

# CHURCH NONPROFIT INCORPORATION

UNDERSTANDING WHAT IT MEANS FOR  
OX HILL BAPTIST CHURCH

# UNDERSTANDING OUR CURRENT STATUS

## **OHBC is currently an unincorporated association**

This status could subject members, particularly leaders, to personal liability and precludes the church's ability to hold title to its property in its name (trustees currently hold property and corresponding liability).

## **501(c)(3) status belongs to the BGAV**

OHBC does not currently hold its own 501(3)(c) status, rather it utilizes that status through association with the Baptist General Assembly of Virginia.

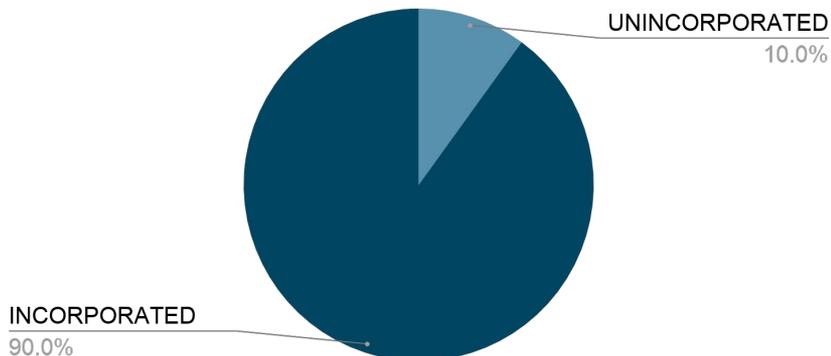
## **Bylaws are sorely outdated**

These governing documents are no longer guiding decision making as they are outdated and thus do not adequately protect the church or contain risk management provisions for a church today.

# BACKGROUND ON CHURCH INCORPORATION

## Estimated That 90% of All Churches Were Incorporated by 2017

\*Statistic provided by Robert Showers, Esq.



## Prohibited in the state of Virginia until 2002

Thomas Road Baptist Church alleged that refusing to grant a corporate charter to the church and its trustees was depriving them of their civil rights under the First and Fourteenth Amendments to the Constitution.

This provision of the constitution was declared an unconstitutional limitation on the rights of churches and religious bodies; as such the Virginia Constitution was amended to permit church incorporation.

## Changing climate

A generation ago, few people would have dreamed of suing the church, but lawsuits and claims against churches are now more commonplace.

# REASONS TO INCORPORATE

**Limits liability:** When a church incorporates, it adds a measure of legal liability protection for its membership because only the assets of the church corporation can be used to settle debts or lawsuits. Members can't be held personally liable for the inappropriate actions of another member.

**Common accepted standards:** Incorporation and its governing documents are designed to explain how the church intends to govern itself, reduce confusion and conflict, prevent the misuse of authority by church leaders, and protect members.

**Property management:** Under incorporation, trustees are no longer needed and court appointment of such trustees is not required to hold, manage, buy, sell, transfer, or encumber real property of the church - which can make it easier for the church to operate bank accounts and engage in other business transactions.

**Faith based grants:** Churches must be incorporated to receive grants through government faith-based social service provider programs or private foundations.

# A FEW MORE REASONS TO INCORPORATE

**Discounts:** Incorporation with tax exemption can often permit special nonprofit mailing rates and procure discounts.

**Preference of banks and lending institutions:** Most banks and lending institutions prefer to deal with an incorporated entity to assure its governance, purpose, and legal status.



# CONSIDERATIONS REGARDING INCORPORATION

**Requires some documentation rewrites:** Requires a new document called Articles of Incorporation. Articles and the OHBC bylaws must include requirements of the IRS and SCC that ensure legal compliance and risk management.

**Document upkeep and reporting:** Governing documents must be kept current and an annual report will be filed with the SCC which has an estimated annual cost of \$100.

## **Requires a Board of Directors**

As a non-profit corporation, the church would have a Board of Directors. This group would help with business decisions, contracts, strategic planning, etc. and bring those things to the church.

**Registered agent:** The church will need to acquire a registered agent (a member of the Virginia Bar who accepts legal correspondence on the church's behalf) which has an estimated annual cost of \$133-\$200.

**Minimal cost:** Including the SCC filing and the registered agent costs, there is an estimated annual cost of about \$300. The first time we file, there is an added one-time fee, bringing the first year estimated cost to \$425.

**Accounts and property:** Names on bank accounts and property should be transferred to the church corporation.

# MORE ABOUT THE BOARD OF DIRECTORS

## Team makeup

This team would likely consist of under 10 individuals, representing various areas of the church and would be inclusive of staff, leaders, and laity. The make-up of this team will be outlined in the Articles of Incorporation & Bylaws and individuals would be presented in the annual nominating committee report for church approval.

## Rotation

This team would likely consist of individuals that are constant, such as staff, as well as individuals that rotate out by a term specified in the bylaws.

## Streamlining Decision Making

This fits right in with the church's desire to streamline decision making. This group would likely replace the current coordinating council and would allow the deacons to coordinate spiritual needs, congregational care, and ministerial support. The directors would focus on long-term strategic planning, contract changes and execution, and articles and bylaws upkeep, as examples.

## Approvals

The deacons and the directors will still bring motions to the church and involve the church in decision making related to their relevant areas. Decisions concerning the selling of land, purchase of property, or any other legal agreement will be brought to the church for approval.

# QUESTIONS WE'VE HEARD ABOUT INCORPORATION

## **Do the Articles of Incorporation change our church covenant?**

The Articles will be a new document, separate from the church covenant. The church covenant is not being changed as part of this process.

## **What will happen to the Trustees and why will they not be needed anymore?**

They will still be members of the church, and while we love them no less, the assets held in their names will now be held by the Ox Hill Baptist Church Corporation. The signatures once required for contracts and legal documents will be required of positions the church designates permissible in the bylaws.

## **How can we be a corporation and a non-profit?**

A nonprofit corporation is an organization formed to serve the public good, such as for charitable, religious, educational, or other public service reasons, rather than purely for the creation of profit.

## **Is our tax-exempt status changing?**

We will still have a 501(c)(3) tax exemption, but instead of it being passed down to us through our association with the BGAV, it will be in the name of the Ox Hill Baptist Church corporation. The legal requirements for the 501(c)(3) status will not change.

# MORE QUESTIONS WE'VE HEARD ABOUT INCORPORATION

**Will we have any responsibilities to the state or federal government if we are incorporated and does this give the state control over us?**

We are currently subject to federal and state laws, including tax laws, and that will not change.

Incorporation means that the church is recognized by the state as a separate legal entity. The laws of the state leave it up to the discretion of the nonprofit corporation to determine all matters of internal governance. These laws also allow the church corporation to determine how best to fulfill the purpose for which it was organized, so long as there is no breach of the law.

**How does this continue Baptist religious liberties history and the separation of church and state?**

We will be able to continue the history of operating freely but now as an incorporated church. As a church, we will still be able to operate freely and as we wish in regards to our beliefs and the exercises thereof like we have since our founding, however now with added protection. Overall, scholars (both legal and theological) are widely in agreement that Church Incorporation upholds the practice and belief of religious liberty and the separation of church and state.