



The Free Methodist Church in Canada, General Conference 2024

April 25-28, 2024

Beginners' Guide to Church Incorporation, including Overview of the ONCA

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A. Overview

- Introduction
- What are the characteristics of an unincorporated church?
- Why should a church incorporate?
 - Considering incorporation
 - Benefits of incorporation
 - Any disadvantages?
- How does a church properly incorporate?
 - The nuts and bolts of incorporation
 - Bringing your church corporation to life
 - Effectively using your church corporation
- What if your church corporation is already incorporated in Ontario?
 - Review of the ONCA transition process and what is involved

B. Introduction

- It is generally recommended that churches consider incorporation based on their particular circumstances
 - For many churches, this is not an easy decision and they are encouraged to do their own research on the question, including seeking legal advice before making a final determination
- If the decision is ultimately made to incorporate, then churches are strongly encouraged to seek legal advice from the outset and “do the process right”
 - This will ensure a solid governance structure is put in place for the church on a long-term basis – one that properly reflects the requirements of the incorporating statute as well as the church’s own unique polity and, ideally, avoids unnecessary problems and duplicative legal work in the future

C. What are the Characteristics of an Unincorporated Church?

- Many churches remain unincorporated, meaning they operate as voluntary associations of individuals
- Voluntary associations are made up of people who have committed to work together towards a common cause
- For unincorporated churches, this common cause is advancement of the Christian faith in their local communities
- Key characteristics of unincorporated churches:
 - Cannot hold property in the church’s name – need to elect trustees to act on the church’s behalf
 - Property is held in name of trustees under *Religious Organizations’ Lands Act (Ontario)* (“ROLA”)
 - Trustees must be named in the church’s mortgages, contracts, etc.
 - While the church has a name, it has no identity in law outside of its members
 - This means lawsuits brought on behalf of or against the church must at least involve the trustees
 - Trustees, officers and members are ultimately liable for the church’s actions
 - Church liability insurance may not be a complete shield

D. Why Should a Church Incorporate?

- An incorporated church has a separate identity from that of its members
 - This provides both a governance structure and limited liability protection for its members
- Benefits of incorporation:
 - The church is a separate legal entity
 - Once incorporated, the church will have perpetual existence
 - Church corporation can hold property in own name – no need for ROLA trustees
 - Limited liability for members – incorporation provides a shield for the members
 - Protects their personal assets
 - They cannot be found liable for the church's actions merely because they are members
 - Indemnification of officers through directors' and officers' insurance
 - Church can purchase this insurance, which protects the leadership against personal loss
 - With some exceptions, the church will be able to buy, sell, lease and mortgage property similar to other corporations

1. Are there specific situations where incorporation would be of benefit?

- Incorporation may be particularly advantageous in the following situations:
 - Building program/expansion – risk related to debt, negligence and third party involvement
 - Incurring debt – risk related to fundraising efforts
 - Higher risk ministries – risk related to operating schools, camps for kids, children's clubs, teen ministries, missions trips, local community ministries, etc.
 - Employment – risk related to wrongful dismissal, etc.
 - Volunteers – risk related to church discipline, child or vulnerable person abuse, etc.
 - Entrenchment of biblical beliefs through statement of faith, e.g. marriage
- No one size fits all solution
 - Evaluate your church's particular needs and potential liability exposure
 - Seek legal counsel for advice

2. Are there any disadvantages to incorporating?

- While there are some disadvantages to incorporation, they generally are outweighed by the advantages, particularly for members' liability protection

Cost:

Could be onerous for smaller churches but it will be a good long-term investment

Time:

12 -18 months to complete entire process if done correctly from the outset with transfer of assets, with no delays taking place from the church's side

Corporate maintenance:

- Ensure compliance with the corporate statute and the church's corporate documents
- Maintain corporate records and complete annual filings

Concern with increased regulation/compliance:

- But the church is already a registered charity so the CRA, Charities Directorate exercises oversight in any event

E. What are the Nuts and Bolts of Incorporation?

1. Preparation

- Do it right or not at all
- Designate small committee or one individual to co-ordinate incorporation process
- Obtain congregational approval to proceed with incorporation
- If incorporating a brand new church, apply for charitable registration after incorporation
- Collect all existing church governance documents
- Retain legal counsel to work through current governance provisions and determine changes required to establish new corporate structure for the church
 - This will be a good time to update and improve the church's existing governance practices and put best practices in place going forward

2. Choose the Incorporating Jurisdiction

- For churches in Ontario, there are two options:
 - Federally under *Canada Not-for-Profit Corporations Act* (“CNCA”); or
 - Provincially under the Ontario *Not-for-Profit Corporations Act* (“ONCA”)
- Both the CNCA and the ONCA work well for church incorporation but have some differences:
 - Corporate name protection
 - How multiple membership classes are dealt with
 - Financial reporting requirements
 - *Ex officio* directors
 - Discipline and termination of membership process
- Mandatory, default and optional rules in both the CNCA and the ONCA
- Can incorporate in other provinces as well if desired
- No one size fits all solution
 - Evaluate your church’s particular needs and seek legal counsel for advice

3. Prepare Corporate Documentation

- Form must follow substance
- Consult with denominational head office, if applicable
 - Do they have sample incorporation documents for local churches?
 - Is their approval of draft incorporation documents required?
 - Who owns the local church assets and is their consent required to transfer assets as part of the incorporation process?
- Two main corporate documents to be prepared under the CNCA or the ONCA
 - Articles of Incorporation
 - Need to confirm availability of desired corporate name
 - Need people to be initial applicants for incorporation
 - General Operating By-law

4. Draft Articles of Incorporation

- Charitable purposes (formerly objects)
 - Standard ones for most churches
 - Include a purpose to uphold church's own statement of faith
 - May need customized purposes as well
 - Needed to ensure fulsome corporate authority to conduct all programs
- No need for corporate power clauses anymore
- Number of directors – fixed or a range (minimum and maximum number)
- Number of membership classes and the rights of each class
- Special provisions – mandatory and custom ones
- Dissolution clause
 - Assets usually directed to charity with similar purposes and statement of faith
 - Could direct assets to the denomination or give it right to be consulted about recipient charity(ies) on church's dissolution
- Set out whole text of the Statement of Faith in the Articles

5. Draft General Operating By-law

- Membership Qualifications
 - Churches usually have broad membership
 - But some have a “closed” membership, i.e. corporate members are same as the controlling board members
 - Used where there is a large congregation and regular members' meetings are cumbersome, or where the church is hierarchically structured
 - Congregation can still be provided with limited role as congregational members
- Membership Admission
 - Usually done by the controlling board
 - Or by the Pastor, together with those responsible for spiritual matters
 - Sometimes members will also approve any new members
- Membership Term
 - Usually perpetual but need to regularly monitor membership lists
 - Some churches now impose limited term, e.g. 3 years, with renewal requirements

Members' Rights

- Can vary depending on the number of member classes
- If 1 class, then all members must have the same rights
 - Right to receive notice of members' meetings
 - Right to attend and participate in discussions
 - Right to one vote
 - Other rights under the CNCA and the ONCA, as applicable
- Members' Meetings – Need to deal with number of issues including:
 - Notice requirements
 - How a meeting can be requisitioned
 - Quorum
 - In person vs. hybrid vs. fully phone/electronic meetings
 - How voting is to be done
 - Proxy (optional)
 - Record date

How to Address Discipline and Termination of Members?

- Objective Reasons
 - Resignation, death, failure to meet objective membership qualifications
- Subjective Reasons
 - Can authorize directors, members or a committee to discipline or terminate
 - But must set out circumstances and manner in which this power is to be exercised
 - ONCA further requires discipline and/or termination be done in good faith and in a fair and reasonable manner including:
 - Notice to the member of discipline/termination with reasons
 - Member given opportunity to respond
 - Decision maker must consider this response before making final decision and notify member of the final decision
- May need to consider any denominational discipline procedure
- Where discipline involves abuse allegations, need to closely follow the church's own separate policies on child protection and reporting abuse allegations

Establishment of the Board of Directors

- This is the controlling board within the church
- While this board will be the board of directors for corporate purposes, the church can refer to this board by any preferred name, e.g. board of deacons, board of elders, church council, etc.
- Responsible to manage or oversee the management of the church corporation
- Could be made up of those who are deacons, elders or others in the church
- Options:
 - Single board – 1 leadership board comprised of deacons or elders only
 - Double board – 2 boards together form a combined leadership board
 - Ex officio board:
 - Comprised of people who hold one office/position in the church and, as a result, are appointed to the leadership board on an ex officio basis
 - Ex officio boards are expressly permitted under ONCA, but not CNCA

• Election of the Directors

- Done by vote of the members at the annual meeting only
- Must be elected by majority vote of the members
- Term of office
 - Can be a term of 1 year up to 4 years maximum
 - Must be re-elected at end of term
 - Optional to impose maximum number of terms but it is common
 - If term more than 1 year, rotating terms of office are recommended

• Removal of the Directors

- Automatic removal if resign
- Board could possibly remove if no longer meet objective requirements
- Only members can remove for subjective reasons
- Both CNCA and ONCA permit mandatory removal of directors by members by majority vote at any time and for any reason

Other Issues to Address?

- Definition and duties of the pastor and associate pastors
 - Can have right to participate in board meetings but cannot be directors
 - All other duties should be set out in employment contracts with the church
- Definition and duties of officers and their terms of office
- Usually officers are chair or president, vice-chair or vice-president, secretary or clerk, treasurer, or possibly secretary-treasurer and moderator
- Directors usually elect officers, but members could do so if desired
- Indemnification and insurance
- Committee terms of reference
- Policy statements – spiritual matters vs. operational procedures
- Future amendment of the corporate documents
 - Could have varying approval thresholds and process to follow

6. Next Steps When the Draft Incorporation Documents are Ready

- Hold an informal town hall meeting to informally present and discuss the documents
- Call special meeting of members to obtain formal congregational approval
- Confirm availability of corporate name
- Submit signed documents to either Corporations Canada (if incorporating federally) or ServiceOntario (if incorporating provincially) for processing
- Issuance of articles of incorporation – step 1 is now done!
- Time to get ready for step 2 of the incorporation process including:
 - Choosing implementation date for transfer of assets and liabilities
 - Taking steps to move everything in the unincorporated church over to its new corporate home

F. How to Bring Your Church Corporation to Life?

- Overview

- Getting incorporated is only the first step

- Second and equally important step is the transfer of assets and liabilities from the unincorporated church over to the church corporation

- Once this is done, the unincorporated church will need to be dissolved

- Need to choose effective date for the transfer of assets and liabilities
 - Often it is the financial year end date but other dates are possible
- Conducting appropriate due diligence searches ahead of time, e.g. real estate including environmental assessments, title searches, etc.

- May need to involve the denomination in this process if:

- It holds title to the property of the unincorporated church in trust or a mortgage/charge registered on title to the property

- Prepare initial organizing resolutions for the church corporation

- These will be adopted at the initial meetings of the first directors/members of the church corporation

- Convene final meeting of the members of the unincorporated church to:

- Advise that the incorporation is now completed and that operations will be transferred to the church corporation as of the effective date
 - Authorize transfer of the members, charitable number and all assets and liabilities
 - Authorize dissolution as a voluntary association

- Complete formal transfer of membership, charitable number and assets over to the incorporated church
- Assumption of debt by incorporated church and indemnification of the unincorporated church and its trustees
- Need new banking documents/account for the church corporation
- Write to the CRA, Charities Directorate to advise of the church's incorporation and ask for assignment over of its charitable number to the church corporation
 - Charitable number will remain the same but will now held by the church corporation
- Filing of government forms
 - Extra provincial registration(s) may be required
 - Business (i.e. operating) name registrations, if applicable
- Obtain final report from legal counsel on the church's incorporation and how to operate as a corporation going forward

G. How to Effectively Use Your New Church Corporation?

- Proper use of corporate name
- Proper use and registration of ministry (operating) names
- Protection of corporate and ministry names, e.g. trademarks, if applicable
- Completion of required corporate business and maintenance of corporate records on ongoing basis
 - Regular board meetings
 - Recommend minimum of four per year although some churches have monthly board meetings
- Annual meeting of members
 - Receive financial statements for past financial year
 - Appoint auditor for next financial year
 - Elect directors, as needed
- Occasional special meetings of members (only as needed)

- Elect officers, as applicable
- Need to prepare detailed minutes of all meetings and file in corporate minute book on regular basis
- Complete annual corporate returns and, when required, notices of changes
- Conduct regular review of corporate documents and update as required
- Consider the possibility of related corporations from time to time including when:
 - Existing ministry programs change
 - New ministry programs are being added
 - Assets grow, e.g. acquisition of real property, etc.

H. What If Our Church Corporation is Already Incorporated in Ontario?

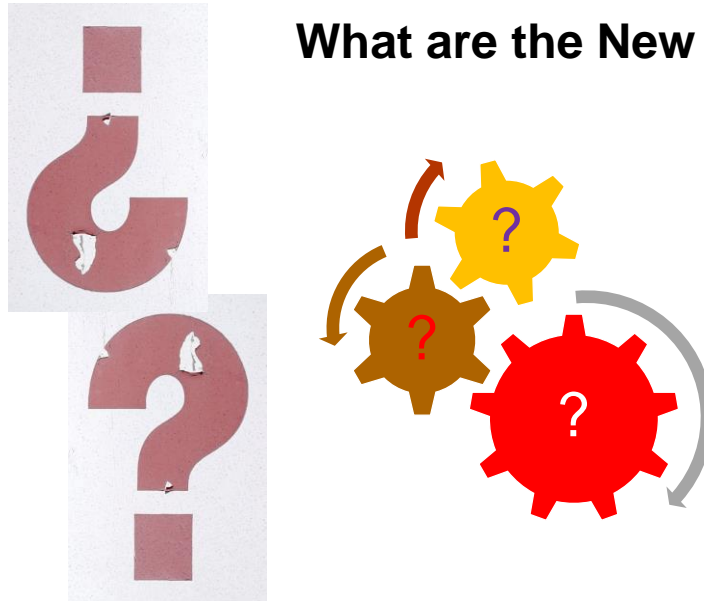
1. The ONCA is Now in Force!

- The ONCA was proclaimed into force on October 19, 2021
- ONCA now automatically applies to all non-share capital membership corporations originally incorporated under Part III of *Ontario Corporations Act* (“OCA”)
- New online Ontario Business Registry (“OBR”) also launched on October 19, 2021
- Strictly speaking, your Ontario church corporation does not need to do anything
 - It will not be dissolved and the following governing documents continue to govern until October 18, 2024, even if inconsistent with the ONCA
 - Letters patent (“LP”) and Supplementary letters patent (“SLPs”)
 - By-laws
 - Special resolutions
- HOWEVER, starting on October 19, 2024, inconsistent provisions (with a few exceptions) will be deemed to be amended to the extent necessary to comply with ONCA - will result in uncertainty and a complicated guessing game!

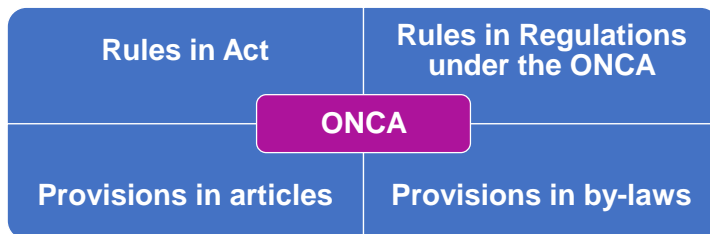
2. So What Should Our Ontario Church Corporation Do Next?

- Undertake the optional transition process!
 - Can take transition process within 3 years of proclamation to make necessary changes to current governing documents
 - Adopt Articles of Amendment
 - Adopt ONCA-compliant by-law
 - It is prudent to go through this ONCA transition process
- End result?
 - After the transition process, your church corporation will be governed by:
 - LP & SLPs, as amended by Articles of Amendment (consider consolidating them in Restated Articles of Incorporation)
 - ONCA-compliant by-law

What are the New Rules Under the ONCA?



ONCA Framework

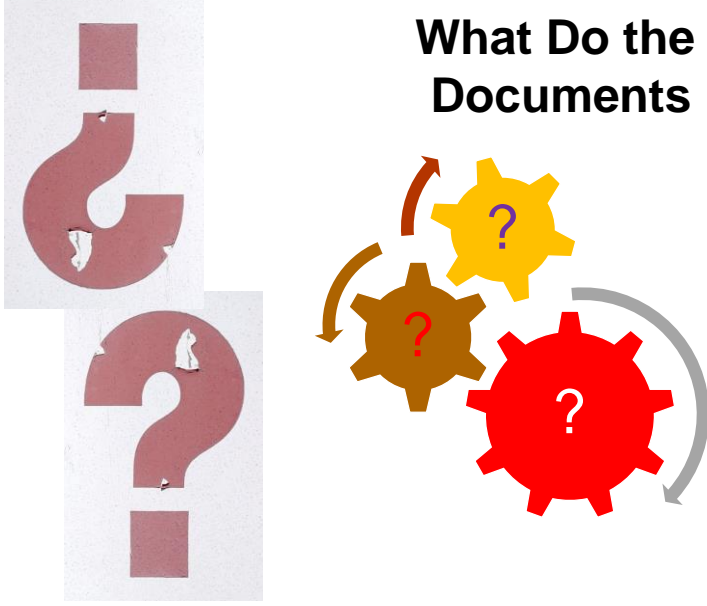


- ONCA is modeled after rules for public for-profit companies
- Lots of rules in ONCA that were not in the OCA
- Complicated rules and how the rules work with each other

Three Types of Rules in ONCA

Mandatory Rules	Cannot be overridden by the articles or by-laws	Corporations must follow these rules
Default Rules	Apply automatically if articles/by-laws silent	Corporations may override the default rules Overriding provisions may be set out in articles or by-laws – depending on the rules in question
Optional Rules	Options for corporations to opt in to have certain optional rules apply	Corporations may opt in to the options available Opt-in provisions may be set out in articles or by-laws – depending on the rules in question

What Do the New ONCA Documents Look Like?



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ONCA TRANSITION DOCUMENTS

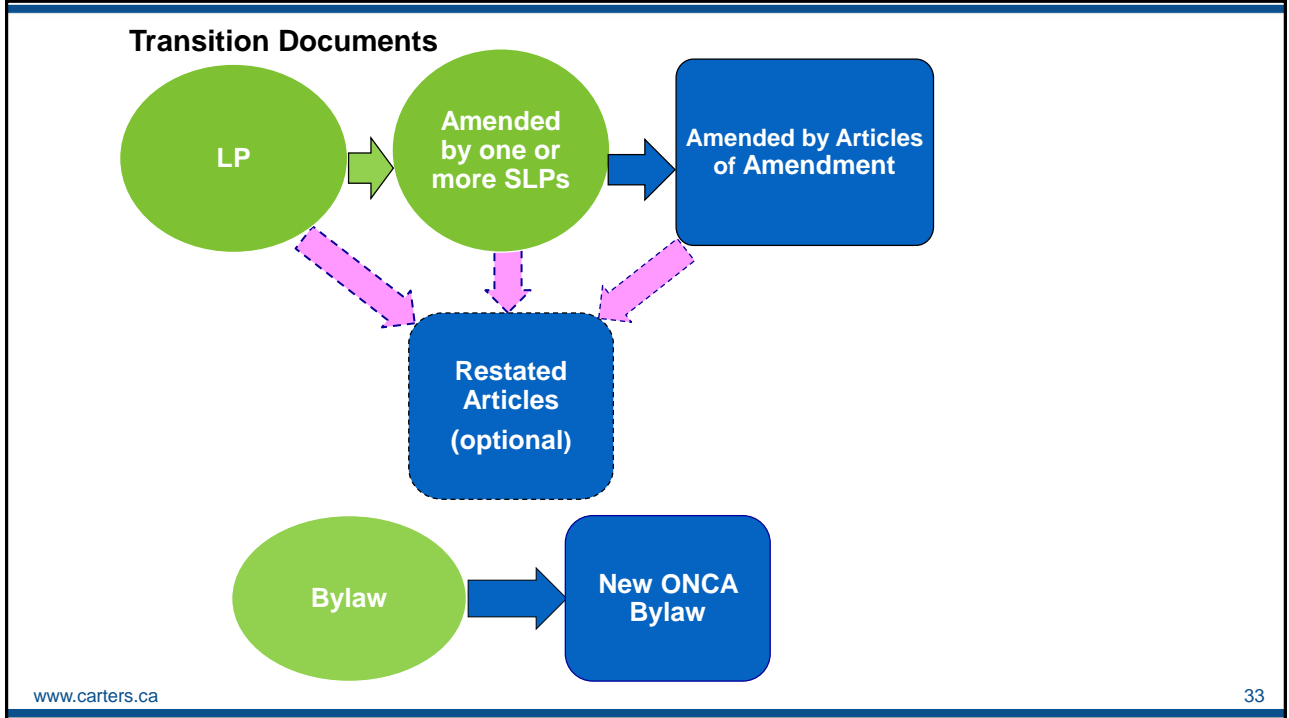
#1 Need ONCA-Compliant By-law

- Current by-law will likely:
 - Have provisions that do not comply with the ONCA
 - Have gaps in the by-law that do not address some of the new ONCA rules
- Need to know how the ONCA rules work in order to know:
 - What rules must be followed
 - What rules may be overridden, how to override, and where to put overriding provisions (articles vs by-law)
 - What rules can be opted in, and where to put the opt-in provisions (articles vs by-law)
 - What else to include in by-law?
- Question – amend current by-law or draft a fresh by-law?
- Complicated, not just following a template

#2 Articles of Amendment and Optional Restated Articles

- Simply adopting an ONCA-compliant by-law is not sufficient
- LP and SLPs also need to be amended to comply with new ONCA requirements – this is done by Articles of Amendment
 - Set out the following in the Articles:
 - Number of directors
 - Number of membership classes and voting rights
 - Dissolution clause needs to comply with new rules in the ONCA
 - Add “special provisions”
 - Default “special provisions”
 - Other provisions may be required to co-ordinate with mechanisms in the by-law

- After amendment by Articles of Amendment, your church corporation will need to flip back and forth between the following documents
 - LP
 - LP as amended by SLPs in the past
 - LP as amended by Articles of Amendment
- Can consolidate all of these documents into Restated Articles of Incorporation
 - Will replace LP, all SLPs, and Articles of Amendment
 - Need to carefully consider how to consolidate
 - Additional filing fees and processing time
 - Certain default provisions will be automatically inserted into the articles – may need to anticipate them when doing Articles of Amendment
- Complicated, not just filling out forms



What Steps Does Our Church Corporation Have to Take to Transition?

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1. Collect

Collect Governing Documents

- Confirm your church corporation is actually under the OCA
- Collect LP, SLPs, by-laws (including amendments)
- Obtain microfiche copies from Ministry as needed
- Collect all by-laws, including amendments
- Collect Members' resolutions and board resolutions related to the corporate documents
- Need to review if all by-laws are valid? Were they properly adopted?
- Also collect all governance related documents - e.g., organizational charts, policies, manuals, etc. - they may contain provisions which need to be in the corporate documents instead

2. Review

Review Governing Documents

- Do they reflect your church's current governance process? If not, what is your church's current governance process?
- Are changes desired? What are they?
- Are there new provisions to be inserted?
- Write them down, come up with a wish list and review it with legal counsel to see if possible to add to the church's new ONCA-compliant documents

3. Study

Study Key ONCA Features

- To determine how current governance structure will be impacted by the ONCA
- ONCA framework
 - Rules in the Act
 - Some details in the Regulations
 - Articles and by-laws
- Three types of rules in ONCA
 - Mandatory rules - cannot be overridden by the articles or by-laws
 - Default rules - by-laws or articles can override
 - Alternate rules - articles/by-laws can include certain optional rules permitted by ONCA

4. Compare

Compare ONCA vs Current Governing Documents

- Are the current by-laws or the desired governance structure and process inconsistent with ONCA requirements?
- If inconsistent with ONCA mandatory requirements, then:
 - Need to adjust governance structure and process to comply
- If inconsistent with ONCA default requirements, then:
 - Consider whether to opt out
- If ONCA provides options, decide which options to adopt
- Consider what else to include

5. Prepare

Prepare New ONCA Documents

- Prepare articles of amendment
 - To amend LP and SLPs
 - Consider consolidating in restated articles
- Prepare ONCA-compliant by-law
 - By-law will need to be replaced or substantially revised because the ONCA is very different from OCA
 - OCA contained very few rules, ONCA provides many detailed rules
 - Generally easier to start with a fresh ONCA by-law than to amend current general operating by-law
 - Some governance changes may require detailed consideration and possibly consultation with members ahead of time
 - Some changes may only be administrative in nature

Are There Any Other ONCA Issues to be Aware of?

- YES!
- Need a new company key
- Need a new official email address
- Need consent from Public Guardian and Trustee (PGT) if your church wants to revise its charitable purposes as part of the ONCA transition process
 - Can only revise the purposes set out in the LP/SLPs by Articles of Amendment
 - Articles of Amendment form will automatically insert “after acquired” clause, regardless of the changes being made, unless the PGT has provided written consent to waive inclusion of this clause
- Implications of after-acquired clause
 - Funds and other property acquired before the Articles of Amendment can only be used for the existing charitable purposes – including all income received from a Will, deed or other trust made before the Articles of Amendment became effective, regardless of when the income is received
 - However, all funds and other property acquired after the issuance of the Articles of Amendment can only be used for the amended purposes



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