# The Legal Mechanics of Church Mergers


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Given the challenging economic times, many religious organizations have contemplated whether they should merge with another congregation in order to survive and grow. This is not an easy question to answer. Before contemplating a merger, the first step should be to examine all the options. If a merger is still a top choice, the church needs to examine why it thinks a merger is a good option, whether a merger would fit the vision of the church, and what elements would contribute to a successful merger.

From there, the church should identify what type of congregation it would want to merge with, then move forward and identify churches that have those characteristics. Once identified, each church needs to select leadership teams for the process, to set definite timelines to make decisions, and to begin the difficult discussions regarding the name, mission and vision of a potentially merged church entity. After these stages, meetings are needed to review details such as personnel, facilities/property, worship style, programs and finances. After these decisions are made, then the parties' legal representatives need be brought in to discuss the mechanics of the merger.

Most courts have held that the decision to merge is an internal religious issue made by the respective members of a church alone in their exercise of religious beliefs. Although the state may not interfere with a church's decision to merge, a church must, nevertheless, follow procedures in its own internal regulations or an applicable state corporation law for a valid merger to occur.

## Legal Specs

In a merger, one church takes over the other, which in turn will be dissolved. In order to properly dissolve the prior churches, the congregations must review the church's articles of incorporation and bylaws, as well as meeting minutes, to ensure that all the contingencies are met. Once these documents have been reviewed, the dissolution will likely take the following course: ...

1. A church may be dissolved by action of the board members. A final meeting will be called whereby a majority of members of the board will confirm the dissolution of the congregation and affirm that the merged church will hold its assets and retain its liabilities upon dissolution. This meeting must be held in accordance with the procedures outlined in the church's constitution and bylaws, and the minutes of the meeting will be reliant upon as proof of dissolution.
2. Assuming that the church has been incorporated as a nonprofit religious corporation under the laws of the state, it should then have tax clearance from the IRS under section federal (501)(c)(3). The church does not have to follow any particular dissolution forms with the IRS, but it must secure tax clearance from the state department of treasury in order to dissolve. This requires the church to send a tax clearance request form indicating that it has no outstanding tax liabilities.
3. In Michigan and some other states, the church needs consent from the state attorney general before it can dissolve. This is because it is a nonprofit entity and the attorney general wants to verify that assets of the prior church will need to be transferred to another nonprofit. To obtain the consent, the church must send a letter explaining that it is a tax-exempt religious corporation that seeks to dissolve, along with a complete file copy of the articles of incorporation for review. The attorney general's office will review the same and send a consent order back to the church that clearance will be allowed.
4. Upon receiving the attorney general's consent, the church must then contact the secretary of state's office and send a certificate of dissolution and letter of consent containing the name of the successor corporation along with the approved minutes of the same.

The dissolution of the merged church will not occur until after the merger plan is accepted by both churches. The leadership team of each church will develop the plan to merge, adopt a resolution approving of the proposed plan, and submit the plan to its voting members at a general or special meeting. The plan will be adopted if at least two-thirds of the votes cast approved the plan, assuming that is the amount needed by a church as defined in the articles of incorporation or bylaws of the church. Upon approval of the plan by voting members cover each corporation executes either articles of merger or articles of consolidation on a form prescribed by the secretary of state.

The documents set forth the plan of merger, the date of the meeting at which the plan was approved, a statement that a

quorum was present and that the plan received at least two-thirds voter approval. The articles of merger are filed with the secretary of state.

Church bylaws may impose further restrictions that must be followed. If, for example, a proposed merger would alter the doctrines of a church, the validity of the merger may require a larger number of members of the Church to agree to the same. Churches affiliated with religious hierarchies must further comply with applicable procedures in the constitution or bylaws of the parent ecclesiastical body.

The legal effect of a merger is generally determined by state law and the terms of the merger agreement. State corporation law typically stipulates that all properties of a church corporation that merges with another congregation belong to the surviving church. The surviving church is responsible for all the liabilities and obligations of each the church that is merging. As such, neither the rights nor liabilities of the former church will be affected by the merger.

There are many other things the congregations must do before in terms to move forward and complete a merger. The legal aspects of the merger are the least complicated; the personal aspects are the most difficult to determine. However, once the legal issues are resolved, confirming the merger and dissolving the parent corporations will give the church adequate means to begin a new corporate entity.

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