

#67

4/19/66

Memorandum 66-22

Subject: Study 67 - Suit in Common Name

Attached to this memorandum as Exhibit I is a draft statute designed to carry out the recommendations made in the research study on suit in common name (as revised to reflect the decisions made at the April meeting).

The draft statute is organized so that the procedural matters relating to suit in common name are presented first. The remaining portion of the draft statute presents the policy questions concerning (1) substantive liability of unincorporated associations and (2) substantive liability of members of nonprofit unincorporated associations.

The following section by section comments concern the draft statute. References to the "Research Study" are to the research study on suit in common name dated February 14, 1966. You have a copy of this research study.

PROCEDURAL MATTERS

Section 1 (Repeal of Code of Civil Procedure Section 388). Note that Section 2 of the draft statute enacts a new Section 388.

Section 2 (Adds new Code of Civil Procedure Section 388). Subdivisions (a) and (b) of this section were approved in substance at the April meeting. Is the language of these subdivisions satisfactory?

Subdivision (c) is added to make it clear that a judgment against an unincorporated association binds only the property of the association and not the individual property of a member of the association. Under subdivision (c), if the plaintiff seeks a judgment that will bind the individual property of a member, he must obtain a judgment against the member in an

action to which the member is a party. (The member may, of course, be joined as a defendant in the action against the association.) Although the present law is not clear, subdivision (c) probably restates existing law. See discussion in Research Study at pages 26-29. This subdivision will afford a member of an unincorporated association an opportunity to personally litigate the question of his individual liability before he can be required to pay for an injury, damage, or loss arising out of the association's activities.

Subdivision (d) provides that where a judgment is obtained against the unincorporated association and also against a member of the association for the same injury, damage, or loss, execution shall not issue against the individual property of the member unless execution against the property of the association has been returned wholly or partially unsatisfied. This subdivision provides an especially important protection to the individual members of the association in the event that the law relating to the liability of individual members is not clarified. Whether or not the law relating to such liability is clarified, we believe that the subdivision provides a desirable rule. The damage, injury, or loss is to be paid in the first instance from the joint assets of the association whose activities resulted in the damage, injury, or loss if the plaintiff obtains a judgment against the association for such damage, injury, or loss. This serves to spread the cost of associational liability among all the members in proportion to and to the extent of their interest in the joint assets of the association. There is ample precedent in other jurisdictions for a provision like subdivision (d). See Research Study at pages 28-29. Note that we do not recommend that the plaintiff be required to make the association a party to an action to recover from the individual member who caused the loss.

Such a provision might create problems in a case where the plaintiff claims that he did not know that the individual member was acting for the association at the time the injury was caused.

Section 3 (Adds new Code of Civil Procedure Section 395.2). This section relates to venue. If the unincorporated association files a certificate designating a principal office or place of business with the Secretary of State, it will be treated like a corporation for venue purposes. See proposed Section 22503 at pages 9-10 of draft statute for provision concerning filing of certificate.

This section will permit the plaintiff to bring the action in the county where the association's principal office or place of business is located. It also will prevent the plaintiff from bringing an action against the association in a particular county merely because a member of the association resides in that county. However, the section will apply only if the certificate is filed with the Secretary of State. If no certificate is filed, the existing law will remain in effect. For discussion, see Research Study at pages 36-39.

Section 4 (Amendment of Code of Civil Procedure Section 410). This is a technical, nonsubstantive change. The change conforms this section to new Section 388.

Section 5 (Amendment of Section 411 of the Code of Civil Procedure). Section 411 is amended to add subdivision 2.1 to require service on the agent designated for service if one has been designated by the association. See proposed Section 22503 at pages 9-10 of the draft statute for provision concerning designation of agent. If no such agent has been designated, no change is made in existing law except that a copy of the summons must be mailed to the last known address, if any, of the principal office or place of business of the association. Under existing law, service may be made

on any member of the association. For discussion, see Research Study at pages 30-36.

LIABILITY OF UNINCORPORATED ASSOCIATIONS

Section 6 (Adds Sections 22500-22502 to Corporations Code). This part would be added to the Corporations Code under the title entitled "Unincorporated Associations." Title 3 would then consist of the following:

Title 3. Unincorporated Associations

Part 1. Nonprofit Associations

Chapter 1. Definition

Chapter 2. Liability of Members (to be revised--see later discussion)

Chapter 3. Property

Chapter 4. Insignia

Chapter 5. Death Benefit Payments by Fraternal Societies.

Part 2. Joint Stock Associations

Part 3. Unincorporated Associations (to be added)

Generally speaking, the theory of Part 3 (added by Section 6 of the draft statute) is that an unincorporated association should be liable to the same extent as any separate entity recognized by the law. This makes clear that the fact that an unincorporated association is not recognized as a legal entity does not provide such an association with an immunity from liability. For a discussion of the liability of unincorporated associations, see Research Study at pages 11-21.

This part will have the effect of encouraging unincorporated associations to select responsible officers and agents and to adopt other safeguards to minimize the possibility of injury. It will discourage plaintiffs from seeking to recover for harm from the individual members of an association

and will make it easier for plaintiffs to reach the assets of the association to satisfy associational liability. This will tend to transfer the impact of the harm from the individual to the enterprise which usually will be able to bear it more easily. See Research Study at pages 11-21.

Proposed Section 22500. This definition of "unincorporated association" is the same as that provided in new Section 388. For discussion, see Research Study at pages 2-4.

Proposed Section 22501. This section provides that an unincorporated association is liable for tort to the same extent as if the association were recognized as a separate legal entity. This means that the association is liable for failure to maintain its property and for the negligent or wrongful acts or omissions of its officers, agents, and employees, in the scope of their office, agency, or employment. For discussion, see Research Study at pages 11-21. Section 22501 probably codifies existing law but (except for labor unions) there is no California case in point.

Proposed Section 22502. This section provides that an association is liable on a contract executed on behalf of the association by a person authorized to do so. This section changes the existing law on contracts. Under existing law, an unincorporated association cannot make a contract unless by statute it is directly or indirectly authorized to do so or is made a legal entity for this purpose. There are, however, already a number of California statutes that authorize unincorporated associations to make contracts. Basically, the proposed section merely extends to ~~unincorporated~~ nonprofit associations the treatment already afforded to partnerships and labor unions. See Research Study at pages 19-21.

Proposed Section 22503. This section authorizes an unincorporated association to file with the Secretary of State a statement designating

an agent for service of process, or a statement designating its principal office or place of business, or both. This section is significant in connection with venue (statement of principal office or place of business) and service of process (statement of agent for service of process). The section is permissive, not mandatory. For discussion, see Research Study at pages 32-39.

LIABILITY OF MEMBERS OF NONPROFIT ASSOCIATIONS

Sections 7 and 8 (Repeal Sections 21100-21103 of, and Add Sections 21100 and 21101 to, Corporations Code). Section 7 repeals Chapter 2 of Part 1 of Title 3 of the Corporations Code and Section 8 enacts a new Chapter 2. For an outline of Title 3, see this memorandum supra.

This portion of the draft statute has no effect on the liability of members of organizations, such as partnerships, engaged in business for a profit. The existing law dealing with liability of members of such organizations remains unchanged. Generally speaking, the liability of members of nonprofit unincorporated associations is made subject to basically the same rules that govern the liability of limited partners. The proposed sections codify what probably is existing law on liability for tort. The proposed sections probably restrict existing liability based on contract. For a discussion of liability of members of unincorporated associations, see Research Study at pages 21-25.

The proposed sections apply only to members of a "nonprofit association" which is defined by Section 21000 as follows:

A nonprofit association is an unincorporated association of natural persons for religious, scientific, social, literary, educational, recreational, benevolent, or other purpose not that of pecuniary profit.

The previously proposed sections on liability of unincorporated associations facilitate reaching the group funds and property. On the other hand, extension of recovery beyond the group funds by holding members personally liable is usually undesirable since the members often lack the knowledge and individual control which make justifiable the imposition of personal responsibility for the acts of others. Normally, liability of individual members will not be necessary to compensate the harm. See Research Study at page 18 (first indented quote).

In effect, the draft statute sets up two distinct systems of liability-- one to reach group property and the other, with standards less conducive to recovery, to impose liability on the members. This is the scheme recommended by writers who have analyzed this problem. See, e.g., Research Study at page 18 (second indented quote). This is the substance of the scheme adopted by the California Supreme Court for labor unions.

Proposed Section 21100. This section limits individual liability on contracts entered into in the name of, and on behalf of, a nonprofit unincorporated association. In such a case, the person entering into the contract can protect himself, if he wishes, by requiring assumption of the liability by one or more persons if he is concerned about the financial responsibility of the association. This section would extend the limited immunity from liability provided by Corporations Code Sections 21100 and 21101 for debts incurred in acquiring realty to all contracts made by a nonprofit association. It is of interest to note that Sections 21100 and 21101 were enacted in response to the only California decision that imposed liability on members of nonprofit associations. These sections overrule a decision that indicated that members might be personally liable on a

contract made by a nonprofit association under certain circumstances.

Proposed Section 21101. This section is believed to codify existing California law. See Research Study at pages 21-25.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

SECTION 1. Section 388 of the Code of Civil Procedure is repealed.

~~388. --When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.~~

SEC. 2. Section 388 is added to the Code of Civil Procedure to read:

388. (a) As used in this section, "unincorporated association" means any unincorporated organization of two or more persons which engages in any activity of any nature, whether for profit or not, under a common name.

(b) An unincorporated association may sue and be sued in its common name.

(c) A judgment against an unincorporated association binds only the property of the association and does not bind the individual property of a member of the association.

(d) If a judgment is rendered against the unincorporated association and also against a member of the association for the same injury, damage, or loss, execution shall not issue against the individual property of the member unless execution against the property of the unincorporated association has been returned wholly or partially unsatisfied.

SEC. 3. Section 395.2 is added to the Code of Civil Procedure,
to read:

395.2. If an unincorporated association has filed a certificate with the Secretary of State pursuant to Section 22503 of the Corporations Code listing its principal office or place of business in this state, the proper county for the trial of an action against such unincorporated association is the same as it would be if the unincorporated association were a corporation.

SEC. 4. Section 410 of the Code of Civil Procedure is amended to read:

410. The summons may be served by the sheriff, a constable, or marshal, of the county where the defendant is found, or any other person over the age of 18, not a party to the action. A copy of the complaint must be served, with the summons, upon each of the defendants. When the service is against a corporation, or against an unincorporated association in an action brought under associates-conducting-business-under-a-common-name,-in-the-manner authorized-by Section 388, there shall appear on the copy of the summons that is served a notice stating in substance: "To the person served: You are hereby served in the within action (or proceeding) on behalf of (here state the name of the corporation or the unincorporated association common-name-under-which-business is-conducted-by-the-associates) as a person upon whom the summons and a copy of the complaint must be served to effect service against said party under the provisions of (here state appropriate provisions of Section ~~388~~ or 411) of ~~this~~ the Code of Civil Procedure ." When service is intended to be made upon said person as an individual as well as a person upon whom service must be made on behalf of said corporation or said association associates, said notice shall also indicate that service is had upon said person as an individual as well as on behalf of said corporation or said association associates. In a case in which the foregoing provisions of the section require that notice of the capacity in which a person is served must appear on the copy of the summons that is served, the certificate or affidavit

of service must recite that such notice appeared on such copy of the summons, if, in fact, it did appear. When service is against a corporation, or against an unincorporated association in an action brought under ~~asseeiates-conducting-a-business-under-a common-name,-in-the-manner-authorized-by~~ Section 388, and notice of that fact does not appear on the copy of the summons or a recital of such notification does not appear on the certificate or affidavit of service of process as required by this section, no default may be taken against such corporation or such association asseeiates . When service is made upon the person served as an individual as well as on behalf of the corporation or association asseeiates conducting-a-business-under-a-common-name , and the notice of that fact does not appear on the copy of the summons or a recital of such notification does not appear in the certificate or affidavit of service of process as required by this section, no default may be taken against such person.

When the summons is served by the sheriff, a constable or marshal, it must be returned, with his certificate of its service, and of the service of a copy of the complaint, to plaintiff if he is acting as his own attorney, otherwise to plaintiff's attorney. When it is served by any other person, it must be returned to the same place, with the affidavit of such person of its service, and of the service of a copy of the complaint.

If the summons is lost subsequent to service and before it is returned, an affidavit of the official or other person making service, showing the facts of service of the summons, may be returned in lieu of the summons and with the same effect as if the summons were itself returned.

SEC. 5. Section 411 of the Code of Civil Procedure is amended to read:

411. The summons must be served by delivering a copy thereof as follows:

1. If the suit is against a domestic corporation: to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, general manager, or a person designated for service of process or authorized to receive service of process. If such corporation is a bank, to any of the foregoing officers or agents thereof, or to a cashier or an assistant cashier thereof. If no such officer or agent of the corporation can be found within the state after diligent search, then to the Secretary of State as provided in Sections 3301 to 3304, inclusive, of the Corporations Code, unless the corporation be of a class expressly excepted from the operation of those sections.

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business in this state ; ; in the manner provided by Sections 6500 to 6504, inclusive, of the Corporations Code.

2.1. If the suit is against an unincorporated association that has designated an agent for the purpose of receiving service as provided in Section 22503 of the Corporations Code: to such agent. If no such agent has been designated prior to the commencement of the action, or if such agent cannot be found

within the state after diligent search, then to any one or more of the association's members and by mailing a copy thereof to the last known mailing address, if any, of the principal office or place of business of the association.

3. If against a minor, under the age of 14 years, residing within this state: to such minor, personally, and also to his father, mother, or guardian; or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If against a person residing within this state and for whom a guardian or conservator has been appointed: to such person, and also to his guardian or conservator.

5. Except as otherwise specifically provided by statute, in an action or proceeding against a local or state public agency, to the clerk, secretary, president, presiding officer or other head thereof or of the governing body of such public agency. "Public agency" includes (1) every city, county, and city and county; (2) every public agency, authority, board, bureau, commission, corporation, district and every other political subdivision; and (3) every department and division of the state.

6. In all cases where a corporation has forfeited its charter or right to do business in this state, or has dissolved, by delivering a copy thereof to one of the persons who have become the trustees of the corporation and of its stockholders or members; or, in a proper case, as provided in Sections 3305 and 3306 of the Corporations Code.

7. If the suit is one brought against a candidate for public office and arises out of or in connection with any matter concerning his candidacy or the election laws and said candidate cannot be found within the state after diligent search, then as provided for in Section 54 of the Elections Code.

8. In all other cases to the defendant personally.

SEC. 6. Part 3 (commencing with Section 22500) is added to Title 3 of the Corporations Code, to read:

PART 3. UNINCORPORATED ASSOCIATIONS

22500. As used in this part, "unincorporated association" means any unincorporated organization of two or more persons which engages in any activity of any nature, whether for profit or not, under a common name.

22501. An unincorporated association is liable for its negligent or wrongful act or omission, and for the negligent or wrongful act or omission of its officer, agent, or employee acting within the scope of his office, agency, or employment, to the same extent as if the association were a legal entity. Nothing in this section affects the liability between partners or the liability between a partnership and the partners therein.

22502. An unincorporated association is liable on any contract executed in the name of and on behalf of the association by a person authorized by the association to execute the contract.

22503. (a) Any unincorporated association may file with the Secretary of State on a form prescribed by him a statement designating,

as the agent of such unincorporated association for the purpose of service of process, any natural person residing in this state, setting forth his complete business or residence address. The association may at any time file a new statement which designates a different agent for the service of process and such filing shall be deemed to revoke the prior designation.

(b) Any unincorporated association may file with the Secretary of State on a form prescribed by him a certificate listing the location and mailing address of the association's principal office or place of business in this state. The association may at any time file a new certificate showing a new location or mailing address of its principal office or place of business in this state.

(c) The Secretary of State shall prescribe a form that will permit the statement referred to in subdivision (a) and the certificate referred to in subdivision (b) to be combined in one document.

(d) For filing the statement referred to in subdivision (a) or the certificate referred to in subdivision (b) or the combined document referred to in subdivision (c), the Secretary of State shall charge and collect the fee prescribed in the Government Code for designation of an agent for the purpose of service of process.

SEC. 7. Chapter 2 (commencing with Section 21100) of Part 1 of Title 3 of the Corporations Code is repealed.

Note. Chapter 2 reads as follows:

CHAPTER 2.--LIABILITY OF MEMBERS

~~21100.--Members of a nonprofit association are not individually or personally liable--for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, designing, planning, architectural supervision, erection, construction, repair, or furnishing of buildings or other structures, to be used for the purposes of the association.~~

~~21101.--Any contract by which a member of a nonprofit association assumes any such debt or liability is invalid unless the contract or some note or memorandum thereof, specifically identifying the contract which is assumed, is in writing and signed by the party to be charged or by his agent.~~

~~21102.--No presumption or inference existed prior to September 15, 1945, or exists after that date, that a member of a nonprofit association has consented or agreed to the incurring of any obligation by the association, from the fact of joining or being a member of the association, or signing its by-laws.~~

21103.--Notwithstanding any other evidence of legislative intent, it is the controlling legislative intent that if any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter and the application of such provision to persons and circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 8. Chapter 2 (commencing with Section 21100) is added to Part 1 of Title 3 of the Corporations Code, to read:

CHAPTER 2. LIABILITY OF MEMBERS

21100. A member of a nonprofit association is not individually or personally liable on any contract entered into in the name of and on behalf of the association unless such member assumes such liability by contract and the contract or some note or memorandum thereof, specifically identifying the contract which is assumed, is in writing and signed by the party to be charged or his agent.

21101. A member of a nonprofit association is not liable for the negligent or wrongful act or omission of an officer, agent, or employee of the association unless such member participated in, authorized, or subsequently ratified the negligent or wrongful act or omission. Authorization or ratification of a negligent or wrongful act or omission may not be inferred merely from the fact of joining or being a member of the association or signing its by-laws.

SEC. 9. Section 21200.5 of the Corporations Code is amended to read:

21200.5. Any unincorporated association that is an organized medical society limiting its membership to doctors of medicine who are licensed physicians and surgeons and that has as members a majority of the eligible physicians and surgeons residing in the area in which it functions (which must be at least one county) may, without incorporation, purchase, receive, own, hold, lease, mortgage, pledge, or encumber by deed of trust or otherwise, manage and sell all such real estate and other property as may be convenient for the purposes and objects of the association. ~~The members of any such unincorporated association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, construction, repairing or furnishing of buildings or other structures to be used for the purposes of the association or for debts or liabilities contracted or incurred by the association in the carrying out or performance of any of its purposes; provided, that such purposes are within the purposes stated in Section 21000 of this part.~~

SECTION 1. Section 388 of the Code of Civil Procedure is repealed.

~~388, --When two or more persons, associated in any business, transact such business under a common name, whether it comprises the names of such persons or not, the associates may be sued by such common name, the summons in such cases being served on one or more of the associates; and the judgment in the action shall bind the joint property of all the associates, and the individual property of the party or parties served with process, in the same manner as if all had been named defendants and had been sued upon their joint liability.~~

SEC. 2. Section 388 is added to the Code of Civil Procedure,
to read:

388. (a) As used in this section, "unincorporated association" means any unincorporated organization engaging in any activity of any nature, whether for profit or not, under a common name. The term includes, by way of illustration but not way of limitation, a joint stock company, labor union, partnership, church, fraternal order, or club, unless such organization is incorporated.

(b) An unincorporated association may sue and be sued in its common name.

(c) A judgment against an unincorporated association binds only the property of the association and does not bind the individual property of a member of the association. If a judgment is rendered against the unincorporated association and also against a member of the association for the same injury, damage, or loss, execution shall not issue against the individual property of the member unless execution against the property of the unincorporated association has been returned wholly or partially unsatisfied.

SEC. 3. Section 395.2 is added to the Code of Civil Procedure,
to read:

395.2. If an unincorporated association has filed a certificate with the Secretary of State pursuant to Section 22503 of the Corporations Code listing its principal office or place of business in this state, the proper county for the trial of an action against such unincorporated association is the same as it would be if the unincorporated association were a corporation.

SEC. 4. Section 410 of the Code of Civil Procedure is amended to read:

410. The summons may be served by the sheriff, a constable, or marshal, of the county where the defendant is found, or any other person over the age of 18, not a party to the action. A copy of the complaint must be served, with the summons, upon each of the defendants. When the service is against a corporation, or against an unincorporated association in an action brought under associates-conducting-business-under-a-common-name,-in-the-manner authorized-by Section 388, there shall appear on the copy of the summons that is served a notice stating in substance: "To the person served: You are hereby served in the within action (or proceeding) on behalf of (here state the name of the corporation or the unincorporated association common-name-under-which-business is-conducted-by-the-associates) as a person upon whom the summons and a copy of the complaint must be served to effect service against said party under the provisions of (here state appropriate provisions of Section ~~388~~-er 411) of this code." When service is intended to be made upon said person as an individual as well as a person upon whom service must be made on behalf of said corporation or said association associates, said notice shall also indicate that service is had upon said person as an individual as well as on behalf of said corporation or said association associates. In a case in which the foregoing provisions of the section require that notice of the capacity in which a person is served must appear on the copy of the summons that is served, the certificate or affidavit

of service must recite that such notice appeared on such copy of the summons, if, in fact, it did appear. When service is against a corporation, or against an unincorporated association in an action brought under associates-conducting-a-business-under-a common-name,-in-the-manner-authorized-by Section 368, and notice of that fact does not appear on the copy of the summons or a recital of such notification does not appear on the certificate or affidavit of service of process as required by this section, no default may be taken against such corporation or such association associates . When service is made upon the person served as an individual as well as on behalf of the corporation or association associates conducting-a-business-under-a-common-name , and the notice of that fact does not appear on the copy of the summons or a recital of such notification does not appear in the certificate or affidavit of service of process as required by this section, no default may be taken against such person.

When the summons is served by the sheriff, a constable or marshal, it must be returned, with his certificate of its service, and of the service of a copy of the complaint, to plaintiff if he is acting as his own attorney, otherwise to plaintiff's attorney. When it is served by any other person, it must be returned to the same place, with the affidavit of such person of its service, and of the service of a copy of the complaint.

If the summons is lost subsequent to service and before it is returned, an affidavit of the official or other person making service, showing the facts of service of the summons, may be returned in lieu of the summons and with the same effect as if the summons were itself returned.

SEC. 5. Section 411 of the Code of Civil Procedure is amended to read:

411. The summons must be served by delivering a copy thereof as follows:

1. If the suit is against a domestic corporation: to the president or other head of the corporation, a vice president, a secretary, an assistant secretary, general manager, or a person designated for service of process or authorized to receive service of process. If such corporation is a bank, to any of the foregoing officers or agents thereof, or to a cashier or an assistant cashier thereof. If no such officer or agent of the corporation can be found within the state after diligent search, then to the Secretary of State as provided in Sections 3301 to 3304, inclusive, of the Corporations Code, unless the corporation be of a class expressly excepted from the operation of those sections.

2. If the suit is against a foreign corporation, or a non-resident joint stock company or association, doing business in this state; in the manner provided by Sections 6500 to 6504, inclusive, of the Corporations Code.

2.1. If the suit is against an unincorporated association that has designated an agent for the purpose of receiving service as provided in Section 22503 of the Corporations Code: to such agent. If no such agent has been designated prior to the commencement of the action, or if such agent cannot be found

within the state after diligent search, then to any one or more of the association's members and by mailing a copy thereof to the last known mailing address, if any, of the principal office or place of business of the association.

3. If against a minor, under the age of 14 years, residing within this state: to such minor, personally, and also to his father, mother, or guardian; or if there be none within this state, then to any person having the care or control of such minor, or with whom he resides, or in whose service he is employed.

4. If against a person residing within this state and for whom a guardian or conservator has been appointed: to such person, and also to his guardian or conservator.

5. Except as otherwise specifically provided by statute, in an action or proceeding against a local or state public agency, to the clerk, secretary, president, presiding officer or other head thereof or of the governing body of such public agency. "Public agency" includes (1) every city, county, and city and county; (2) every public agency, authority, board, bureau, commission, corporation, district and every other political subdivision; and (3) every department and division of the state.

6. In all cases where a corporation has forfeited its charter or right to do business in this state, or has dissolved, by delivering a copy thereof to one of the persons who have become the trustees of the corporation and of its stockholders or members; or, in a proper case, as provided in Sections 3305 and 3306 of the Corporations Code.

7. If the suit is one brought against a candidate for public office and arises out of or in connection with any matter concerning his candidacy or the election laws and said candidate cannot be found within the state after diligent search, then as provided for in Section 54 of the Elections Code.

8. In all other cases to the defendant personally.

SEC. 6. Section 1030 of the Code of Civil Procedure is amended to read:

1030. When the plaintiff in an action or special proceeding resides out of the State, or is a foreign corporation, or is an unincorporated association wherever situated which is bringing the action or proceeding in its common name, security for the costs and charges, which may be awarded against such plaintiff, may be required by the defendant. When required, all proceedings in the action or special proceedings must be stayed until an undertaking, executed by two or more persons, is filed with the clerk, or with the judge if there be no clerk, to the effect that they will pay such costs and charges as may be awarded against the plaintiff by judgment, or in the progress of the action or special proceeding, not exceeding the sum of three hundred dollars (\$300). A new or an additional undertaking may be ordered by the court or judge, upon proof that the original undertaking is insufficient security, and proceedings in the action or special proceeding stayed until such new or additional undertaking is executed and filed. Any stay of proceedings granted under the provisions of this section shall extend to a period 10 days after service upon the defendant of written notice of the filing of the required undertaking.

After the lapse of 30 days from the service of notice that security is required, or of an order for new or additional security, upon proof thereof, and that no undertaking as required has been filed, the court or judge, may order the action or special proceeding to be dismissed.

SEC. 7. Part 3 (commencing with Section 22500) is added to Title 3 of the Corporations Code, to read:

PART 3. UNINCORPORATED ASSOCIATIONS

22500. As used in this part, "unincorporated association" means any unincorporated organization engaging in any activity of any nature, whether for profit or not, under a common name. The term includes, by way of illustration but not by way of limitation, a joint stock company, labor union, partnership, church, fraternal order, or club, unless such organization is incorporated.

22501. An unincorporated association is liable for its negligent or wrongful act or omission, and for the negligent or wrongful act or omission of its officer, agent, or employee acting within the scope of his office, agency, or employment, to the same extent as if the association were a legal entity. Nothing in this section affects the liability between partners or the liability between a partnership and the partners therein.

22502. An unincorporated association is liable on any contract executed in the name of and on behalf of the association by a person authorized by the association to execute the contract.

22503. (a) Any unincorporated association may file with the Secretary of State on a form prescribed by him a statement designating,

as the agent of such unincorporated association for the purpose of service of process, any natural person residing in this state, setting forth his complete business or residence address. The association may at any time file a new statement which designates a different agent for the service of process and such filing shall be deemed to revoke the prior designation.

(b) Any unincorporated association may file with the Secretary of State on a form prescribed by him a certificate listing the location and mailing address of the association's principal office or place of business in this state. The association may at any time file a new certificate showing a new location or mailing address of its principal office or place of business in this state.

(c) The Secretary of State shall prescribe a form that will permit the statement referred to in subdivision (a) and the certificate referred to in subdivision (b) to be combined in one document.

(d) For filing the statement referred to in subdivision (a) or the certificate referred to in subdivision (b) or the combined document referred to in subdivision (c), the Secretary of State shall charge and collect the fee prescribed in the Government Code for designation of an agent for the purpose of service of process.

SEC. 8. Chapter 2 (commencing with Section 21100) of Part 1 of Title 3 of the Corporations Code is repealed.

Note. Chapter 2 reads as follows:

CHAPTER 2.--LIABILITY OF MEMBERS

21100.--Members of a nonprofit association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, designing, planning, architectural supervision, erection, construction, repair, or furnishing of buildings or other structures, to be used for the purposes of the association.

21101.--Any contract by which a member of a nonprofit association assumes any such debt or liability is invalid unless the contract or some note or memorandum thereof, specifically identifying the contract which is assumed, is in writing and signed by the party to be charged or by his agent.

21102.--No presumption or inference existed prior to September 15, 1945, or exists after that date, that a member of a nonprofit association has consented or agreed to the incurring of any obligation by the association, from the fact of joining or being a member of the association, or signing its by-laws.

21103, --Notwithstanding any other evidence of legislative intent, it is the controlling legislative intent that if any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter and the application of such provision to persons and circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 9. Chapter 2 (commencing with Section 21100) is added to Part 1 of Title 3 of the Corporations Code, to read:

CHAPTER 2. LIABILITY OF MEMBERS

21100. A member of a nonprofit association is not individually or personally liable on any contract entered into in the name of and on behalf of the association unless such member assumes such liability by contract and the contract or some note or memorandum thereof, specifically identifying the contract which is assumed, is in writing and signed by the party to be charged or his agent.

21101. A member of a nonprofit association is not liable for the negligent or wrongful act or omission of an officer, agent, or employee of the association unless such member participated in, authorized, or subsequently ratified the negligent or wrongful act or omission. Authorization or ratification of a negligent or wrongful act or omission may not be inferred merely from the fact of joining or being a member of the association or signing its by-laws.

SEC. 10. Section 21200.5 of the Corporations Code is amended to read:

21200.5. Any unincorporated association that is an organized medical society limiting its membership to doctors of medicine who are licensed physicians and surgeons and that has as members a majority of the eligible physicians and surgeons residing in the area in which it functions (which must be at least one county) may, without incorporation, purchase, receive, own, hold, lease, mortgage, pledge, or encumber by deed of trust or otherwise, manage and sell all such real estate and other property as may be convenient for the purposes and objects of the association. ~~The members of any such unincorporated association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, construction, repairing or furnishing of buildings or other structures to be used for the purposes of the association or for debts or liabilities contracted or incurred by the association in the carrying out or performance of any of its purposes; provided, that such purposes are within the purposes stated in Section 21000 of this part.~~