

INCORPORATION 101

Incorporating a CWJC[®]/CMJCSM site is similar to building a house. When someone decides to build a home, they must decide on a location, draw up house plans, find a builder, and begin the process. Finally, after hours of paperwork, discussions, and decisions, the plans for a beautiful home await them and their family. The process is similar to incorporating. When you and your board decide to incorporate, you research the neighborhood, find the right builder to complete the various forms, and begin the process. Finally, after hours of paperwork, discussions, and decisions, an incorporated site awaits you and your job corps family.

HOUSE PLANS

The first step in building a house or incorporating is determining why you want to build or why you want to incorporate. The board of directors should consider the following:

- Benefits
- Challenges
- Costs
- Alternatives

These are not easy questions and should be considered with much research and prayer. Additionally, it is very important to carefully select the initial directors and recruit those with both vision and expertise in this area.

Benefits:

An incorporated site is a “legally constituted, nongovernmental entity incorporated under state law as charitable or not-for-profit and organized to serve some public service mission.” In other words, it is a corporation formed to carry out a charitable, educational, religious, literary, or scientific purpose. Benefits of incorporation include

- the ability to obtain a 501(c)(3) designation from the IRS that allows the donations made to the organization to be tax deductible by the giver
- exemption from some federal and state income taxes
- ability to obtain funds from government agencies, private foundations, and many other funding resources
- personal liability protection
- non-profit mailing status

Challenges:

The board of directors in incorporated sites has additional responsibilities from those of an advisory council. The main differences are:

- **Financial:** The fundraising/resource development committee of a board devotes a significant amount of time into raising, managing, and reporting financial resources.

- **Governance:** The board is responsible for the hiring/evaluation/dismissal of the executive director and for making sure that the site is operating under its approved mission, by-laws, and articles of incorporation.
- **Legal:** The board ensures the site is following sound financial and risk management principles, ensures annual reports (as required by state and/or IRS) are submitted correctly, and sets the policy for the site.

Alternatives:

Becoming incorporated is usually not an automatic goal of a CWJC/CMJC site. The decision to incorporate may occur at the initial start-up or could be result of site growth and expansion. Incorporation largely depends on:

- **Needs of the ministry:** The site may no longer be protected under the umbrella of a parent organization, may be responsible for a directors or employees' salary, may engage in profit-making activities (i.e. thrift store), or may need the ability to accept tax-deductible donations.
- **Level of liability desired by the board:** Every site needs insurance and protection from liability. Often in unincorporated sites, this is provided through the parent organization at a lower cost. If that option is not available, then board members will want to take the necessary steps to avoid being held personally liable for the activities of the organization. While a nonprofit can be sued, incorporation generally protects the board members and executive director from the risk of losing personal assets (i.e. personal money, houses, cars, or other assets are not at risk).
- **Funding support:** Incorporation can cost around \$800–\$1,000 or more depending on the state in which you incorporate and hire professional services. A CWJC/CMJC site will need to calculate all possible costs involved in the incorporation process and have money readily available for the various fees. Each state has different fee requirements. A copy of the fee schedule is usually included with the filing instructions obtained through your secretary of state.

RESEARCH THE NEIGHBORHOOD

Before making the final decision to build a house, a family usually looks at their budget to determine how much of a mortgage they can afford and looks at land or neighborhoods for where they would like to live. The same is true with incorporating a site. In researching the neighborhood, the board and executive director may want to engage in a detailed needs assessment and/or strategy planning exercise to obtain answers in the following topic areas:

- **Financial:** What is our budget? How much financial support can we realistically secure? Where will this financial support come from? What are our long-term goals? Will our staff be paid or volunteers? Who is my competition both in programming and for donations?

- **Programming:** What other services are available or lacking in the community? How is my site different from other organizations? Who is my target population? Do I have a written ministry plan?
- **Community Relations:** What professional resources are available in my community (i.e. legal, educational, coalitions, etc.)? What are the potential sources for mentors, board members, and volunteers? What are the possible short-term and long-term challenges to incorporating a CWJC/CMJC in this community?

FINDING THE CONTRACTOR/BUILDER

Congratulations! You have completed your needs assessments, you have a detailed ministry plan, your board is involved and proactive, and you can articulate the reasons and benefits for incorporating to any prospective board member, banker, or state official. You now have a greater idea of how much of your time is required to direct the site; and because this whole process was thoroughly bathed in prayer, you and your board are confident and excited about finally incorporating.

As anyone who has ever built a house knows, finding the right contractor/builder is important. It can mean the difference between minor inconveniences and major disasters. The same is true for incorporation. While an attorney is not required to complete the incorporation paperwork, it is desirable to obtain the services of an attorney to at least check the paperwork, review the articles of incorporation and by-laws, and make sure your site has considered all potential liabilities. If such expertise is not already on your board of directors, check with your local chamber of commerce, center for nonprofit management, friends, and business acquaintances for referrals. Additionally, online businesses offer these services at varying costs. Thoroughly research all Internet sites before engaging in any business transactions.

Most likely, you, as executive director, or one of your board members will be responsible for completing the paperwork. While the forms may look intimidating, don't panic. Downloadable instructions, which provide a step-by-step explanation of each question, exist for each form. They provide definitions of unfamiliar terms as well as a phone number to reach a "live" person that you can ask questions.

So grab a cup of coffee, flex your typing fingers, and turn on the computer. Let's get started.

BUILDING PROCESS

Disclaimer

Each state has a government department that handles profit and nonprofit business matters. The name of the government agency administering nonprofit business matters may differ from state to state. For the best site, conduct an Internet search such as

“incorporating a nonprofit in [name of state]” or go to www.usa.gov/business/nonprofit_state.shtml for a list of state-by-state Web site addresses.

Additionally, each state has different laws, forms, and filing fees; however, most follow a general format for incorporating that includes drafting by-laws and creating a governing board, actually incorporating and writing articles of incorporation, obtaining tax-exempt status from the IRS and the state in which you organize, and completing any additional documents that your state or city may require. These additional forms relate to state compliance, annual reporting, and sound recordkeeping practices. It is your responsibility as CWJC/CMJC executive director to research and review the requirements for establishing a nonprofit in your state.

CHECKLIST

There are several forms required by the state in which you are incorporating and by the IRS. However, before you begin completing the forms, you can save time by having the following items written and approved by the board of directors:

- the incorporation filing guide available from your secretary of state*
- articles of incorporation **
- by-laws ***
- budget with three-year projections
- detailed ministry/business plan
- detailed fundraising plan
- create and approve incorporation budget

Please review all of the required forms and associated filing fees before you begin the process so that you are prepared and can avoid delays in gathering information. Additionally, it is advisable that you keep a copy of forms and required data in an organized notebook that is easily accessible. Much of the information needed for completing the forms will be found in your articles of incorporation, by-laws, and budget.

Filing Guide* In Tennessee, this is a 64-page, online booklet for incorporating. In Missouri, it is only six pages. In Texas, it has 22 pages. The filing guide provides an overview of the required forms, contact information, filing fees, instructions, and a glossary of terms needed for successful incorporation. The filing guide can be obtained via the secretary of state Web site or by contacting your secretary of state office.

Articles of Incorporation** This is a legal and binding document that is submitted to the secretary of state which describes the site, how it is organized, and how it is governed. This is where the assistance of a lawyer is helpful in confirming that all points are covered. Check out the resource section of this training module for a listing of suggested books and Web sites available that can provide an outline and wording options, or do an Internet search for online examples and free helps.

The following is an example of the topic points required for writing articles of incorporation:

- Name and address of organization
- Purpose: states that you will operate and use revenue for said purpose. It describes your site's relationship with national CWJC and how you are authorized to use name and logo.
- Limitations: states what you will not do as a nonprofit (i.e. not provide bonuses or salary to board of directors, engage in political propaganda etc.).
- Directors/members: describes how the board manages itself and the executive director. Includes a conflict of interest clause.
- Debt obligation and personal liability: important statement regarding members, officers, or directors not being personally liable for the debts or obligations of the corporation
- Dissolution: states how you will pay remaining debts and dispose of remaining assets in the event your site ceases to exist
- Incorporators: requires the names and addresses of initial incorporators.

By-laws*** This is another legal and often required document for incorporation. By-laws specifically detail how the board operates and is organized. Topic points include but are not limited to:

- Name: legal name of the site.
- Purpose: a brief description stating that you are a nonprofit, what type of nonprofit, purpose for forming, and how the site's mission will be fulfilled.
- Registered Office and Agent: some by-laws include this section, which describes in what state you are incorporating, location of registered office, and relationship with national WMU.
- Membership: describes who can serve on board of directors, how they are elected, voting rights, and how they can resign or be terminated.
- Meetings of Members: lists information about an annual meeting, quorum needed, how often board will meet, location of meetings, how members will be notified of regular meetings, and who can call special meetings.
- Officers: lists all of your board officers such as president, vice president, secretary, etc. and describes how they are elected, term of office, how they can be removed from office, and each officer's general duties and responsibilities.
- Board of Directors: details general powers, how many can serve at one time, for how long and what qualifications are needed, when and how often they will meet, how special meetings are called, quorum needed for decisions, how to fill vacancies, and a statement that you are not paying the board members to attend meetings.
- Committees: description of committees needed and their authority, to whom they report, qualifications, term of office, quorum needed, and how they will organize. Your board needs to be active.
- Financial Management: describes your fiscal controls, such as how to handle donations, who is allowed to make deposits, and how often they must make deposits, who is authorized to sign checks, what is the financial limit under which

the director can operate without seeking board approval, how financial records will be kept, the fiscal year, and who has access to financial books and records.

- Amendments: statement regarding how the by-laws may be altered or adopted.
- Indemnification: statement of liability insurance coverage.

[**Note:** The creation of the articles of incorporation and by-laws can be time consuming and can take up to several months to complete, depending on how often your board meets and the person(s) writing and reviewing the documents. Be very thorough in this process; detailed by-laws can save you many future headaches. Additionally, some states do not require by-laws for incorporation. Check with your state's secretary of state.]

(Filing fee costs listed are those of Tennessee. Check with your state for appropriate filing fees.)

IRS Form SS-4—Application for Employer Identification Number

(No Fee): If you expect to be paid or have paid employees, open a bank account, and/or be fiscally responsible, you will need to obtain your employer identification number (www.irs.gov/pub/irs-pdf/fss4.pdf). This is a relatively simple and straightforward two-page document required for tax purposes.

Application for Reservation of Corporate Name (\$20): This is a simple one page form that, when submitted, prevents another organization from using your name for up to four months while you are in the incorporation process. This is not a required form and unless there are many CWJC/CMJC sites incorporating in your state, you may want to skip this form. Usually, you can contact your secretary of state's office or Web site to verify that your selected name is not already taken.

[**Note:** Before committing your name, make sure that it will not be confused with another high profile organization (i.e. AAA Job Corps) or that your name's initials are not misleading or inappropriate.]

Application for Certificate of Authority (\$600): This is a simple but expensive form that grants you permission to operate a nonprofit in your state. It asks for names and addresses of your board of directors, your principal business address, and date of incorporation.

Charter (Nonprofit) (\$100): This is the filing form that states the names and addresses of the incorporators and describes how assets will be distributed if your site closes down.

[**Note:** For section two, most CWJC/CMJC sites would answer public benefit/religious corporation/no members. Because Bible study is a required key element for participation, CWJC/CMJC sites are largely considered religious corporations.]

IRS Form 1023—Application for Recognition of Exemption (\$300 or \$750 depends on revenue): This 28-page form is used to apply for 501(c)(3) status with Internal Revenue Service (tax exemption is not automatically obtained through

incorporation. It must be requested). This form and accompanying instructions can be obtained online (form: www.irs.gov/pub/irs-pdf/f1023.pdf; instructions: www.irs.gov/pub/irs-pdf/i1023.pdf). This form will require the majority of your time, and you will be asked to provide an articles of incorporation, by-laws, charter, ministry/business plan, and financial plan with a three-year projection.

Form 1023 is divided into parts:

- I. **Identification of Applicant**
This section asks for your name, contact information, employer identification number, and information on the professional helping you complete this form.
- II. **Organizational Structure**
More than likely you will answer “Yes” to Questions #1—you are a corporation; and #5—you have adopted by-laws.
- III. **Required Provisions in Your Organizing Document**
In case you haven’t downloaded the instructions or organized your notebook, this is a good time to get organized so that you can detail where the required documents are located in your packet of information.
- IV. **Narrative Description of Your Activities**
This section requires an attachment describing your past, present, and planned activities in a narrative format. Review the instructions for specifics. Additionally, Publication 557 is a great resource for IRS and nonprofit tax laws and guide for writing this narrative section. Publication 557 can be obtained at www.irs.gov/pub/irs-pdf/p557.pdf
- V. **Compensation and Other Financial Arrangements with Your Officers, Directors, Trustees, Employees and Independent Contractors**
This section wants you to list your board of directors and their respective offices (chairman, secretary, etc), executive director, paid employees, and anyone of whom you may have on retainer such as an attorney or CPA. Again refer to instruction guide for additional information.
[Note: You don’t want to or appear to be paying your board of directors. The paid children’s director of your site should not also be a board member, nor should relatives or those on retainer comprise the majority of your board. Take time with this section and be clear on all possible conflicts of interest. If there is a potential conflict of interest, this may be a good time for a board member to excuse him/herself.]
- VI. **Members and Other Individuals and Organizations that Receive benefits From You**
In this section, you are answering questions that relate to what you do, to whom your services are provided, and the restrictions of your goods, services, or funds. Do you provide computer training for another organization? Do you restrict services or goods to a specific individual or group? Do you make regular donations toward a scholarship or other organization? If so, explain the situation.
- VII. **Your History**
In this section, you are stating whether your site was a result of a merger or incorporation of another organization and if you have been operating as a legal agency for more than 27 months. See instructions for definition of legal agency—

especially if you've been under the umbrella of another organization and are now incorporating.

VIII. **Specific Activities**

In this section, you must honestly answer whether you are involved in political activities that include endorsing a political candidate, operating lottery or bingo activities, or acting as an interest group. It is highly advisable that your site refrain from these activities. Additionally, this section asks how you conduct fundraising and requires a copy of your fundraising plan. Question 4 C asks if you will engage in fundraising activities for other organization. If you receive United Way money, more than likely you are required by United Way to participate in fundraising activities, and thus your answer is "yes." You will need to explain and document your answers. If in doubt on any of these questions, refer to the form instructions or contact a legal representative.

IX. **Financial Data**

This section requires a lot of thought and financial information. Be thoughtful, thorough, and realistic. If you have not already created a financial management plan and had it approved by your board, stop now! A financial management plan is needed so that you can prove that you have the funds and support necessary to successfully sustain and grow the ministry.

X. **Public Charity Status**

You are not a private foundation; you are a public charity designated by letter "g." This means you are an organization that receives a substantial part of its financial support in the form of contributions from publicly supported organizations, government units, or the general public. You must request advance or definitive ruling. This ruling allows the IRS to review your funding sources and contributions for purposes of tax exemptions. If you choose advance ruling, you are allowed a five-year period to obtain the financial support needed to meet the public support tests and prove that you have a diverse funding base and are not receiving the majority of your support from one individual. The definitive ruling is requested if you have existed for at least one tax year and have diverse funding sources. Carefully read the filing guide instructions for this section. The advice of an accountant or attorney may be helpful in reviewing this section.

XI. **User Fee Information**

This section asks for your annual revenue. The amount determines the amount of your filing fee.

Schedules: If you provide loans or scholarships to your participants for educational needs then you are required to complete Schedule H.

Narrative of Services: It is advisable to create a concise, narrative report describing your site, your mission, and the services you provide to include with your completed Form 1023.

Other Forms: Check with your secretary of state Web site for a checklist of required forms for incorporating and operating a nonprofit in your state. You may also

need to check with your local city manager for any additional forms that may be required by your local government.

WELCOME HOME!

Your incorporation is a testimony to you and your board's ability to get organized and navigate the world of government agencies. Now that you are an incorporated site, you must consider the maintenance on your new site. For example, most every state and the IRS require some type of annual report.

1. The **annual report** required by the secretary of state is due on the first day of the fourth month following the close of the corporation's fiscal year and are available on preprinted forms provided by the secretary of state. The annual report verifies principal office address, and requests an updated list of board of directors and officers. The filing fee for the annual report is approximately \$20.
2. **Form 990, 990EZ, or 990N** are IRS annual reports used by tax-exempt organizations. If your site's gross receipts are less than \$100,000 and have total assets of less than \$250,000 at the end of the fiscal year, you are eligible to use the 990EZ. Otherwise, you are required to complete the form 990. If your gross receipts are normally \$25,000 or less, you have previously been exempt from filing returns. However, beginning in 2008, small tax-exempt organizations that were not required to file the 990 or 990EZ may be required to file an annual electronic notice Form 990-N. This will verify the amount of your gross receipts to the IRS and is required by the Pension Protection Act of 2006.
[Note: Detailed instructions for completing these forms are available at www.irs.gov/pub/irs-pdf/i990-ez.pdf. Many potential donors and grant funders rely on the 990 or 990EZ as a primary source of information about your organization. Therefore, your return should be complete, accurate, and fully describe your sites programs and accomplishments.]
3. **Changes** to your articles of incorporation, by-laws, charter and/or change in registered office location will require the completion of appropriate form and submission of appropriate filing fee.
4. **Dissolution**: In the event that your incorporated site needs to consider other alternatives and/or must un-incorporate, review the articles of incorporation, by-laws, and state charter for the proper procedures on how to close down a site. There will be forms to complete (see your secretary of state Web site for incorporation dissolution) and assets are usually required to be distributed to another nonprofit organization. If assets are numerous or there are financial debts that must be paid, the advice of an attorney should be considered.

The decision to incorporate should not be made lightly or even by one person. The decision should be based on solid facts and information obtained from needs assessment or other strategy planning methods. Placing a site on a firm foundation can mean the difference between thriving or just barely surviving. A CWJC/CMJC ministry is a business and should be managed with a respectable amount of passion, professionalism, business skills, and financial management skills. It is not necessary for the executive director to possess all these talents; however, a wise leader knows where to obtain assistance and will surround self with the right assets.

RESOURCES:

WEB SITES

- **www.usa.gov/Business/Nonprofit_State.shtml**
This site provides a state-by-state directory of online information about how to incorporate a nonprofit organization.
- **www.hurwitassociates.com**
Nonprofit Law Resource Library with samples and information on incorporating, articles of incorporation, by-laws, etc.
- **www.managementhelp.org**
a great and free management how to guide with several sample articles of incorporation, by-laws and other great information.
- Form 1023: **www.irs.gov/pub/irs-pdf/f1023.pdf**
- Form 1023 instructions: **www.irs.gov/pub/irs-pdf/i1023.pdf**

BOOKS

- Wolf, Thomas. *Managing a Nonprofit Organization in the Twenty-First Century*. (New York: Simon and Schuster, 1999) ISBN: 0-684-84990-9
- Hopkins, Bruce. *Starting and Managing a Nonprofit Organization: A Legal Guide*. 4th edition. (New York: John Wiley and Sons, 2001) ISBN: 0-471-68000
- Allison, Michael, and Jude Kaye. *Strategic Planning for Nonprofit Organizations: A Practical Guide and Workbook*. 2nd Edition. (San Francisco: CompassPoint Nonprofit Services, 2005) ISBN: 10-0-471-44581-9. Includes a CD with sample forms and worksheets.