

STEPS FOR MERGER OR CONSOLIDATION OF CONGREGATIONS

A general guide prepared by the Office of the Secretary
of the Evangelical Lutheran Church in America

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Preliminary steps involve consultation by leadership of the congregations with the synodical bishop or synodical staff regarding possibilities for merger or consolidation (*see definitions in item 1., subsections a. and b., below*).¹ The congregations involved, in a regular or special meeting, should vote separately on an enabling resolution to pursue the possibility of merger or consolidation and to appoint a joint coordinating committee for that task.

1. Determine whether a “merger” or “consolidation” will be proposed:
 - a. **MERGER:** A “*merger*” is defined here, *for ecclesiastical purposes*, as involving a congregation giving up its separate identity and uniting with an already existing congregation (one congregation merges into another, continuing congregation):
 - (1) The name and congregation-identification number of the continuing congregation normally would be maintained;
 - (2) The corporation of the continuing congregation would be the surviving corporation following the “merger,” as here defined.
 - (3) The legal existence of the non-continuing congregation would normally cease, either through dissolution or by operation of law in a statutory merger or consolidation.
 - b. **CONSOLIDATION:** A “*consolidation*” is defined here, *for ecclesiastical purposes*, as involving two or more congregations that join together to become a new entity with a new name and a new congregation-identification number (as assigned by the Office of the Secretary of the Evangelical Lutheran Church in America).
 - (1) A new name would need to be chosen for the “new” congregation created through such a consolidation, and a new congregation-identification number assigned after the synod has taken action to receive the “new” congregation.
 - (2) The legal existence of the previously existing corporations of the predecessor congregations would normally cease, either through dissolution or by operation of law in a statutory merger or consolidation.
 - c. **LEGAL INCORPORATION:** For *legal purposes*, documents need to be drawn to conform to the requirements of the state statute under which each of the congregations is incorporated.
 - (1) Some congregations are incorporated under the newer or “modern” not-for-profit corporation statutes that contain fairly detailed and specific provisions describing how a merger or consolidation is to be effected legally.
 - (2) Some congregations are incorporated under older “religious organizations” statutes that in most states contain few, if any, provisions describing how a merger or consolidation is to be effected legally.
 - (3) In some states it is possible for a corporation organized under a “religious organization” statute to “adopt” incorporated status under the not-for-profit corporation statute. Where this is possible, it should seriously be considered as a

¹ Substantial preparatory work by appropriate synodical staff and perhaps staff of the Evangelical Outreach and Congregational Ministry unit likely would have been needed to reach this point. Often, such preparatory work is delicate but crucial in assisting the respective congregations toward any readiness to explore the possibility of a merger or a consolidation.

preliminary step so both congregations can proceed with the merger or consolidation under the detailed and specific provisions.

- (4) Where “adoption” is not possible, it is essential that competent legal advice be secured so that the merger or consolidation is effected legally in the best manner possible.
- d. Contingent liabilities of each congregation need to be carefully considered very early in the discussion process.
 - (1) Where there is either a merger or a consolidation in the legal context, the surviving corporation falls heir to all of the liabilities—contingent or otherwise—of all of the constituent corporations.
 - (2) Contingent liabilities may pose substantial obstacles to the consummation of a merger or consolidation from a legal standpoint. Examples of such contingent liabilities include: property being utilized in violation of zoning or building laws; ownership of property with environmental or biological hazards; or liability for sexual misconduct of staff (whether employed or volunteer).
 - (3) Where significant contingent liabilities can be identified, advice of competent legal counsel is essential to evaluate whether a merger or consolidation, in the ecclesiastical but not in the legal sense, can be effected.
 - e. Assets of each congregation should be considered, too, because these are carried forward into the newly merged or consolidated congregation.
 - f. Likewise, conditional notes held by the congregations with the Evangelical Outreach and Congregational Mission unit of the Evangelical Lutheran Church in America are passed on to the newly formed congregation, in the case of consolidation, or to the lead congregation, in the case of merger. An example of such a conditional note would be Mission Partnership Covenant Forms.
2. Gather copies of the relevant official documents of the respective congregations:
 - a. Current constitution and bylaws;
 - b. Current articles of incorporation;
 - c. Legal titles to property;
 - d. Current, official lists of baptized, confirmed, and voting members;
 - e. Any instruments of indebtedness and repayment details;
 - f. Approved budgets for the past three years;
 - g. Income statements for the past three years;
 - h. Three-year giving profile of members;
 - i. Current balance sheets;
 - j. Confirmation of legal zoning on property, including any restrictions for alternate uses; and
 - k. Historical items, such as the parish registers, archival materials, and other documents and artifacts of historical value that may be gathered for the archives of the new or continuing congregation.
 3. Prepare, if considered necessary, additional information, including:
 - a. Detail of building facilities, including seating capacity of nave, fellowship center, number of classrooms, and the like;
 - b. Organ and other significant musical instruments—type, size, condition, and age;
 - c. Parking capacity;

- d. Assessment of condition of property;
 - e. Description of accessibility to major roadways;
 - f. Summary of physical accessibility of existing facilities;
 - g. Analysis of age and gender profile of the baptized members of existing congregations;
 - h. Cemetery, if any.
4. Determine, in the case of consolidation, a method for the respective congregations to decide on the name of the “new” congregation (for example, the working group may propose three names from among those submitted by members of the uniting congregations; each congregation expresses preferences; the name with the strongest support would be submitted to the uniting congregations for approval).
 - a. If a “new” congregation is established, such a congregation would need to apply to the synod for recognition and reception as a congregation of this church (see “Steps for Recognizing and Receiving Congregations into the Evangelical Lutheran Church in America”).
 - b. If relocation to a new site is considered, the congregation must confer with the bishop of the synod “before any steps are taken leading to such action. The approval of the Synod Council shall be received before any such action is effected” (ELCA churchwide bylaw 9.53.06.).
 5. Prepare a proposal regarding the worship and meeting site of the “new” congregation and propose a plan for making such a decision by the respective congregations.
 6. Draft, in accord with the *Model Constitution for Congregations of the Evangelical Lutheran Church in America*, the constitution and bylaws of the “new” congregation for adoption by the amendment process specified in the existing congregation constitutions (ELCA churchwide constitutional provision 9.25. and †S13.01. in the *Constitution for Synods*).
 7. Formulate a “mission statement” for the “new” congregation to be approved by the existing congregations.
 8. Develop a “business” plan for the initial operation of the “new” congregation, including possible sale of any assets of predecessor congregations.
 9. Formulate an “Agreement and Plan” for merger or consolidation, in accord with applicable state law, to accomplish legally the uniting of the congregations.
 - a. Such an agreement and plan should include the language of necessary enabling resolutions and appropriate authorizations to accomplish the necessary steps.
 - b. The agreement and plan also may include a process for disposition of certain properties and for the handling of foundation funds, memorials, and other items of value to be carried forward into the merged or consolidated congregation.
 10. Convene a special meeting of the respective congregations, properly called in accordance with the requirements for such a meeting, as specified in each congregation’s constitution and in the applicable state corporation statute, for the purpose of approving the unification and related plans for merger or consolidation.
 - a. **VOTE REQUIRED:** The starting point to determine what vote is required must be the corporate statutes of the state under which the congregations are incorporated. If there is a specific requirement in the statutes and that requirement is for a two-thirds vote or greater, then that is the requirement that must be satisfied *by each* of the congregations that need to vote upon the matter.

- b. SILENT STATUTE: What follows needs to be considered if the governing statute is silent on the vote required for merger or consolidation (as may be the case under some of the older “religious organizations” statutes in some states) or if the statute requires only a majority vote for approval of mergers or consolidations.
 - (1) Even though the statute may require only a majority vote, or where the statute is silent, it is wise to give serious consideration to requiring at least a two-thirds vote. Other equally important matters—such as the calling or terminating of the call of the pastor, or amending the congregation’s constitution—require a two-thirds vote for approval. If the resulting congregation is to be viable, ownership by a substantial majority of the members in each of the congregations is vital in regard to the decision to merge or consolidate.
 - (2) The statutes that permit majority vote for approval of mergers and consolidations usually permit the parties to decide that a higher vote requirement is to be established. Serious consideration is recommended for requiring approval by at least a two-third vote in the matter of a merger or consolidation.

- 11. Establish, in consultation with the synodical bishop, a plan for the calling of a pastor to serve the “new” congregation.

- 12. File with the appropriate state office all the necessary legal documents.

- 13. Contact the general counsel of the Evangelical Lutheran Church in America churchwide office in Chicago, by October 1, for information concerning how to continue the “new” congregation in the ELCA’s group exemption filed with IRS.

- 14. Select the date for the first worship service of the “new” congregation.

- 15. Convene a special meeting of the “new” congregation, in the case of consolidation, (a) to approve the constitution and bylaws, as well as other necessary documents, (b) to call the pastor; and (c) to elect officers and members of the Congregation Council.

- 16. Follow-up steps:
 - a. The synod shall report to the Office of the Secretary of this church the effective date of the merger or consolidation and, in the case of consolidation, the date of reception of the new congregation.
 - b. The Synod Council or Synod Assembly must take action to receive officially a new congregation resulting from consolidation (§S13.01., *final section*).