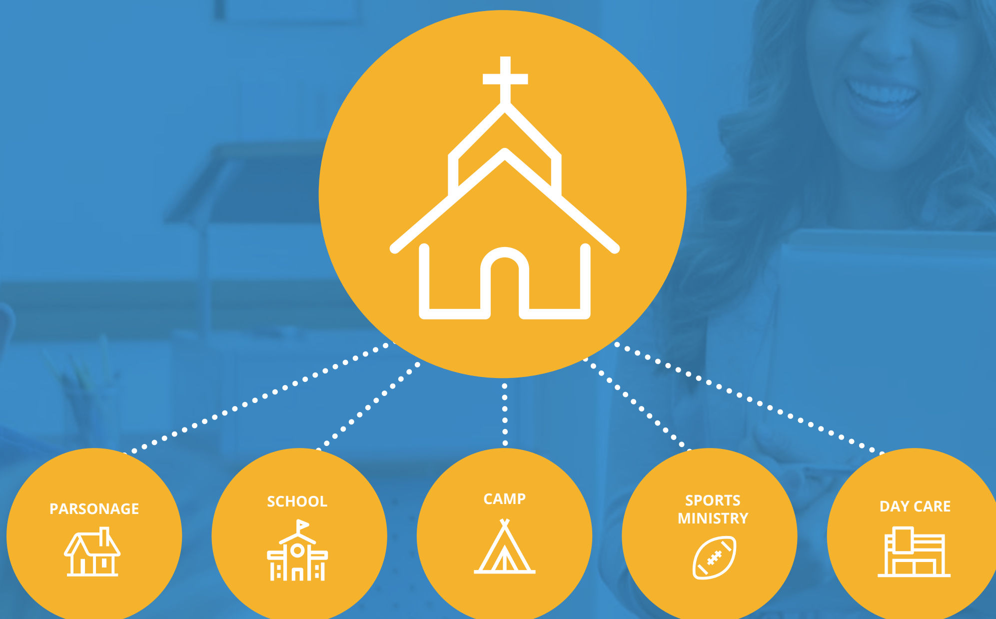


BROTHERHOOD MUTUAL®

Ministry Asset Protection

and Organizational Structure

WHAT'S THE BEST WAY TO PROTECT A MINISTRY?

Your ministry's mission, and how you fulfill it, is a balancing act between objectives and risk. By taking steps to protect **ministry resources** from potential liabilities stemming from **ministry activities**, you can tip the scales in your favor. This concept is known as **asset protection**.

Many ministries choose to evaluate their organizational structure as part of their asset protection strategies. Organizational structures can range from an informal group of people to a complex and burdensome corporate structure. Some approaches are safer, and some may expose your ministry to more risk. Other important considerations center on your available resources, like staff, volunteers, and money. If you're considering separately incorporating aspects of your ministry, you should know your options.

Need a definition?

You can review definitions for words in **blue** on page 19.

CONTENTS

Laws affecting incorporation and corporate formalities vary state-to-state. The information contained in this resource is for general information purposes only. It is not a substitute for advice from a licensed attorney in your state. Accordingly, no attorney/client relationship is created through this process, and no legal advice will be provided. It is important to consult with a locally licensed attorney to ensure compliance with all applicable laws.

INCORPORATING YOUR MINISTRY

BASIC ASSET PROTECTION

Limiting liability through an asset protection plan usually begins with incorporating your ministry. Incorporation can help protect members from the personal liability caused by the negligent acts of other members. If your ministry is unincorporated, organizational activity or decisions that cause harm to others can result in all members being held responsible.

Most believe the benefits of incorporating far outweigh the costs. Whenever incorporating, it’s important to understand the corporate formalities that must be followed and expenses that may be incurred.

INCORPORATING YOUR MINISTRY

BENEFITS	COSTS
• Shields members from liability for ministry activities • Shields members’ assets from creditors • Easier access to capital and financing • Perpetual existence beyond influential leaders	• Additional expenses to start and maintain • Administrative burdens adhering to corporate formalities

COMPLEX ASSET PROTECTION

With lawsuits on the rise, many attorneys now recommend adopting a complex asset protection plan that separates the ministry's assets from liabilities. For some ministries, the best approach might be the creation of additional entities to preserve resources and isolate risks, since each entity is legally responsible for its own actions. This approach can help isolate the risk to the responsible entity rather than exposing the entire ministry organization.

It's important to understand the increase in administrative burden and expense a ministry will incur when adopting a more complex corporate structure. Ministry leaders should carefully consider whether their ministry has the resources to absorb the additional expense and administrative burdens that come from creating multiple incorporated entities. Consult with an attorney and tax professional to consider whether separate entities might be beneficial.

	INCORPORATION MODEL	INCORPORATED PARENT & SUBSIDIARIES MODEL
EXAMPLE	An incorporated church chooses to operate its ministries under one entity.	An incorporated church separately incorporates four additional entities: a school, day care, camp, and outreach ministry.
CORPORATE FORMALITIES	• **Articles of Incorporation** and **bylaws** • Corporate bank accounts • Financial records • Board of Directors: 4–7 members • Board meetings: 1–4 per year • Board minutes and notes • Board resolutions	• Articles of Incorporation and bylaws: 5 • Corporate bank accounts: 5 • Separate financial records: 5 • Board members: 20–35 • Board meetings: 5–20 per year • Board minutes: 5–20 per year
EXPENSES	• Articles of Incorporation filing: \$100–200 • Annual Report filing: \$100–200 per year • Attorney fees to draft articles, bylaws, agreements, etc. • Fees for a tax professional to help navigate corporate tax law • Maintaining payroll and filing tax returns	• Articles of Incorporation filing: \$500–1,000 • Annual Report filing: \$500–1,000 per year • Attorney fees to set up five entities • Ongoing fees for a tax professional to help navigate corporate tax law for five entities • Maintaining separate payroll and filing separate tax returns

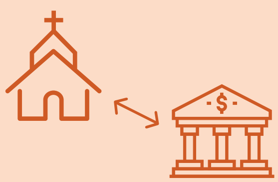
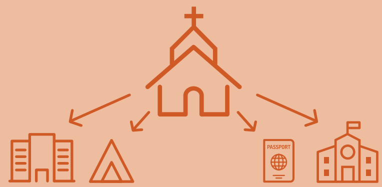
PROTECTING MINISTRY ASSETS THROUGH YOUR CORPORATE STRUCTURE*

SIMPLE STRUCTURE

UNINCORPORATED ENTITY	SINGLE INCORPORATED ENTITY	SEPARATE INCORPORATED ENTITIES
A group of people who meet for a common purpose. Longstanding rural churches have sometimes remained unincorporated associations.	A state-recognized entity that is considered a person under the law. Smaller churches often remain a single incorporated entity.	The ministries are separately incorporated entities that are governed independently of each other. A church may sometimes separately incorporate a school and allow each to run independently.
LEGAL CONSIDERATIONS		
Each individual member could be held personally liable for the acts of others in the ministry.	Generally, only the ministry is exposed to liability—individual members are shielded from liability.	If properly operated, each ministry's assets are likely shielded from liability for the other ministry's actions.
PRACTICAL CONSIDERATIONS		
The ministry is not a legal entity—individual members must sign contracts and share liabilities of the ministry.	The ministry is a legal person and can enter into contracts and purchase property. Individual members do not share liabilities of the ministry.	Each ministry is operated separately from the other with no governance oversight. Any interaction between the entities should be at arm's length.

With lawsuits becoming more common, your ministry leaders should consider how they can protect the resources God has entrusted to them. These two pages illustrate several different corporate structure strategies. Some strategies work better than others, depending on the ministry—it is important to evaluate which strategy is the best for your organization.

COMPLEX STRUCTURE

INCORPORATED MINISTRY & HOLDINGS ENTITIES	INCORPORATED PARENT & SUBSIDIARY ENTITIES	INCORPORATED PARENT, SILOED HOLDINGS, & SUBSIDIARY ENTITIES
		
The incorporated ministry entity maintains all activities but transfers its assets and property to a holdings entity. A growing church will sometimes create a holdings entity to hold ministry resources.	The **parent ministry** creates **subsidiary** entities to hold real estate and/or related ministry activities. A large ministry with several different endeavors will often create separate subsidiaries for ministry resources and activities.	The parent ministry creates holdings entities who, in turn, create subsidiaries to hold real estate and/or related ministry activities. A large multi-site ministry with various endeavors sometimes utilizes a complex **siloed** holdings and subsidiary structure.
LEGAL CONSIDERATIONS		
If properly operated, assets are shielded from ministry liability because they are owned by a separate holdings entity.	If properly operated, the parent ministry and subsidiary entities are generally shielded from liability for any claims that arise within a single subsidiary's operations.	The parent ministry and subsidiaries are further separated by the siloed holdings entities. Generally this provides greater liability protection from a claim against a single subsidiary's operations.
PRACTICAL CONSIDERATIONS		
The ministry board usually maintains governance control over the holdings entity. The ministry usually pays rent and other fees to the holdings entity to cover expenses.	Adds a considerable amount of expense and administrative burden to follow corporate formalities across several entities.	This strategy adds a significant amount of expense and administrative burden to follow corporate formalities across several entities.

*Laws affecting incorporation and corporate formalities vary state-to-state.
The information contained in the above infographic is for general information purposes only.

MORE CONTROL = GREATER RISK OF LIABILITY

Creating separate entities can help separate your ministry resources and activities. The structure of these entities depends on the needs of your ministry and the control that it retains over related entities. The level of control can range from no control—the safer approach to protect ministry assets—to full control, the least safe approach.

The more the parent entity exerts control, the greater the risk that each entity could be held liable for the acts of the others.

MORE CONTROL = GREATER RISK OF LIABILITY

RISK: “PIERCING THE CORPORATE VEIL”

If a ministry fails to abide by the corporate formalities or operates multiple entities as if they were just one entity, a court could “pierce the **corporate veil**” and hold each entity liable for the acts of the others.

Courts will hold a parent entity liable for the acts of a subsidiary if it’s determined corporate formalities were not followed, and the subsidiary was just acting as an **alter ego** of the parent.

There are several factors that courts look at, including whether the two ministry organizations:

- Are involved in the same business operations.
- Have similar corporate names.
- Commingle their assets and affairs.
- Lack corporate records.
- Share address and office space.
- Share employees.
- Have a significant overlap within their boards of directors.
- Fail to hold board meetings.

The single most important indicator of whether a parent and subsidiary would be considered alter egos of each other is the amount of control that the parent exerts over the subsidiary. Parent entities typically maintain some level of governance over a subsidiary. However, if the parent makes all the operational decisions for the subsidiary while the subsidiary fails to abide by required corporate formalities, it’s likely that the court will hold the parent liable for the actions of the subsidiary.

Ministries can minimize this problem by:

- Ensuring proper formation of entities.
- Permitting little or no shared ownership between the entities.
- Maintaining separate boards, records, accounts, and names.
- Avoiding commingling of funds or shared bank accounts, among other things.
- Utilizing contracts between the entities for any shared operations, employees, or assets.

CORPORATE STRUCTURE MODELS*

Balancing the risk involved in following corporate formalities with practical ministry considerations can be difficult. Some ministries have adopted a blended approach to corporate formalities. This limits the risk of piercing the corporate veil while reducing some of the administrative burdens.

	SEPARATE ENTITIES APPROACH	BLENDED APPROACH	FULLY INTEGRATED APPROACH
CORPORATE PRACTICE	Carries greater administrative burdens. Ministries should ensure the entities are truly separate. Failure to do so can result in a court allowing assets from the entire organization to be subject to a lawsuit.	Increases likelihood that ministry assets will be protected under this approach, but there is a risk that liability may still pass to the entire organization.	Offers little protection to ministry assets, making risk management and insurance especially critical.
CONTROL	Each entity controls only its own operations	Parent entity maintains level of control through board of directors and by agreements or licenses	Parent entity retains full control over all activities of subsidiary entities
PURPOSE	Each entity has its own distinct operational purpose	Entities may have distinct or related purposes	Operational purposes are shared across entities without distinction
ADMINISTRATIVE FUNCTIONS	Administration managed within each entity separately	Parent/subsidiary may perform functions for other entities by agreement	Administration for all entities are performed by parent
CORPORATE NAME	Separate and distinct names	Similar naming conventions	Nearly identical names
CORPORATE OFFICES	Operate from different locations	Operate from different or same locations	Operate from same location
CORPORATE ACCOUNTS	Separate accounts with no commingling of funds	Separate accounts with no commingling of funds	All transactions for different entities taken from same account
USE OF ASSETS AND RESOURCES	Each entity owns its own assets and has exclusive rights to use	Single entity owns assets, but allows subsidiaries to use resources through agreement	All assets and resources are shared among entities without agreement
FINANCIAL RECORDS	Separate accounting and tax records	Separate accounting and tax records	Accounting and tax records overlap
EMPLOYEES	Each entity hires and pays its own employees	Subsidiary entities lease employees hired and paid by the parent entity	All employees work for single entity without formal agreement to lease employees from the parent
BOARD OF DIRECTORS	Each entity has a board composed of separate board members	Each entity has its own board, but directors may serve on multiple entity boards	May have one board that oversees all entities
BOARD MEETINGS	Regular board meetings and minutes for each entity	Regular board meetings and minutes for each entity	Unlikely to have regular board meetings and minutes for each entity

*Laws affecting incorporation and corporate formalities vary state-to-state.
The information contained in the above infographic is for general information purposes only.

ADDRESSING POTENTIAL APPROACHES TO INCOME STREAMS

Ministries moving into the creative fundraising space should familiarize themselves with the do's and don'ts of generating income outside of their religious purpose. Knowing the rules will provide financial transparency and keep your tax-exempt status intact.

Consider the potential tax implications. Even though a religious organization is recognized as tax exempt, there are limitations. A ministry still may be liable for income and property taxes.

- Creatively earned income. For most tax-exempt organizations, **unrelated business income tax (UBIT)** is taxable income from a trade or business, regularly carried on, that is not substantially related to the basis of the organization's exemption.
- Property taxes. If ministry-owned property is not used exclusively for exempt purposes, you may lose your property tax exemption. Most states will consider whether the exemption would be lost for the entire property or just for the portion which is used to earn the unrelated business income.

Consider an affiliated organization. An affiliated organization can be set up as a subsidiary and govern endeavors separate from your ministry's daily operations. Two types of organizations that ministries often set up are **Supporting Organizations** and **Title Holding Corporations**. This type of subsidiary organization for for-profit activities can help protect the tax-exempt status of the parent organizations.

Consider increased transparency. Ministries should properly account for money generated from creative income sources. Good accounting practices protect a ministry from allegations of misuse of funds or ethical indiscretions. Ensure that you can substantiate charitable contributions and that your banking and accounting records are reviewed by a third party.

LEARN MORE

Go to **brotherhoodmutual.com** and search 'Unrelated Business Income and How it Affects Your Ministry' and 'Affiliated Organizations.'

WHAT'S RIGHT FOR YOUR MINISTRY

Your ministry's needs and circumstances determine the type of asset protection plan it should adopt. Your decision to create a new entity should be pursued only after evaluating whether your ministry is willing and able to comply with all the corporate formalities and additional burdens of maintaining separate entities. While separation of entities may be beneficial to some, your leadership should consult with an attorney and tax professional to determine the best approach to protect the ministry's assets.

KEY QUESTIONS TO CONSIDER BEFORE ADOPTING A COMPLEX STRUCTURE

Does your organization have:

1. Access to capital to cover expenses?
2. An abundance of qualified leadership—often volunteers—to serve on various boards?
3. Administrative knowledge and capacity to oversee multiple corporate entities?

REIMAGINING YOUR ORGANIZATIONAL STRUCTURE

It’s your turn to imagine the possibilities for your organization. Refer to pages 8–9 to see what kind of structure you now have. Then sketch possible corporate structures that might be a better fit to protect your assets. Use the following page to jot down items you’d like to discuss with your leadership.

ACTION ITEMS

EVALUATE YOUR MINISTRY'S LIABILITY INSURANCE LIMITS

Another important step your organization can take to protect its assets is to obtain liability insurance. Ministries need liability insurance to cover the risks that come alongside ministry activities. Liability insurance can help shield your organization's assets by providing funds to defend the organization from a lawsuit and pay for judgments or settlements to resolve a lawsuit.

Here are four factors to consider when selecting liability limits:

1. **The likelihood of loss.** The more activities that your ministry engages in, the greater likelihood, statistically, that one of these activities will result in a liability claim.
2. **The church's assets.** A plaintiff's attorney typically won't pursue a liability claim beyond insurance proceeds if your church has no significant assets. The greater your ministry's liquid assets, the more likely it is that an attorney will seek additional funds.
3. **The likely damages a court would award for a loss.** Juries in some locations are more prone to award higher damages than in other locations. Before selecting liability limits, check with a local attorney to gauge the "judicial environment" in your area. Also, having a sound risk management program in place can help reduce not only losses but also their claim value.
4. **The ministry's "appetite for risk."** Your ministry may desire higher limits even though you've taken every precaution and have little in the way of liquid assets. Other ministries would rather pay less for liability insurance and bear a greater risk that a claim will exceed the limit selected. Neither approach is right or wrong; it's just a matter of how your leadership views the risk of loss.

COMMITTED TO SERVE

Support and service are at the core of Brotherhood Mutual Insurance Company. We offer a wide variety of liability coverage options to help safeguard your organization from the unique risks Christian ministries face. We customize your insurance package to specifically fit your organization.

Talk to one of our independent agents. Their professionalism, experience, and involvement in local ministry set them apart from other insurance salespeople.

A Brotherhood Mutual customer service representative can connect you to a ministry-specialized agent in your area. *Call 800-380-5474*.

DEFINITIONS

Alter Ego: a corporation, organization, or other entity set up to provide a legal shield for the person actually controlling the operation.

Articles of Incorporation: the basic charter of a corporation which spells out the name, basic purpose, incorporators, amount and types of stock which may be issued, and any special characteristics such as being nonprofit.

Basic Asset Protection: Corporate organizational strategies that help protect ministry resources from potential liabilities that can arise during ministry activities.

Bylaws: the written rules for conduct of a corporation, association, partnership, or any organization.

Corporate Veil: completely controlled front (alter ego) for an individual or management group.

Ministry Resources: assets that have a financial value, e.g., cash on hand, bank accounts, buildings, vehicles, office equipment.

Ministry Activities: activities that generally further the ministry's mission, e.g., worship services, day care, vacation bible school, sports ministries, mission sending organizations. Activities can present a potential liability if an injury or property damage occurs.

Parent Ministry: a ministry that owns subsidiary entities.

Siloed: separated entities that do not share resources.

Subsidiary: a company owned and controlled by another company.

Supporting Organization: a specific type of ministry that carries out its exempt purpose by supporting other religious organizations.

Title Holding Corporation/Entity: a corporation, which is created to own the stock of other corporations, thereby often controlling the management and policies of all of them.

Unrelated Business Income Tax (UBIT): a tax assessed on all income of a tax-exempt organization that is derived from a source not substantially related to the organization's exempt purpose.

BROTHERHOOD
MUTUAL®

Insuring America's churches and related ministries® | brotherhoodmutual.com | 800.333.3735
Property & Liability Insurance | Commercial Auto | Workers' Compensation | Mission Travel Services | Ministry Payroll
Copyright 2021 Brotherhood Mutual Insurance Company. All rights reserved. Brotherhood Mutual is licensed in most states.
6400 Brotherhood Way, Fort Wayne, Indiana 46825

M584 (10/21)