



Congregational Resolutions Related to Merger or Amalgamation

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NB

- Resolutions and templates on the following pages are for information only; they are intended as examples and will need to be tailored to each individual situation; as such, they are not legal documents, and congregations are wise to seek individual legal advice, especially for those having to do with the legal status of a congregation, incorporation, property, etc.
- Resolutions are also worded in style to reflect the ELCIC's use and preference of Bourinot's Rules (also likely reflected in the congregation's Constitution and Bylaws).

Last reviewed: August 2019

Resolution: Congregation/Council Beginning the Process for Conversations of Merger/Amalgamation

If a congregational meeting begins the process to begin merger/amalgamation conversations:

That the Congregational Council of *Name1 Lutheran Church, City/Prov*, be authorized to form a team who will work with *Name2 Lutheran Church, City/Prov*, to explore a potential merger/amalgamation of the two congregations.

If the Congregational Council is beginning the process to begin merger/amalgamation conversations:

That *(named individuals)* be authorized to work on behalf of *Name1 Lutheran Church, City/Prov* with those similarly named from *Name2 Lutheran Church, City/Prov*, to explore a potential merger/amalgamation of the two congregations.

The resolution requires the approval by a majority vote.

The Congregation/Council may also consider a timeline for a report to be brought back to it.

Resolution: Congregation Approving in Principle to Move Forward towards Merger/Amalgamation

At a special congregational meeting in each congregation, the following resolution is considered.

That *Name1 Lutheran Church* approves, in principle, moving forward towards a plan and timeline for a merger/amalgamation with *Name2 Lutheran Church*.

The resolution requires the approval by a majority vote.

Resolutions: Approval and Authorization to Proceed with Merger

At a special congregational meeting in each congregation, the following resolution is considered.

That *Name1 Lutheran Church* merge with *Name 2 Lutheran Church* to form one congregation to be known as *Name Lutheran Church*.

The resolution above requires the approval by a two-thirds vote.
The succeeding resolutions require the approval by a majority vote.

That the Covenant for Shared Ministry for *Name Lutheran Church* be adopted.

That the assets of *Name1* be liquidated or conveyed and the proceeds dealt with as follows:

- a. x...
- b. x...

That upon the filing of all necessary returns, issuance of charitable receipts and receiving the consent of Canada Revenue Agency, an application be made to revoke its CRA business number and its charitable status voluntarily.

That the Constitution and Bylaws attached to this resolution are hereby approved, upon the subsequent approval by Synod Council, as the Constitution and Bylaws of *Name Lutheran Church*.

That *named individuals or Congregational Council* be authorized, on behalf of *Name1*, to execute any and all documentation to carry out the foregoing.

That with the preceding items having been reconciled, the merger will be effective and begin on *date*.

The congregation which is merging into another (i.e. not the congregation receiving another into its own self) might consider the following resolution, requiring approval by a majority vote.

That all current members of *Name1 Lutheran Church* shall be transferred to and added to the membership rolls of *Name2 Lutheran Church*.

Status of Incorporation of Merging Congregations

If an incorporated congregation is merging into an unincorporated congregation, the corporation needs to dissolve, so that the merged congregation results as an unincorporated congregation. The merging congregation, before the date of merger is effective, would dissolve the corporation.

That the members of *Name Lutheran Church* authorize the Congregational Council to make arrangements to dissolve the corporation.

(Note: the intent of this resolution dissolves the corporation. This would be done so as to be effective before the merging process so that any other actions necessary (e.g. revocation of CRA business number, issuance of charitable receipts, transfer of assets, property, etc.) would be able to be done legally before the corporation is dissolved.

If the merged congregation wishes to be incorporated, it should first become incorporated, and the resulting joining of congregations would then be the result of an amalgamation of two corporations.

That the members of *Name Lutheran Church* authorize the Congregational Council to make arrangements to incorporate the congregation.

Resolutions: Approval and Authorization to Proceed with Amalgamation

At a special congregational meeting in each congregation, the following resolution is considered.

That:

1. pursuant to Section 113 of the Ontario Corporations Act (“the Act”), the amalgamation of *Name1 Lutheran Church, City, Ontario* (“the Corporation”) and *Name2 Lutheran Church, City, Ontario* (collectively the “Amalgamating Corporations”) to continue as *New Name Lutheran Church* (the “Amalgamated Corporation”) in accordance with the terms and conditions of the Amalgamation Agreement dated as of *date*, to be entered into between the Amalgamating Corporations, and submitted to this meeting, be and the same is hereby approved;
2. that the Corporation be and it is hereby authorized to enter into and adopt the said Amalgamation Agreement and prior to the endorsement of Letters Patent of Amalgamation, the Amalgamation Agreement may be amended or terminated by a resolution of the board of directors of the Corporation without further approval of the members of the Corporation;
3. that the Corporation be and it is hereby authorized and directed by a joint application for Letters Patent of Amalgamation to apply, on or before the Effective Date (as defined in the Amalgamation Agreement), or on such other day as may be agreed upon by the board of directors of the Amalgamating Corporations, to the appropriate authorities in the Province of Ontario for Letters Patent of Amalgamation to give effect to the amalgamation;
4. that upon the endorsement of Letters Patent of Amalgamation pursuant to the provisions of the Act, the Amalgamated Corporation shall possess all of the property, rights, privileges and franchises and will be subject to all liabilities, contracts, disabilities and debts of each of the Amalgamating Corporations; and,
5. that the proper officers of the Corporation be and they are hereby authorized to do all things and execute all instruments and documents necessary or desirable to carry out and give effect to the foregoing.

The resolution requires the approval by a two-thirds vote.

The following resolutions might also subsequently be considered, as necessary or required. They require approval by a majority vote.

That the ministry purpose and plan for *New Name Lutheran Church* be adopted.

That upon the filing of all necessary returns, issuance of charitable receipts and receiving the consent of Canada Revenue Agency, an application be made for *Name1 Lutheran Church, City* to revoke its CRA business number and its charitable status voluntarily.

Sample Amalgamation Agreement between Two (or More) Corporations

AMALGAMATION AGREEMENT

THIS AGREEMENT dated as of the *xth* day of *month*, *year*. (“the Effective Date”)

BETWEEN:

Name1 Lutheran Church, city, Ontario, a Corporation without share capital incorporated and validly existing under and governed by the Ontario Corporations Act (“*Name1*”)

and

Name2 Lutheran Church, city, a Corporation without share capital incorporated and validly existing under and governed by the Ontario Corporations Act (“*Name2*”)

WHEREAS *Name1* and *Name2* are corporations existing and not in default under the Ontario Corporations Act and have the same or similar interests;

AND WHEREAS *Name1* and *Name2* are collectively referred to in this Agreement as the “Amalgamating Corporations”;

AND WHEREAS each of the Amalgamating Corporations has made full disclosure to the other of all of its material assets and liabilities;

AND WHEREAS the Amalgamating Corporations, with the approval of their respective boards of directors and members acting in accordance with the provisions of the Ontario Corporations Act, have agreed to amalgamate upon the terms and conditions hereinafter set out;

NOW THEREFORE for and in consideration of the mutual promises, covenants and agreements set forth herein, the parties hereto agree as follows:

1. Definitions. In this Agreement, the following terms shall have the following meanings, respectively:
 - a. “Act” means the Ontario Corporations Act, as amended or replaced;
 - b. “Amalgamated Corporation” means the corporation continuing from the amalgamation of the Amalgamating Corporations;
 - c. “Amalgamation” means the amalgamation of the Amalgamating Corporations as contemplated in this Agreement;
 - d. “Effective Date” means a date on or before the *xth day of month, year*, or such other date as may be agreed upon by the board of directors of the Amalgamating Corporations, on which the conditions to the Amalgamation, and all steps to implement the Amalgamation as set forth in this Agreement are taken and satisfied;
2. Amalgamation. The Amalgamating Corporations agree to amalgamate pursuant to the provisions of the Act as of the Effective Date and to continue as one corporation without share capital on the terms and conditions herein described. On the Effective Date that the Amalgamation becomes effective, the Amalgamated Corporation shall possess all of the property, rights, privileges and franchises and will be subject to all liabilities, contracts, disabilities and debts of each of the Amalgamating Corporations.
3. Name. The name of the Amalgamated Corporation shall be “*New Name Lutheran Church*” or such other name as may be approved.

4. Objects. The objects of the Amalgamated Corporation shall be as follows:
 - a. to preach and advance the teachings of the Christian faith and the religious tenets, doctrines, observances and culture associated with that faith;
 - b. to establish, maintain and support a house of worship with services conducted in accordance with the tenets and doctrines of the Christian faith;
 - c. to support and maintain missions and missionaries in order to propagate the Christian faith;
 - d. to establish and maintain a religious school of instruction for children, youth and adults.
5. Powers. The powers of the Amalgamated Corporation shall be as follows:
 - a. For the above objects, and as incidental and ancillary thereto, the Amalgamated Corporation may exercise any of the powers as described by the Act or by any other statutes or laws from time to time applicable, except where such power is contrary to the statutes or common law relating to not-for-profit, non-share corporations.
6. Special Provisions.
 - a. The Amalgamated Corporation shall be carried on without purpose of gain for its directors and members and any profits or other gains of the Amalgamated Corporation shall be used in promoting its objects;
 - b. The directors shall serve as such without remuneration and shall not directly or indirectly receive any profit from their position, provided that the directors may be paid reasonable expenses incurred by them in the performance of their duties;
 - c. Upon the dissolution of the Amalgamated Corporation and after satisfying all of the debts and liabilities, in accordance with the resolution adopted by no less than two-thirds (2/3) of the members present and voting at a properly called meeting of the Amalgamated Corporation prior to the dissolution, its remaining property shall be distributed or disposed of in accordance with the Letters of Amalgamation, the provisions of the Act, and the Income Tax Act (Canada).
7. Head Office. The head office of the Amalgamated Corporation until otherwise determined by special resolution of the members, shall be located at *address, city, Ontario, postal code*.
8. Supervision of Amalgamated Corporation. The affairs of the Amalgamated Corporation shall be under the supervision of the board of directors, subject to the provisions of the Act and the Amalgamated Corporation's bylaws.
9. Board of Directors.
 - a. Number: The board of directors of the Amalgamated Corporation shall, until otherwise changed in accordance with the Act, consist of *nine (9)* directors.
 - b. First Directors: The first directors comprising the board of directors of the Amalgamated Corporation shall be the members of the Transition Team as follows:

<u>Name</u>	<u>Residence Address</u>	<u>Term</u>
Name1	Address1	next AGM
Name2	Address2	"
Name3	Address3	"

Each of the foregoing is a resident Canadian and the said directors shall hold office until their successors are duly elected or appointed in accordance with the Amalgamated Corporation's Letters Patent of Amalgamation and its bylaws.

10. Members. The members of the Amalgamated Corporation shall be those individuals who make application for membership and who may be admitted as members pursuant to the bylaws of the Amalgamated Corporation. The members' rights and obligations, including the right to vote, shall be set out in the Amalgamated Corporation's bylaws.
11. Segregated Funds. Funds which have been raised by either *Name1* or *Name2* and which are currently designated as special purpose funds of the Amalgamating Corporations shall remain segregated and shall be used exclusively for the benefit of the purpose(s) to which such funds were designated and any replacements or additions to such purpose(s).
12. Trust Funds. All gifts, trusts, bequests, pledges, devises and grants of real or personal property or of the income or proceeds thereof, before this date expressed by a person in a deed, will bequest or other document, to be made, given or conveyed to *Name1* or to *Name2*, or to any person in trust for or for the benefit of the foregoing, shall, insofar as the same shall not have vested in possession or been carried into effect on the date this Amalgamation comes into force, shall, subject to any applicable law and if practicable, be applied by the Amalgamated Corporation for the exclusive use and benefit for the purpose of which such funds were so designated. Any funds not so designated shall be allocated by the Amalgamated Corporation in accordance to the directions of its board of directors.
13. Bylaws. The Amalgamating Corporations hereby agree that the Constitution and Bylaws ("the bylaws") of the Amalgamated Corporation until otherwise repealed, amended or altered to, and upon subsequent approval by the Synod Council, shall be the bylaws adopted by the members of *Name1* and *Name2*.
14. Actions. No action or proceeding by or against any of the Amalgamating Corporations shall abate or be affected by the Amalgamation.
15. Conditions Precedent to Amalgamation. Notwithstanding anything to the contrary contained herein, the respective obligations of the Amalgamating Corporations to complete the transactions contemplated by this Agreement, the Amalgamation shall be subject to the satisfaction of the following conditions:
 - a. This Agreement, with or without amendment, shall have been approved and adopted by the board of directors of each of the Amalgamating Corporations, at a meeting of directors called and held in accordance with the Act;
 - b. This Agreement, without or without amendment, shall have been approved and adopted by special resolution of the members of each of the Amalgamating Corporations at a meeting of members called and held in accordance with the Act.
16. Application. Upon the directors and members of each of the Amalgamating Corporations approving and adopting this Agreement in accordance with the Act, at meetings thereof called for the purpose of considering this Agreement, such fact shall be certified upon the Agreement by the Secretary of each of the parties hereto under their respective corporate seals and the parties hereto by their joint application shall, on or before the Effective Date, or on such other day as may be agreed upon by the

board of directors of the Amalgamating Corporations, apply to the appropriate authorities in the Province of Ontario for Letters Patent of Amalgamation to give effect to the Amalgamation.

17. Amendments. This Agreement may, prior to the endorsement of Letters Patent of Amalgamation, be amended by resolution of the board of directors of each of the Amalgamating Corporations without further approval of the members of each of the Amalgamating Corporations.
18. Termination. This Agreement may, prior to the endorsement of Letters Patent of Amalgamation, be terminated by resolution of the board of directors of either of the Amalgamating Corporations notwithstanding the approval of this Agreement by the members of both of the Amalgamating Corporations.
19. Further Assurances. Each party shall from time to time promptly execute and deliver such further documents, conveyances, deeds, assignments, transfers, and the like, and take such further action as may be reasonably necessary or appropriate to give effect to the provisions and intent of this Agreement.

IN WITNESS WHEREOF this Agreement has been duly executed by the parties hereto under their respective corporate seals as witnessed by the signatures of their proper officers on that behalf.

Name1 Lutheran Church, city, Ontario

Per: _____

Per: _____

I/We have the authority to bind the Corporation

Name2 Lutheran Church, city, Ontario

Per: _____

Per: _____

I/We have the authority to bind the Corporation

Resolution: Requesting Approval of Synod Council for Merger or Amalgamation

At a meeting of the new congregational entity, the following resolution is to be adopted to seek approval from Synod Council (*in reference to Eastern Synod Constitution Article VI, Section 4 and Eastern Synod Bylaw Part II, Section 1.a*).

That, as a result of a vote on *date* by *Name1 Lutheran Church*, and on *date* by *Name 2 Lutheran Church*, we hereby request the Eastern Synod Council's approval of the merger of *Name1* and *Name2* to be known as *Name Lutheran Church*, effective *date*.

or

That, as a result of a vote on *date* by *Name1 Lutheran Church*, and on *date* by *Name 2 Lutheran Church*, we hereby request the Eastern Synod Council's approval of the amalgamation of *Name1* and *Name2* to become *New Name Lutheran Church*, effective *date*.

The resolution requires the approval by a majority vote.