

# Forming a Free Church

## American Law : Existing 501(c)(3) Corporations

Australian Law.....?????

This article is a “how to do it” summary for forming a free church—a church directly under God, as opposed to the common practices of:

- 1) Forming **church corporations** which are ultimately under control of state governments.
- 2) **Obtaining 501(c)(3) status from the Internal Revenue Service**—which provides some advantages but also voluntarily pledges to submit a church to all present and future IRS rules. Extensive explanation of **why** a church should be formed as a free church and avoid the above two practices may be found in the free literature at the end of this paper. This document concentrates on **how** to do it.

### Source of Authority

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**Source of authority** is something that many people seldom, if ever, think about. Yet it is utterly vital. Notice how Jesus handled this important issue:

Now when He came into the temple, the **chief priests** and the **elders of the people** confronted Him as He was teaching, and said, "By what authority are You doing these things? And who gave You this authority?"

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But Jesus answered and said to them, "I also will ask you one thing, which if you tell Me, I likewise will tell you by what authority I do these things:

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"The baptism of John—where was it from? **From heaven or from men?**" And they reasoned among themselves, saying, "If we say, 'From heaven,' He will say to us, 'Why then did you not believe him?'"

26 "But if we say, 'From men,' we **fear the multitude**, for all count John as a prophet."

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So they answered Jesus and said, "We do not know." And He said to them, "Neither will I tell you by what authority I do these things (Matt 21:23-27).

The issue of whether Christ's authority was **from God or from men** was so important that Jesus would not plainly answer their question at this time. Later, He was killed for claiming that His authority was directly from God (Matt 26:63-66). In their hearts, the leaders knew that **John the Baptist's authority was from God**. He did no miracles (John 10:41), had no power or wealth, preached a strong message of repentance, yet the people went to hear him in large numbers. God gave John the Baptist the message to preach and protected him until his mission was finished. John's mission was not dependent upon any group of people electing or agreeing with him. Obviously, the mission of Christ was the same way.

On the other side, the "chief priests" and the "elders of the people" in Jesus' day were appointed by men—some even paying money to obtain the positions. They remained in power as long as they were popular. They "feared the multitude", knowing they could be deposed by a popular uprising. They had no faith that God would uphold their office, and rightly so, because they were not serving Him. Instead, they feared the Roman government so much that they decided to kill Jesus in order to preserve their positions:

"If we let Him alone like this, everyone will believe in Him, and **the Romans will come and take away both our place and nation.**" And one of them, Caiaphas, being high priest that year, said to them, "You know nothing at all, nor do you consider that it is expedient for us that one man should die for the people, and not that the whole nation should perish" (John 11:48-50).

**What are the sources of authority, today?** Still the same: "men" and "God".

The **source of authority of civil governments** is largely from "men". While the Bible says that God at times sets up and removes kings (Dan 2:21), we do not have prophets today openly telling us which kings God is setting up and removing. Dictators rule because they have been able to squelch all human opposition—people would rather accept them than fight them. Kings rule because they are the humanly recognized (not divinely selected) heir to a throne.

Other countries are ruled by a constitutional government that specifies the means whereby human leaders come to power. These governments frequently begin with a **declaration document** that declares a certain group of people to be independent from all other governments. Declarations are written in spite of other's claims to authority over a people. The USA's *Declaration of Independence* is an example. It sets the people as the ultimate authority to determine their government and laws. Even so, it alone cannot prevent a nation from being conquered by a foreign power, or prevent the government from gradually taking power away from the people due to their own inattention.

The **source of authority for church corporations** is the **corporate charter** (called by various names in different states) from a state government. While church corporations generally choose their own leaders from their own church members, the state reserves the right to regulate every aspect of the corporation, to change corporate rules at its own discretion, to install its own corporate leaders or to dissolve the corporation.

If a church organization has **no written foundational documents**, or if the nature of the organization is ambiguous in its documents, then it will usually be presumed to be an **unincorporated association**. Much of the vast body of corporate law does not apply to associations, but many other laws do regulate associations. In some cases, state laws permit unincorporated organizations without foundational documents to be treated like corporations.

Either corporations or associations may apply to the Internal Revenue Service to be recognized as **tax exempt organizations** in exchange for promising to obey all present and future IRS regulations for such organizations. The **IRS** at its own discretion, may remove the tax exempt status of any such organization retroactively for a number of **years well** levy fines against the organization and its leaders. This can destroy most organizations.

In the USA, genuine religious establishments—church congregations and associations of churches—have specific protection under the constitution:

**Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...** (The Federal Constitution, First Amendment).

Congress is prevented from making any laws giving special benefit to an establishment of religion, or from preventing religious establishments from freely exercising. Hence, Congress cannot require establishments of religions to be licensed, taxed or controlled by the state. That is why all of the above forms of state control over religions—corporations, associations and IRS tax exempt status—are entities to which church organizations must **voluntarily** submit themselves.

For a church group to remain free from state control and place itself directly under God's control, **it must legally establish its own existence, apart from state control, directly under God.** Such independent existence is established with a **declaration** (as the USA was established), not by applying to an existing government. The declaration represents the authority of men—the people who declare the congregation to exist; but it is authority of believing men following God's teaching to form church congregations (Matt 16:18-19, 18:1,15-20; 28:19-20; Acts 2:37-47; 14:23; 16:5; 20:28; 1Cor 12:28; 1Tim 3; Heb 10:25)—not the authority of an admittedly secular state. Continued existence is also important to understand. Once the existence of any group is established or declared, that existence continues until the entity is dissolved, destroyed or abandoned. Each person born or naturalized into a country has the choices of obeying the rules as they are, attempting to change the rules, disobeying (even fighting) the country or leaving it. Similarly, each person born into or acquiring a membership in a church group has the choice of abiding by its rules, attempting to change them, disobeying them (which may cause the person to be removed by the group) or leaving the group. In either case, a forced termination is also possible.

## Church Declaration

With the above in mind, all free church groups must begin with a declaration. This can be a simple document, even one page, that gives the church name, its creation date, a brief purpose of why it was created, a brief statement about how it is governed, a brief statement about the powers granted to it and a list of the people that created it.

The **name** of the church should clearly include the word “church” or “congregation” and possibly other biblical words. Since a free church will not be included in civil government lists of “incorporated” or “501(c)(3) churches”, governments often make their decision about the nature of a group solely from its name. While it is possible to operate a church congregation with names like *Peoria People's Assembly* or *Freedom Fellowship*, these may be mistaken for clubs or political organizations, and the congregation may have to spend quite a bit of time writing letters and going to court to establish that their group really is a church. Your congregation is much more likely to be recognized as a church if its name includes words like "Church", "Congregation", "Christian", "Bible", "Missionary", "God", "Jesus", "Christ", "Lord", "Yahweh", etc. Extensive details about governance should be reserved for other documents. If a congregation has met for some time without a declaration, it is possible to pre-date the declaration, as long as those signing it were actually meeting at the beginning. Any effort to make a false declaration is contrary to God's laws and man's law as well.

## Who Signs the Declaration?

Those who sign a church declaration are often referred to as “founders” or “charter members”. There is no need for a set number or even a majority of the people who attend a congregation to sign it. Those who do are simply expressing on paper their willingness to start a congregation. In congregations where the members choose their leaders, it makes sense for the original members to sign the declaration. I think 100 members is plenty?

The declaration simply states those who founded it. Other regularly updated documents will show who represents the church congregation. If members are the main decision makers, then the congregation should have either a membership list, or rules for determining which members may participate in decision making (e.g. those who tithe, those who attend regularly).

The success of any congregation (or any government for that matter) is determined primarily by whether the decision-makers follow God—whether they be the whole group, a few elders or one man. Voted in.

## Document Wording

The declaration and all other documents should be worded with biblical terminology rather than corporate terminology to establish the clear “church” character of the group.

### **Use: Do Not Use:**

Church, congregation Organization, corporate body  
council, elders, ministers, deacons board, officers, managers  
overseer, bishop, pastor president, vice president, CEO, employer  
clerk, scribe, steward, trustee, church warden secretary, treasurer, CFO  
offerings, support, tithes donations, contributions, income

### **Use: Do Not Use:**

worker, believer, brother employee church records minutes  
Bible teaching, exhortation advice, counseling  
open, guests are welcome public (essentially means “government”)

## Statement of Beliefs

A church should be able to summarize its essential beliefs and practices. Basic things such as God being the Creator, the Bible being His Word, Salvation being available to all mankind through Jesus Christ, and Christ being the head of the Church should be included. Extensive statements of beliefs without full biblical support are not good as they encourage people to align themselves with the statement rather than to learn truth through Bible study (John 17:17) and from the Holy Spirit (John 16:13). With no statement of beliefs, the religious nature of a church may be called into question.

## Mission and/or Ministry Statement

The purpose of a local congregation is to praise God, to feed the flock and to accomplish God’s work. A “mission statement” and more detail about the specific purposes of a congregation are very helpful in establishing the religious nature of a church, in helping new members decide to join the congregation and in reminding the group why they are there. This may contain a description of the congregation’s worship services, church activities, service projects and evangelistic work.

## Method of Church Governance

This can be a single document or a group of several documents. It usually starts small and expands as time goes on. The following items are very important:

1. Description of church leadership and ministry positions.
2. A method for appointing and replacing church leaders. This may include statements about their qualifications.
3. An explanation of church leadership regarding who is authorized to act on behalf of the church and in what capacity.
4. A means for implementing Matthew 18:15-17. When a member has a grievance or difficulty that cannot be resolved by going to his brother and by taking witnesses, how does he bring the issue to the congregation in order to have it heard? Such a procedure is vital in avoiding litigation. Most church lawsuits are from members or former members and courts usually decline to hear a case when the church has a documented grievance procedure.
5. Requirements for membership (if not included in the membership list document).
6. Means of handling church offerings and property.

It is very important that a church congregation define itself as a private group which invites interested people to attend their services provided they adhere to the congregations standards. The use of the terms “public meeting” or “open to the public” may make it impossible to remove people who are following man’s laws but violating biblical or church teaching.

## Church Records

Churches should keep records of decisions made by its leadership and membership in a method prescribed by the church’s **own** rules, for the benefit of all who attend. Precisely following the standards used for corporate minutes will only increase the likelihood that the church congregation will be treated like a corporation. Similarly, financial records need be kept only for the benefit of the congregation. While everything should be done honestly, the church need not acknowledge that it keeps records according to any government standard, nor should it turn over such records to any government agency unless it has a good reason to do so. Governments cannot require a free church to keep records. Turning over such records simply because they are requested may cause a government agency to presume that it has the same authority over a free church as it does over other churches.

## Legal Actions

If leaders or members of a church group commit crimes, even while acting on behalf of the church, they are personally responsible. Free churches are not a “free ride” to commit crimes. The church should make clear to its members that it is not responsible for their personal record keeping, tax obligations and other requirements placed upon citizens by various government entities. On the other hand, the Church can voluntarily make information available to help members when prudent.

Nevertheless, free churches can avoid a great amount of government regulation. It has no requirement to produce tax returns, financial statements; or audit reports. Indeed, probably nobody will usually ask for them. Some government employees understand how to treat free churches, others do not understand it, and a few may try to unlawfully bring free churches under government control. It is good to be “wise as serpents and harmless as doves” and choose one’s battles carefully. For example, a church’s leaders may voluntarily choose to correspond with some zoning or regulatory requirements in order to avoid conflict where it is not a significant issue. If any paperwork is generated, the church should state that the compliance was voluntary. On the other hand, zoning requirements have sometimes caused cities to try to require that church

groups make multi-thousand dollar changes to their buildings or parking lots. These are cases where the church should stand up for God, cite the protection of the First Amendment and continue to use its funds to preach the Gospel and feed its flock, rather than make unneeded building changes.

Sometimes, it is simply effective to write a government agency explaining that a **free church** is different from the corporations or associations that they are used to working with and that they simply do not have jurisdiction over free churches. If a court appearance is necessary, then a representative of the church may make a **special appearance** in court to explain that neither the court nor the government agency has jurisdiction over them. A *special appearance* is one that is not actually required to be made, but done for the benefit of clearing up the misunderstanding. It is a rare situation when a court attempts to assert jurisdiction over a free church. If this happens, it is time to get help from someone knowledgeable of such difficulties—see the last page.

## Insurance

While the Bible says little about obtaining insurance—even commands that we look to God as our protector, many believers are accustomed to the concept of insurance that they feel they must have it. Church Mutual Insurance Company (3000 Schuster Lane, Merrill, WI 54452, 715-536-5577, 800-554-2642; [www.churchmutual.com](http://www.churchmutual.com)) is a large insurance company with nearly 200 offices throughout the country that will insure free churches.

## Banking

In our society, it is difficult to receive offerings and pay church expenses without a bank account. The goal of church banking is to "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's" (Matt 22:21). Church funds should be separated from private funds so that: 1) the government does not tax church funds, 2) people do not misuse churches to avoid paying taxes on personal funds, and 3) the government does not falsely claim that church funds are personal funds and attempt to tax an individual for them.

There are people who pretend to create churches simply to avoid taxes. A government investigator, who cares more about collecting money than constitutional religious freedom, may try to treat a legitimate free church like a tax avoidance scheme. Even though the law does not require churches to obtain exemption under section 501(c)(3), many tax professionals think it is required. True, a free church should be able to defend itself in court and prove that it is a legitimate church, but the amount of time required to learn to represent oneself or the money required to hire an attorney can destroy a church.

Unfortunately, our courts have even allowed taxing agencies to seize property without due process—without a court order. This is why a church should pay attention to its banking and avoid looking like a tax avoidance scheme.

For many years, banks were only required to **ask** for social security numbers, but were permitted to open accounts without them, as long as they kept a separate listing of such accounts. New regulations resulting from the events of 9/11/2001 have changed this and this writer does not know of any financial institutions that will open a new account without a Social Security Number (SSN) or an Employer Identification Number (EIN). An EIN can be obtained quickly via the Internet, but the SSN of the person obtaining the EIN is required. The EIN clearly indicates intent to create a separate entity, but could still be falsely construed to be a "tax dodge" for the person who created it. If a free church is not going to have employees, then it would seem best to request an EIN "for banking purposes only"—one of the check boxes on the form. (Becoming an employer—having employees—opens up any entity to a large amount of regulation. If anyone receives a regular salary or hourly wage, governments will claim that they are employees. If there are limited financial needs of people involved in a ministry that can be taken care of by occasional gifts that are not regular in amount or frequency, that is a better way to do it.)

Other free churches have opened bank account in the church's name with a member listed as a "trustee" or "deacon", giving his SSN to the bank. This, again, runs the risk that taxing authorities may ignore the church and claim that all of the income is taxable to SSN's owner. If the church leader's SSN is on the account, or used to request the EIN used for the account, it is more likely to be considered a tax-avoidance scheme, since most tax-avoidance schemes are one-man operations. The best person to use their SSN on an account is an older member with few assets—often a retired person. They are less likely to be mistaken for tax frauds. Should a false accusation occur, they have no large assets to seize (this can be a big factor in a decision to prosecute a case). Make sure that the older person who does this understands the risk. If the person who writes the checks is not the person who's SSN is on the account, that further decreases the chance that the church money will be wrongfully treated as personal money.

For an account in a church name and SSN (no EIN), banks often require a "Doing Business As" (DBA), "Fictitious Name" or "Assumed Name" statement from the local county. These statements typically cost less than \$25 to obtain and are the government's way of identifying who runs businesses that have not formed as a corporation, partnership, LLC, LLP, etc. at the state level. While a church is not required to file these to operate as a church, a bank may refuse to open an account without it. Unfortunately, the DBA statement can be considered legal evidence that the entity is a business—and can therefore be regulated and taxed like a business. This writer has seen statements such as the following added near the entity name on the DBA form: "This is not a business but a free church [or "church ministry"]. This statement has been filed solely to meet bank requirements for opening an account."

**Do not** open an interest-bearing account. The amount of interest received is more trouble than it is worth. Some entity will have to report the interest income. If the church reports it, then it looks like a profit-making entity and may have to file some kind of tax return. If an individual reports it, then the church money appears to be his money.

## Property Ownership

Free churches can acquire real estate and other property in a variety of ways. Some states actually permit land to be held in the name of Jesus Christ, in trust by members of a congregation. Other states will let it be held in the name of the church. In some, it is easier to form a trust controlled by the church's leaders. Because many churches in the 1700s and 1800s were organized as free churches, and because most owned their buildings, every state in the union has a well-established but sometimes forgotten legal method whereby free churches may own real estate and other property. For specific situations, it is probably best to seek specific help—see the last page.

### Tax Issues

Title 26 (Federal Tax Code) and IRS publications both clearly state that a church need not file with the IRS to be exempt from tax or for offerings to be "tax deductible". As long as the name is clearly a church, most people report little trouble taking income tax deductions. More trouble occurs with avoiding property and sales taxes. Many taxing units claim that they require a church to have IRS "510(c)(3) status" in order to recognize it as tax exempt. In practice, many such taxing entities will instead accept a letter clearly quoting the IRS regulations stating that churches are not required to apply for 501(c)(3) status to be tax exempt, and going on to inform them that they cannot discriminate against a church for not filing paperwork that the law does not require them to file. Even vendors that "require" a 501(c)(3) status or proof of non-profit incorporation to give their "educational product discounts" will still accept a form letter explaining that a free church does not need these things, and offer their discounts to them.

### Existing 501(c)(3) Corporations

Some believers may have formed a corporation and/or applied for 501(c)(3) status in the past because they were led to believe that this was necessary for a church or ministry. Now that they know otherwise, what should be done with the old entities? It is important that those entities continue to be run by the laws governing them until they are dissolved. Every situation is different, but here is an approach that some have used to exercise their rights to freedom of religion:

1. Start a new church or ministry with a declaration. Choose a name that is noticeably different than the former corporate name. A name that is obviously different would be more helpful in avoiding possible confusion between the entities, but if name-recognition by the people served is important, then a name that is only slightly different might be a better choice. Simply dropping the suffix "Inc" from a corporate name is probably not enough distinction. A further distinction between the old and new entities can be achieved if

the elders of the new group are not identical with the board of the former corporation. If there is someone who would like to resign, or a new person who would like to become involved, this is often a good time to implement that change.

2. Obtain a new PO Box or address for the free church if possible. New stationery—or a new computer letterhead—with this new address is also a good idea.

3. Obtain a bank account for the new free church ministry. Again, if it is possible to make a distinction from the old, do it. Open the account at a new bank or change the list of people who have account authorization.

However, do not jeopardize the essential part of you church or ministry to do this—i.e., do not put an incapable or non-trustworthy person in charge of the something just to make a change.

4. Make these issues known to those who support the church or ministry. Many believers greatly appreciate the determination to organize directly under God and not under men. Others are less concerned with these issues and simply state that they will make checks out to whatever name is necessary to do God's work.

5. When the brethren accept the new declaration and begin to support the free church/ministry, the board of the 501(c)(3) corporation may decide to give its assets to the free church/ministry in furtherance of its Christian goals. For real property (land and buildings), this must be done with a deed. Appropriate documents will also need to be filed if there are any mortgage holders. A real estate agent or attorney may be able to help with this. Other property, such as sound equipment, music books, instruments, office equipment, etc., can be given with a gift letter stating the religious purpose for giving it. It is a good idea to put new identification tags or stickers on property giving the new free church name and address.

6. Many groups allow their 501(c)(3) corporation to continue for a year or so just in case any other assets are discovered and to accept any offerings that may still be sent to it. Sometimes those giving the offerings may need to be advised several times that the old corporation is likely to be discontinued.

7. When the offerings to a 501(c)(3) corporation are so low that they will not even pay the annual fees to remain incorporated, it is time to dissolve that entity. The corporations' Board or directors can vote to dissolve it at any time. It should pay any remaining bills and close its bank account. Reserve money for the dissolution fee, if there is one.

8. While corporations that do not pay annual fees are "automatically dissolved", they may be in a kind of "limbo" state and can be easily reinstated. It is much better to contact the state government and officially dissolve the corporation. The state's web site or a general state government information number will direct you to the office that is responsible for corporations. They probably have a form, or will be able to tell you what must go into a letter to dissolve a corporation. If your corporation is formed in another state and you have a license to do business in your state, you may need to also inform your state of the dissolution. If a 501(c)(3) corporation still has any remaining assets at the time of its dissolution, they must be given to another 501(c)(3) organization and you should comply with the law.

9. If a ministry has been filing IRS form 990 (not required for churches), then a letter should be sent to the Internal Revenue Service, Exempt Organizations Determinations, P.O. Box 2508, Cincinnati, OH 45201, informing them that the entity is dissolved and will no longer be filing form 990.

10. Close the PO Box of the old corporation, if any, and do not conduct any more transactions under that name.

While it may be tempting to cash an offering check made out to the old name, it is better to return it and ask the person if they would like to give an offering to the free church or ministry.

## Summary

Working as a free church is not as difficult as most people think. It is largely a matter of **not** doing the things that people say a church should do. Read the Bible, seek God in prayer, listen to the Holy Spirit, and then do what They say. Serve God with your whole heart and practice what you preach. This writer has seen the leaders in too many churches and ministries overcome by the sins of adultery, covetousness, pride, etc.—and then those leaders wonder why God allowed their church to be destroyed. May we wise as serpents and harmless as doves!

## For More information

The following information is available free of charge. Just ask for the order code at the beginning **DECLAR The Declaration of Independence and the Federal Constitution**, 10 pages. The Apostle Paul knew his rights under the law as he traveled and preached Christ (Acts 16:37-40; 22:25-30; 25:11,16). These documents can help us know ours.

**FRECHA Free Church Article Reprints, 50 pages.** Articles about avoiding church incorporation from Linden Baptist Church, Indiana; New Testament Baptist Church, Cape Coral, Florida; and The Rutherford Institute, Charlottesville, Virginia.

**GOVHUM How Does the Eternal Govern Through Humans?** by Norman Edwards, 64 pages. How the KJV translators altered Scriptures about government to please King James and an analysis of what the Bible says about how we should govern in congregations today.

**IRSCHU What Does the IRS Code Say About Churches?** by Norman Edwards, 12 pages. Internal Revenue Code section 501(c)(3) and other related sections showing how they restrict Churches from certain activities, including "carrying on propaganda", which means, at law, the propagation of anything.

**K501C3 501(c)3 Religion: Reemergence of the Divine Right of Kings** by Peter Kershaw, 8 pages. Summary of how freedom from state-controlled religion began in the USA and how it is being lost.

**LOCONG Starting a Local Congregation** by Norman Edwards, 62 pages. How and why to organize a congregation: utilizing spiritual gifts, teaching, music, praise, speaking in tongues, prophesying, role of women, dress, formal organization, baptism, weddings, funerals, statements of beliefs, naming a group, finding a place to meet, local evangelism and more.

## **Legal Status of This Paper**

This paper is written from the command of Jesus that His followers be witnesses of Him "to the ends of the Earth" (Acts 1:8). The author asserts his right to produce this paper according to the rights of freedom of religion, freedom of speech and freedom of the press, which are upheld by the First Amendment of the Constitution of the United States of America.

The purpose of this publication is to provide useful teaching and information for forming church congregations.

The author grants permission for this paper to be copied in whole or in part, as long as it is distributed free of charge.

The author believes the information in this paper to be accurate, but realizes that he is fallible, so he would appreciate corrections of any errors in the paper. This paper is **not** professional or legal advice. Anyone making a decision based upon this paper should seek God in prayer first, and realize that **they are making their own decisions** and that the author of this paper and those who distribute it are not liable for their decisions and their consequences. People not capable of making their own decision or wanting "legal advice" should seek a "licensed professional". This is a private publication, not public.

May God bless all who read it!

## **Basic Charter Signatory Contract**

We the undersigned, believe in Jesus/Yeshua the Christ as the only begotten son of the Almighty God.

We believe and practice the gifts of the Holy Spirit and accept His rule in our church.

We believe and practice tithing 10% of our gross income into this Church, failure to do so brings our signatory vote into the councils hands for re evaluation.

We believe in one vote per signatory and the election of our shepherd and his staff.

We believe and practice the act of the apostles in the new testament and the evangelization of souls into the Kingdom of God on Earth.

We the undersigned do hereby give our hearts and souls into this church and its resolve elected by us the undersigned and guided by the Holy Spirit.

Being the founders of this edict and church as it stands today. Taking full control and responsibility as a body for its up keep and maintenance. Being granted a key to the premises and its holdings.

Dated:10<sup>th</sup> April 2012.

X.....  
John Smith

X.....  
Joe Blog

X.....  
Jane Someone

X.....  
Mr faithful

And so forth till 100 signatories. Or so.