

Notes for Revising an ELCA Congregation Constitution

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The Model Constitution

When the ELCA was formed in 1987, a *Model Constitution for Congregations of the Evangelical Lutheran Church in America* was adopted which had been developed by a joint study group of the merging church bodies. This Model Constitution was built upon the traditions and beliefs of those merging bodies as well as on the *Constitution, Bylaws and Continuing Resolutions of the Evangelical Lutheran Church in America* which had been written by those merging bodies. One of the great outcomes of the merger has been to observe that these documents have been responsive to the synods and congregations and have been revised when study has shown that changes should be made. At each biennial Churchwide Assembly, starting in 1989, the voting members have debated and adopted changes to the Model Constitution.

Priority of Governing Documents

It is important to recognize the priority of documents which govern the congregation. The superior document is the *Articles of Incorporation*. This is a document, filed with the county or state, which legally establishes the congregation.

The *Constitution* has the second highest superiority followed by the *Bylaws* and then by *Continuing Resolutions*. Care should be taken so that provisions of lower priority documents do not conflict with a higher priority document.

Articles of Incorporation

The Articles of Incorporation is a legal document which identifies and registers the organization being incorporated. It is recommended that congregations should review their Articles of Incorporation at the same time they review their constitution and bylaws. In the state of Minnesota, for many years churches were incorporated under Minnesota Statutes Chapter 315, Religious Associations. The Articles of Incorporation were filed with the county. Often those Articles have been forgotten and the content may not be known. It may be a simple document of identification or in some congregations with older forms of the Articles, it may be a broad and detailed document, in some cases conflicting with a more recent constitution. In addition, some provisions of Chapter 315 may not be appropriate for congregations today. The Southeastern Minnesota Synod recommends that churches incorporate under the more recent Chapter 317A, Nonprofit Corporations. The ELCA national organization is

incorporated in Minnesota under this chapter.

Chapter 317A lists, in par 317A.111, the information that is required to be included in the certificate. That information is the name and address of the corporation and the names and addresses of the incorporators and a statement that it is organized under Chapter 317A. Additional information may be included but it is optional. Limiting the Articles to just that required information reduces the potential for conflict with the other governing documents of the congregation and the need for future revisions.

A congregation vote for approval of changes is required. Under Chapter 317A, the document is filed with the Minnesota Secretary of State. It is recommended that legal assistance be obtained in preparing or revising the Articles.

Constitution

The Model Constitution provides a format and content for each local congregation to use to develop their own constitution. In order to preserve a unity, consistency and common understanding within the ELCA, some sections of the Model Constitution are required in all congregation constitutions and “... *must be used without alteration or amendment of the text in any manner (neither additions nor deletions).*”

¹ These numbered provisions are found in chapters 2 through 9 and 15 through 20 and are preceded by an asterisk. They describe ELCA churchwide practice.

There are other numbered provisions, not preceded by an asterisk, which provide a recommended text for local governance provisions. They are found in chapters 1 and 10 through 14. In addition, there are numbered provisions in other chapters that are not preceded by an asterisk. As of this writing, they are C5.05, C7.05 and C9.21. The text of these non-asterisk provisions can be modified or deleted as needed by the local congregation.

A congregation that is about to revise the constitution should start with the most recent Model Constitution. This is a document that has been carefully drawn and it provides a statement of Lutheran doctrinal foundations and mutual responsibilities of the congregation, the pastors, the synod and the ELCA. It is the foundation of the ELCA Lutheran congregation church body today.

1 Italic emphasis added. See Model Constitution for Congregations of the Evangelical Lutheran Church in America, Introduction, Required provisions

See “Resource Documents” on page 4 for information on downloading from the internet or for ordering printed copies and diskette versions of the model.

Required sections of the Constitution

The required sections of the Model Constitution are found in Chapters 2 through 9 and 15 through 20 and they are preceded by an asterisk which indicates that they must be used without any change. Within those chapters are certain provisions which contain blanks to be filled in or alternative choices of text. Examine them and complete them as appropriate.

Those required sections of the Model Constitution are subject to amendment by the biennial Churchwide Assembly. If that happens, the local congregation constitution should be amended to include the change and that can be accomplished by a simple majority vote at any legally called congregation meeting. See Chapter 17, par 17.04 of the Model Constitution for details.

Locally-controlled sections of the Constitution

Chapters 1 and 10 through 14 of the Model Constitution and numbered provisions without an asterisk in other chapters (C5.05, C7.05 and C9.21 as of this writing) address the local structure and operation of the congregation. These sections should be studied with care because it is here that you will establish how your congregation will operate. The Model Constitution provides a very good example for what each congregation constitution should include but these provisions can be locally modified or deleted if necessary.

When changes are made to these sections of the Model Constitution by the ELCA Churchwide Assembly, they should be studied to determine if they should be adopted by the local congregation.

These locally controlled provisions establish the structure and governing principles of the congregation. Once adopted, they should not be changed before careful consideration by the congregation. Whenever they are revised or amended by the congregation, the changes must be approved by a majority vote at any legally called congregation meeting and then be ratified without change by a two-thirds majority vote at the next annual meeting. See Chapter 17 of the Model Constitution for details.

The congregation should periodically review its constitution and bylaws to determine if change is needed and to include revisions that have been approved by the Churchwide Assembly. The requirement for such a review at, say 5-year intervals, could be included as a reminder in an added paragraph in Chapter 12. The constitution should always include the date of the last revision; a note on the cover page, or in the heading, or at the end of the document can be used to indicate that date.

Bylaws

The constitution establishes the basic structure and operation of the congregation. The bylaws spell out how that is to be implemented.

The bylaws are subordinate to the constitution and cannot interfere or conflict with the operation of the constitution. Bylaws are easier to revise than the locally-controlled sections of the constitution.

Bylaws should always be reviewed when the constitution is being revised. One question that sometimes arises is what should be in the bylaws and what should be in the constitution. Here is an explanation.

The constitution describes the beliefs and nature of the Church and the ELCA and it spells out the purpose, powers and rules that the synods and congregations of the ELCA have approved. It is also the document that establishes the organization and operating structure of the local congregation and the constitution purposely requires a more deliberate approval process than bylaws do when change is made.

The bylaws supply the implementation of the constitution. Example: the constitution defines the frequency (quarterly, semi-annual, annual) of scheduled congregation meetings. The bylaws establish the month when the scheduled meeting will occur and the order of business at the meeting. Example: the constitution specifies the events that will result in termination of membership. Bylaws provide details regarding transfer or removal. Example: the constitution identifies the officers of the congregation. The bylaws spell out their duties.

These are important details that should be spelled out. However when bylaws are changed they don't need to be controlled by the more careful, deliberate steps required for a constitutional change.

At the same time, a congregation should avoid unnecessary bylaws. Bylaws which prescribe limits (when children should be confirmed, what groups can use the church building, etc.) are often not well advised. Time and circumstances change and such limits in the bylaws may become unwieldy to work with. Policies and questions of this kind are usually better handled by the Congregation Council through decisions on specific questions or events as needed.

The ELCA has recommended that the constitution and bylaws be integrated into the same document so that those provisions of each that relate to the same matter are placed together. When that is done, a different numbering structure is used for bylaws so that they can be identified as such. The *Model Constitution for Congregations, Introduction, Codification explanation*, prescribes a numbering system for bylaws. In addition to that numbering

system, it is suggested here that the bylaws be preceded by a B rather than a C for a more clear identification of a bylaw.

If the constitution and bylaws are merged into the same document, then the title of the document should read “Constitution and Bylaws for”

Bylaws may be adopted or amended by a majority vote at any legally called meeting of the congregation. See Chapter 16 of the Model Constitution for details.

Continuing Resolutions

When the Congregation Council wants to create a long-term policy or establish a decision about an ongoing matter so that the policy or decision will have a continuing effect and future councils will be aware of it, that can be done with a continuing resolution. The responsibilities of standing committees are typically described in continuing resolutions. (See par *C4.04 and C13.07 in the Model Constitution.) Continuing resolutions are subordinate to bylaws and can be approved or revised or removed by the Congregation Council. They do not require review or approval by the congregation. They can be effective for a limited term.

Continuing resolutions should be published and accompany the constitution and bylaws. The *Model Constitution for Congregations, Introduction, Codification explanation* prescribes a numbering system for continuing resolutions. In addition to that numbering system, it is suggested here that continuing resolutions be preceded by a CR rather than a C for a more clear identification.

The Introduction to the Model Constitution recommends that the constitution, bylaws and continuing resolutions should be placed together for clarity and ease of use. However, since continuing resolutions may be revised or added at any time by the Congregation Council, it may be wise to separately publish them in a replaceable appendix. This will avoid having to republish the constitution and bylaws every time the continuing resolutions are changed.

How to proceed

Start with a small group, say two or three people, who will examine the Model Constitution and prepare a proposed draft. As they work, they may need to come back to the Congregation Council if they feel they need council guidance or direction. Bylaws should be part of this process but it may be best to complete the constitution provisions first.

The draft document will be presented to the council for consideration. The council should review the draft and give direction to the group if additional changes are needed.

When the council is satisfied with the draft document, the council should recommend the draft to the congregation and call a congregation meeting for its adoption. Copies should be made available to the congregation so that the draft constitution and bylaws can be studied prior to the meeting.

The process for approval by the congregation of the revised constitution and bylaws will be controlled by the provisions of the existing constitution.

Review of the Articles of Incorporation and revision if necessary should be included in this overall process.

When working with chapters 10 through 14, following are some points to consider for the constitution or for the bylaws.

1. How are the President and Vice-President of the congregation/Congregation Council elected? Is it by the congregation at the annual congregation meeting or by the Congregation Council? What is their term of office? Can they serve consecutive terms?
2. Is prior service on the Congregation Council required in order to be elected to the office of President and Vice President?
3. Is the Vice President an automatic nominee at the next election for president of the congregation and the Congregation Council?
4. Is the Secretary elected by the congregation or is that person appointed or elected by the Congregation Council? Can the Secretary serve consecutive terms? What is the term?
5. Is the Treasurer elected by the congregation or is that person appointed or elected by the Congregation Council? Can the Treasurer serve consecutive terms? What is the term?
6. What are the duties of the officers?
7. What is the term of office for members of the Congregation Council who are not the officers? Can they serve consecutive terms? If the term of office is more than one year, do all of their terms expire at the same time or are they staggered?
8. What is the role of the pastor(s) in the Congregation Council? Is it a) ex officio president, b) member with vote, c) member without vote?
9. What is the role of the pastor in standing committees and other committees?
10. If a vacancy occurs on the Congregation Council, can it be filled by the council or does it have to be filled by the congregation at a special or regular meeting?
11. In addition to the nominations from the Nominating Committee, can nominations be made from the floor?
12. What are the duties of the Executive Committee? Is the pastor a voting member or a member without vote on the Executive committee?
13. Does a Call Committee submit its report and

recommendations directly to the congregation or must it first seek approval from the Congregation Council?

14. What are the roles of the Congregation Council and pastor in employing and supervising part- and full-time staff?
15. How will voting be conducted (voice, show of hands, ballot) in congregation meetings?

Synod Review

Following approval by the congregation of changes to either the constitution or the bylaws, a copy of those changes should be sent to the synod. See par *C16.04, *C17.03 and *C17.04. A copy of revised Articles of Incorporation should also be sent.

Unalterable Articles in Older Constitutions

Some congregation constitutions, written before the formation of the ELCA, may have provisions that do not allow certain articles to be altered. Those congregations are advised to contact the synod office for advice on how to proceed.

Resource Documents

The text of *Model Constitution for Congregations of the Evangelical Lutheran Church In America 2003* can be downloaded from the ELCA web site at www.elca.org/os/constitution/modelconstitution2003.html. The file is available in Word and WordPerfect format.

A booklet containing the *Model Constitution for Congregations of the Evangelical Lutheran Church in America 2003* may be purchased from Augsburg Fortress Publishers (ISBN 0-8066-4900-3; \$1.75 each) and the *Model Constitution for Congregations* is also available from Augsburg Fortress Publishers on 3.5" diskette (ISBN 0-8066-4901-1; \$14.95).

The Guide for Use of the Model Constitution for Congregations of the Evangelical Lutheran Church In America can be downloaded from the ELCA web site at www.elca.org/os/constitution/modelguide2003.pdf and is also available from the synod office.