

REVIEW PROCEDURES FOR C&S 512 - RESTATED ARTICLES OF INCORPORATION FOR ECCLESIASTICAL CORPORATIONS

Act 327, P.A. 1931; MCLA 450.178; MSA 21.179 and Act 162, P.A. 1982;
MCLA 450.2101; MSA 21.197(101)

Sections 178 through 185, Act 327, P.A. 1931 include provisions for amending the articles of incorporation of an ecclesiastical corporation but not for restating them. Section 123, Act 162, P.A. 1982 provides that it is applicable to ecclesiastical corporations unless otherwise provided for and to the extent it is not inconsistent with the act under which incorporated. Since Act 327, P.A. 1931 does not provide for restating articles, the provisions of Act 162, P.A. 1982 are applicable.

Section 641, Act 162, P.A. 1982 provides a corporation may adopt restated articles for the purpose of integrating into a single instrument the provisions of the articles then in effect and operative. That section also provides the articles can be further amended by filing restated articles. Section 642 lists information required in the restated articles as well as omissions which do not result in an amendment to the articles.

Upon filing, the restated articles replace the articles and all subsequent amendments and changes and become the corporation's articles. The date of incorporation does not change, and unless the corporation is changing from an ecclesiastical to a profit, nonprofit, or professional service corporation, filing of the restated articles does not change the act under which incorporated.

Section 182, Act 327, P.A. 1931 contains the procedure for amending the articles of an ecclesiastical corporation. If the restated articles include amendments to the articles, these procedures must be followed in drafting the document.

Form C&S 512 may be used to restate the articles of an ecclesiastical corporation. Items 1 through 4 and Articles First through Fourth MUST be completed to effect filing of the restated articles.

Section 179, Act 327, P.A. 1931 lists the format and contents of the articles of an ecclesiastical corporation. Consequently, the contents of Articles First through Fourth must follow this format. Variations in the language, sequence of information, etc. is not acceptable.

Additional information desired in the articles may appear beginning with Article Fifth.

The document must be reviewed to determine that it substantially complies with the Act. For example, provisions must conform to law and be consistent with attorney general opinions, guidelines, and policies; the name, if it is being changed, must be available for use; the document must be signed; fees must be paid; etc.

Following are specific items to be considered in determining whether or not the Restated Articles can be filed.

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
The document must be titled "Restated Articles of Incorporation".	NPA 642
Except for the corporation name, the document must be drafted in the English language. The corporation name need not be English words but must be written in English letters or Arabic or Roman numerals.	NPA 132(1)
<u>ITEM 1</u>	
Must be completed with the name of the corporation. The name must be identical (spelling, abbreviations, and punctuation) to the name as it appears on the database.	NPA 642

**REVIEW PROCEDURES FOR C&S 512 - RESTATED ARTICLES
OF INCORPORATION FOR ECCLESIASTICAL CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
<u>ITEM 2</u>	
Must be completed with the identification number for the name in Item 1.	
<u>ITEM 3</u>	
Must reflect any former name the corporation has had. This should be verified on the database. If there were no former names, the space may be blank.	NPA 642
Must be completed with the date the original articles of incorporation were filed. This should be verified on the database.	NPA 642
<u>ARTICLE FIRST</u>	
If the name is being changed, the new name must be checked for availability. The following must be considered in doing so:	
1. The corporation name must clearly indicate it is a church or a religious society or association.	GCA 179
2. The corporate name may not indicate or imply that the corporation is engaged in an activity other than the teaching and spreading of religious beliefs and principles.	NPA 212(1)(a)
3. The corporate name must be distinguishable from any active name of a corporation, limited partnership, or limited liability company, including	NPA 212(1)(b) Guideline adopted 1-28-83
a) a corporate name	
b) a limited partnership name	
c) a limited liability company name	Policy Statement C-40
d) an assumed name for a corporation, limited partnership or limited liability company	
e) a reserved name	
f) a name registered by a foreign corporation	
4. The corporation name shall not contain a word or phrase or the abbreviation or derivative of a word or phrase, which is prohibited or restricted by any other state statute unless the restriction is complied with.	NPA 212(1)(c)
5. Various state and federal statutes prohibit or restrict the use of certain words or abbreviations in names of corporations. The NAMES program in the computer system searches for any of these words which have been identified when inquiry regarding name availability is made and displays a message that the proposed name contains a word or abbreviation which may be prohibited or restricted from use.	See RESTRICTED WORD list Policy Statement C-48

**REVIEW PROCEDURES FOR C&S 512 - RESTATED ARTICLES
OF INCORPORATION FOR ECCLESIASTICAL CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
<p align="center"><u>ARTICLE SECOND</u></p> <ol style="list-style-type: none"> 1. The location of the church or society must be reflected. City or county name is sufficient. 2. The address of the registered office must be completed. This address is a physical location and must include number, street, city and zip code. The route, suite, or apartment number must also be included if applicable. Except for the exceptions cited in Policy Statement C-32, this address must be in Michigan and cannot be a post office box. 3. It is permissible to have a mailing address of the registered office that differs from the street address. Except for the exceptions cited in Policy Statement C-32, the mailing address must be a Michigan address. A post office box is permitted. 4. The name of the resident agent must be completed. Each domestic corporation must name and continuously maintain a resident agent who must be one of the following: <ol style="list-style-type: none"> a) An individual resident of Michigan whose business office or residence is identical with the registered office. b) A domestic corporation having a business office identical with the registered office. c) A foreign corporation authorized to transact business in Michigan having a business office identical with the registered office. 5. The following are not acceptable as resident agents: <ol style="list-style-type: none"> a) Dissolved or withdrawn corporations b) Limited partnerships c) Partnerships generally d) Limited liability companies e) Limited liability partnerships 	<p>GCA 179</p> <p>NPA 202(g) 241(a) Policy Statement C-32</p> <p>NPA 202(g) 241(a) Policy Statement C-32</p> <p>NPA 202(g) 241(b)</p>
<p align="center"><u>ARTICLE THIRD</u></p> <p>The term of corporate existence is perpetual unless a specific date is reflected.</p>	<p>GCA 179 AG Opinion dated 3-24-33 (Our No. 121) Special Opinion 170 Special Opinion 291</p>

**REVIEW PROCEDURES FOR C&S 512 - RESTATED ARTICLES
OF INCORPORATION FOR ECCLESIASTICAL CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
<p align="center"><u>ARTICLE FOURTH</u></p> <p>The name of the church which determines the discipline, rules and usages according to which the members will worship and labor. If it is independent, the name of the church being incorporated may be repeated or the word "none" may be reflected.</p> <p>The articles may not include a provision which would permit an individual to determine the discipline, rules and usages according to which the member will worship and labor.</p>	<p>GCA 179</p> <p>GCA 180</p>
<p align="center"><u>ARTICLE FIFTH</u></p> <p>This space may be used to reflect additional provisions permitted or required to be part of the articles of incorporation. Examples of such provisions include:</p> <ol style="list-style-type: none"> 1. Any provision concerning church policy or government 2. Corporate term <ul style="list-style-type: none"> If the term is a specific number of years, compute the term expiration date from the date of filing the articles of incorporation or, if there was an effective date, from the effective date. If the term is identified as being "extended", compute the new term date from the current term date. 3. Proposed compromise, arrangement, or reorganization between corporation and creditors or members. 4. Limited Liability <ol style="list-style-type: none"> a) Exemption from personal liability of volunteer directors or volunteer officers. The provision may not provide for exemption from liability beyond that provided for in the Act nor may it provide for limiting liability on a date earlier than the effective date of the restated articles if they include amendments, or the effective date of the document which originally contained the provision if the restated articles are an integration only. <ul style="list-style-type: none"> The provision may not include a reference to the Uniform Management of Institutional Funds Act. Provisions in the Nonprofit Act do not affect, amend, expand or place limits on other statutes. Unless the Management of Institutional Funds Act is amended to provide for limitations or exemptions of liability of directors, the reference to that Act is not acceptable in a provision providing for limiting the liability of a volunteer director. b) Corporation assumes liability for volunteer directors. This statement may include any date between 1-1-88 and the current date. c) Corporation assumes liability for volunteer directors, volunteer officers, or other volunteers. 	<p>GCA 180</p> <p>GCA 179 AG Opinion dated 3-24-33 (Our No. 121) Special Opinion 170 Special Opinion 291</p> <p>NPA 204</p> <p>NPA 209(c), (d) & (e) 541</p> <p>NPA 209(c)</p> <p>NPA 209(d)</p> <p>NPA 209(e)</p>

**REVIEW PROCEDURES FOR C&S 512 - RESTATED ARTICLES
OF INCORPORATION FOR ECCLESIASTICAL CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
5. Bylaws	GCA 181 NPA 231
6. Powers	GCA 183 185 NPA 261
7. MEMBERS / MEMBERSHIP	
a) Qualification of members	GCA 181
b) Manner of admitting, suspending or expelling members	GCA 181
c) Voting	
1) each member entitled to 1 vote. (The articles can provide, in the case of 2 or more classes, that a class shall not have voting rights. They cannot provide that all members are non-voting.)	NPA 304(3)
2) by members of condominium associations	NPA 304(4)
3) by members of homeowners or property owners associations	NPA 304(5)
4) cumulative (for directors only)	NPA 451
5) supermajority (vote of more than a majority of members required)	NPA 455 1145
6) proxies	NPA 421 1144(1)
7) voting as a class	NPA 442 443 1144(2)
d) Participation in meeting of members by conference telephone or similar communication equipment	NPA 405
e) Taking corporate action without a meeting	NPA 407
8. DIRECTORS	
a) Qualification for directors	GCA 181
b) Manner of selection and removal from office	GCA 181
c) Minors may not act as incorporators, officers or directors of corporations	AG Opinion 5893 dated 5-8-81 (Our No. 254) Special Opinion 105
d) Indemnification (Cannot exceed statutory limits as to who, the types of actions, etc. which can be covered.	NPA 561

**REVIEW PROCEDURES FOR C&S 512 - RESTATED ARTICLES
OF INCORPORATION FOR ECCLESIASTICAL CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
9. OFFICERS	
a) Election or appointment of officers	GCA 181 NPA 531
b) Minors may not act as incorporators, officers, or directors of corporations	AG Opinion 5893 dated 5-8-81 (Our No. 254)
c) Indemnification (Cannot exceed statutory limits as to who, the types of action, etc. which can be covered)	NPA 561
10. Dissolution	NPA 805
11. Information required by the Internal Revenue Service for tax exempt corporations.	
12. The articles cannot include provisions which would	GCA 180
a) permit or encourage the teaching of immoral practices or conduct or anything contrary to public policy	
b) violate the sanctity of marital relations	
c) prohibit a member from utilizing the courts concerning personal or property rights	
d) provide that the bylaws and rules of discipline are not subject to civil law or decree	
e) encourages the violation or disregarding of any law of the United States or the State of Michigan	
f) permit the corporation to obtain property through fraud, misrepresentation or undue influence under the guise of religious teaching or discipline	
g) permit an individual to hold church property in his own name	
h) permits an official of the church to dictate and construe the rules of discipline or bylaws without approval of the directing board or require they be approved by him before becoming effective.	
<u>EFFECTIVE DATE</u>	
An effective date, not more than 90 days after the date of receipt is permitted. The desired effective date must be reflected in the body of the document. Inserting it in the "Bureau Use Only" area is not sufficient.	NPA 131(2) Policy Statement C-19

**REVIEW PROCEDURES FOR C&S 512 - RESTATED ARTICLES
OF INCORPORATION FOR ECCLESIASTICAL CORPORATIONS**

SPECIFIC DOCUMENT ITEMS	STATUTORY CITE
<u>ITEM 5</u>	
5a) Must be completed to reflect the date of adoption if restated articles are an integration only and do not further amend the articles of incorporation.	NPA 641(2) 642
5b) Must be completed to reflect the date of adoption if the articles of incorporation are amended or if adoption is by the members.	NPA 641(2) 642
5b) (i) Must reflect a copy of the notice given to members that a meeting is scheduled at which adoption of the restated articles will be considered. The wording should be as it appeared in the church bulletin, paper, notice, or as announced from the pulpit. The notice must be to the entire membership of the church -- not just the board of directors or other select group.	GCA 182
5b) (ii) Must be completed to reflect the number of members present at the meeting. This must be members of the corporation -- not just members of the board of directors or other select group.	GCA 182
5b) (iii) Must be completed to reflect the number of members voting in favor of the restated articles. This must be at least a majority of the members present at the meeting unless a different majority is required by the rules of discipline or by church policy. This must be members of the corporation -- not just members of the board of directors or other select group.	GCA 182
<u>SIGNATURE</u>	
Must be a signed in ink by the persons controlling the temporal affairs.	GCA 182
Signatures must be notarized. The notary public must complete the notarial acknowledgment. Expiration date of notary's commission must be the same as or later than the signature date of the document.	GCA 182
<u>FEES</u>	
Filing fee - \$10.00	NPA 1060(1)(I) Policy Statement C-9 Policy Statement C-33
<u>MISCELLANEOUS</u>	
An ecclesiastical corporation can change to a nonprofit corporation by filing a version of restated articles which combines parts of C&S 511 and 512. The first page through Item 4, the contents of the restated articles, Articles I through IV, any additional provisions, and Items 5a if the articles are not further amended, must conform to the requirements of Act 162, P.A. 1982. If the articles are amended or adoption is by the members, Item 5b must be completed in conformity with the requirements of Act 327, P.A. 1931.	