved by the affirmative vote of a majority of all directors [i.e., council members] and by the members with voting rights [i.e., voting members of the congregation]. If an amendment is initiated by the directors [i.e., congregation council], proper notice of the proposed amendment must precede a meeting of the members with voting rights at which the amendment will be considered and must include the substance of the proposed amendment.

8. The congregation council must first approve the proposed *Restated Articles of Incorporation* by a majority of the entire council (i.e., a majority of a quorum is not sufficient).

9. The council must give timely notice to the congregation concerning a vote on the proposed *Restated Articles of Incorporation* in accordance with sections C10.02. and C10.03 of the congregation's constitution.

10. The congregation can vote on the proposed *Restated Articles of Incorporation* at either a regular or special meeting of the congregation. The proposed *Restated Articles of Incorporation* "must be approved...by the members with voting rights." Section C10.06. of the congregation's constitution will likely be similar to the 2016 Model Constitution for Congregations, which provides: "All actions approved by the congregation shall be my majority vote of those voting members present and voting, except as otherwise provided in this constitution or by state law." When approved, the congregation president should sign the *Restated Articles of Incorporation*.

11. Finally, mail the *Restated Articles of Incorporation* and a \$30 filing fee payable to the North Dakota Secretary of State to the Murray G. Sagsveen, Synod Attorney, 1277 Eagle Crest Loop, Bismarck, ND 58503-8849; he will file the document with the Secretary of State's office, then return a copy of the filed document to the congregation.

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Western ND Synod – ELCA
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701-426-1905
November 30, 2016

Enclosure 2

North Dakota Nonprofit Corporation

Restated Articles of Incorporation

for

[Name] Lutheran Church

Article 1

The name of the corporation shall be **[Name]** Lutheran Church.

Article 2

The registered agent is **[name and mailing address – P.O. box alone is not sufficient]**.

Article 3

The Restated Articles of Incorporation shall be effective when filed with the Secretary of State and will supersede the original articles and all amendments to them.

Article 4

The address of the principal executive office of the corporation is **[mailing address of the church (P.O. box alone is not sufficient; if mail is not delivered to the church, the address should be the registered agent)]**.

Article 5

This corporation is a church within the Western North Dakota Synod of the Evangelical Lutheran Church in America.

Article 6

This corporation is organized exclusively for charitable, religious, and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.

Article 7

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, directors, 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 set forth in Article six. 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 the 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 the corresponding section of any future federal tax code.

Article 8

Upon the dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by the state district court in [county where congregation is located] County exclusively for such purposes or to such organization or organizations as the court shall determine, which are organized and operated exclusively for such purposes.

Article 9

The number of directors that would be required to take an action at a meeting of the board at which all directors are present may also take that action in writing or by electronic communication such as email if the directors sign, approve, or consent to such action.

Article 10

The constitution and bylaws may be amended in the manner set forth in the corporation's constitution.

Article 11

These Restated Articles of Incorporation may be amended upon approval of a proposed amendment by the congregation council and, if a quorum is present, a majority of the corporation's voting members after thirty days' notice has been given to the voting members.

Article 12

These restated Articles of Incorporation are adopted pursuant to Chapter 10-33 of the North Dakota Century Code.

[name]

President, Congregation Council

MGS:20161130