

May 17, 1974

Time

May 23 - 7:00 p.m. - 10:00 p.m.  
May 24 - 9:00 a.m. - 5:00 p.m.

Place

State Bar Building  
601 McAllister Street  
San Francisco 94102

\* FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

May 23-24, 1974

1. Minutes of May 3-4, 1974, Meeting (enclosed)

2. Administrative Matters

3. 1974 Legislative Program

Memorandum 74-27 (enclosed)

Memorandum 74-32 (enclosed)

4. Study 77 - Nonprofit Corporations

Memorandum 74-31 (sent 5/15/74)

Staff Draft of Nonprofit Corporations Code (sent 5/15/74)

5. Study 36 - Condemnation (Disputed Cases Involving Small Amounts or Small Differences in Claims)

Memorandum 74-30 (enclosed)

Draft of Tentative Recommendation (attached to Memorandum)

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
MAY 23 AND 24, 1974  
San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on May 23 and 24, 1974.

Present: Marc Sandstrom, Chairman  
John N. McLaurin, Vice Chairman  
John J. Balluff (Thursday)  
Noble K. Gregory  
John D. Miller  
Thomas E. Stanton, Jr. (Thursday)  
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate  
Alister McAlister, Member of Assembly  
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, Stan G. Ulrich, and Rand McQuinn, members of the Commission's staff, also were present. Mr. G. Gervaise Davis III, Commission consultant on nonprofit corporations, was present on Thursday and Friday, May 23 and 24.

The following persons were present as observers on Thursday, May 23.

John D. Bessey, Attorney for California Association of Collectors,  
Sacramento  
Larry Cassidy, President, California Association of Collectors,  
Sacramento

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ADMINISTRATIVE MATTERS

Minutes of May 3-4, 1974, Meeting :

The Minutes of the May 3-4, 1974, Meeting were approved as submitted.

Schedule for Future Meetings

The place of the September 5-7 Meeting was changed to San Diego. The following is the schedule for future meetings during 1974.

June 27 - 7:00 p.m. - 10:00 p.m.	Los Angeles
June 28 - 9:00 a.m. - 5:00 p.m.	
June 29 - 9:00 a.m. - 1:00 p.m.	
July 25 - 7:00 p.m. - 10:00 p.m.	San Francisco
July 26 - 9:00 a.m. - 5:00 p.m.	
July 27 - 9:00 a.m. - 1:00 p.m.	
August - No meeting	
September 5 - 10:00 a.m. - 5:00 p.m.	San Diego
September 6 - 9:00 a.m. - 5:00 p.m.	
September 7 - 9:00 a.m. - 4:00 p.m.	
October 10 - 7:00 p.m. - 10:00 p.m.	San Francisco
October 11 - 9:00 a.m. - 5:00 p.m.	
October 12 - 9:00 a.m. - 3:00 p.m.	
November - No meeting	
December 5 - 7:00 p.m. - 10:00 p.m.	Los Angeles
December 6 - 9:00 a.m. - 5:00 p.m.	

1974 Legislative Program

The Commission considered Memorandum 74-27 which contained a report on the status of the 1974 legislative program. The amendments to AB 2830 and 2831 were approved. The raising of the filing fee under AB 101 from \$2.00 to \$5.00 was approved. The action taken with respect to AB 2948 is reported in the Minutes under Study 39.70 - Prejudgment Attachment.

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STUDY 36.750 - CONDEMNATION (DISPUTED CLAIMS INVOLVING SMALL AMOUNTS  
OR SMALL DIFFERENCES IN CLAIMS)

The Commission considered Memorandum 74-30 and the attached draft of a tentative recommendation. Memorandum 74-30 contained a staff recommendation that there be distributed for comment a tentative recommendation incorporating the substance of the Uniform Eminent Domain Code provisions relating to disputed claims involving small amounts or small differences in claims. These provisions are designed to provide an informal judicial procedure for dealing with these cases.

There was considerable discussion of the tentative recommendation. Commissioner McLaurin expressed his strong opposition to the informal procedure. Other commissioners expressed the view that the statute lacked necessary detail and needed additional work before a tentative recommendation was distributed for comment. The view also was expressed that it would be desirable to wait until the National Conference of Commissioners on Uniform State Laws had considered the draft in August 1974; the Law Revision Commission should have before it the approved draft (if in fact this article of the Uniform Code is approved by the Conference) when it again considers this matter.

The Commission decided that the tentative recommendation should not be distributed for comment at this time. However, a number of Commissioners believe that there may be merit to an informal procedure for eminent domain cases involving small amounts and it was agreed that this matter should be given further consideration at a future meeting after the draft statute has been worked over by the staff.

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STUDY 39.70 - PREJUDGMENT ATTACHMENT

The Commission considered Memorandum 74-32 and the oral presentation made at the meeting by Mr. John D. Bessey, representing the California Association of Collectors. The Commission directed the staff to draft proposed amendments to Assembly Bill 2948 (prejudgment attachment) and to conform the Comments to the statute to implement the following policy: Attachment should not generally be available where the person on whose behalf the attachment is sought knew or should have known at the time he sold or leased the property, furnished the services, or loaned the money on which the claim is based that these were to be used wholly for other than a commercial or business purpose (or primarily for personal, family, or household purposes). The staff was further directed to consider whether additional amendments are needed to protect the plaintiff from liability for wrongful attachment where he reasonably believes that the claim is based on a commercial--as distinguished from a consumer--transaction.

These amendments should be considered at the June meeting, and the bill should not be set for hearing until the Commission has had an opportunity to review such amendments.

STUDY 77 - NONPROFIT CORPORATIONS

The Commission considered Memorandum 74-31 and the attached staff draft statute regarding nonprofit corporations. After introductory comments by consultant G. Gervaise Davis III and Commissioner Thomas E. Stanton, Jr. on the general approach taken by the draft, the Commission reviewed the first hundred pages of the staff draft. The Commission's decisions with respect to the staff draft follow the following summaries of Mr. Davis' and Mr. Stanton's introductory remarks.

Mr. Davis' Suggestions for Revision of the Nonprofit Corporation Law

Mr. G. Gervaise Davis III, Commission consultant on nonprofit corporations, made the following suggestions regarding the general approach the Commission should use in drafting a new nonprofit corporations law:

(A) It is wise to design one broad statute which includes all nonprofit corporations. The approach of creating a special statute for each type of nonprofit corporation should be rejected as far as is possible.

(B) For the purpose of differing statutory treatment, it is helpful to classify nonprofit corporations into two general types:

(1) Private nonprofit corporations (those with an introverted focus whose main concern is **their** members; e.g., a country club or incorporated trade association).

(2) Public oriented nonprofit corporations (those with an extroverted focus whose interest is primarily in the welfare of the community or a large segment of the community, e.g., the charitable corporation or a corporation whose purpose is public or quasi-public such as the California job creation corporation). The first type of nonprofit corporation does not require

nearly as much statutory regulation or governmental supervision as does the second.

(C) The nonprofit corporation law where possible should be designed to facilitate qualification of California nonprofit corporations for exemptions and tax deductible contributions under the tax laws, particularly the federal tax laws. For example, the "enuring to the benefit" language rejected by the staff draft (Section 155) must always be contained in the articles of corporations seeking federal tax exemptions. Mr. Davis agreed to point out during review of the draft other areas where it might be made to conform more closely to existing tax law.

(D) The procedures and formalities of the present corporation law should be carefully scrutinized and all anachronistic or unnecessarily burdensome requirements should be abolished. For example, the concept of the incorporator serves no useful purpose in the modern nonprofit corporation. Traditionally, the incorporator was the person responsible if the corporation was inadequately capitalized; however, this has little relevance to the nonprofit corporation situation. Moreover, the acknowledgement and verification of documents requirements of the Corporations Code are confusing and extremely burdensome and need to be simplified.

(E) The concept of a single governing board for a nonprofit corporation needs to be studied in light of Robert Leshner's suggestions in Non-Profit Corporation: A Neglected Stepchild Comes of Age, 22 Bus. Law. 951 (1967). Mr. Leshner argues that the German model of a two-tier board of directors better serves the realities of the nonprofit situation. One board of directors is simply honorary with no real role in the management of the corporation, and the personal liability of its members is limited. Whereas, the second

board is actually charged with governing the affairs of the corporation. Perhaps the standard for liability of this second board should be stricter than for directors of a business corporation. In any case, it is unwise and unfair to subject merely honorary directors (associated with the nonprofit corporation for the value of their name) to potential liability.

(F) It is unclear under present law whether a nonprofit corporation may be formed under the General Corporation Law (Division 1 of the Corporations Code). For the benefit of the practicing attorney, the Commission should decide this issue one way or the other and expressly state the conclusion in the nonprofit statute.

Stanton's Comments on the Staff Draft

Commissioner Thomas E. Stanton, Jr., who was unable to stay for the Friday session, made the following general comments regarding the staff draft:

(A) The Legislative Counsel should be consulted to see if his office would approve the creation of a Nonprofit Corporation Code. (The Executive Secretary stated that Mr. Murphy had been approached on this subject and seemed favorable to having a separate code but that the staff would pursue the matter further.)

(B) The proposed draft does not seem flexible enough to cover all nonprofit corporations. Flexibility is extremely important in this area.

(C) It is not a valid assumption to assume that most nonprofit corporations suffer from an apathetic membership.

(D) The annual report requirements seem too burdensome given an undemonstrated need for them.

(E) Creating a number of private actions unnecessarily encourages litigation.

General Decisions Made By the Commission Regarding Nonprofit Corporations

The Commission made the following decisions with respect to the general approach which should be taken by the staff draft:

Title Should Be "Nonprofit Corporations Code"

The Commission rejected as confusing the not-for-profit corporation title which is used by several states with modern codes. The new code titles should be as follows:

- (1) The entire code is the "Nonprofit Corporations Code."
- (2) Division 1 is "Preliminary Provisions and Construction."
- (3) Division 2 is "Nonprofit Corporation Law--General Provisions."
- (4) Division 3 is "Nonprofit Corporation Law--Special Provisions."

All Definitions Are to Be Located in Division 1

All definitions should be located as far as is possible in Division 1 of the code. The staff should review and revise all definitions in light of the Commission's decisions.

The Term "Nonprofit Corporation" is to Be Used Throughout

Whenever this code is referring to a nonprofit corporation, the words "nonprofit corporation" (rather than "corporation") should be used to avoid confusion.

Incorporators Are to Be Abolished

Consistent with Mr. Davis' suggestion, the concept of incorporators should be abolished. Rather than incorporators, only first directors should sign the articles.

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#### Acknowledgment Requirements Are to Be Abolished

The requirement in present law that certain documents be acknowledged (e.g., articles), should be abolished. The Commission determined that the protection gained by requiring acknowledgments was not worth the burden imposed. All documents which change corporate documents (e.g., amendments to the articles), should merely be accompanied by an affidavit signed under penalty of perjury that the facts stated therein are true.

#### Power of Attorney General to Be Studied

The staff should study the powers of the Attorney General under present law to determine the scope of his power, if any, to enjoin fraudulent corporate activities. The power, if any, of District Attorneys to enjoin such activities should also be investigated.

#### Noncharitable Nonprofit Corporations Masquerading as a Charity

The Commission expressed concern regarding the problem of noncharitable nonprofit corporations misleading the public into believing they are charitable. This matter is addressed in Section 1101 and should be reviewed after consideration of that section.

#### Review of the Staff Draft

The Commission took the following additional action with respect to the draft statute attached to Memorandum 74-31:

#### § 9. Reference to statutes

The staff should review this section to determine whether it needs to be revised to make clear that: (1) if this code makes reference to another statute which is subsequently amended, the reference includes the amendment,

and (2) if another statute makes reference to this code which is subsequently amended, that reference also includes the amendment.

§ 18. "Writing"

The Comment should be reviewed to determine whether it includes "writings" which can be produced from information stored on computer tapes.

§ 19. English language

The words "or authorized" were deleted. This change permits a nonprofit corporation to use documents which are not written in English if those documents are merely authorized and not required by this code.

§ 20. Use of certified mail

Unless registered mail is required by some provision of this statute, Section 20 is unnecessary.

§ 20.2. Correction of instruments

The title was changed to the following: "Correction of Instruments Filed With the Secretary of State." The staff should study the last clause of subdivision (d) to determine its meaning and effect.

§ 20.4. Subjection of corporate property to attachment

This section was deleted. The section upon which it is based is not operative after December 31, 1975.

§ 22. Amendment or repeal; reservation of power; savings clause

The Commission directed the staff to redraft for clarity Sections 22, 24, and 175. The provisions of these sections are to be located in Division 1 either as subdivisions of one section or as consecutive sections.

§ 23. Code becomes operative January 1, 1977

This provision is to be located either at the beginning or end of the code.

§ 24. Savings clause; effect on existing right or action; filing record of action taken before operative date

The Commission directed the staff to redraft this section. See the directive regarding Section 22. A time limit of five years (from the point of the vote, consent, or other action) should be placed upon the right to file after the operative date of this code votes, consents, or other actions which took place prior to the operative date.

§ 101. Short title

Division 2 should be entitled: "Nonprofit Corporation Law--General Provisions."

The Comment to this section should state that nothing in the Nonprofit Corporations Code precludes a not-for-profit corporation from being formed under the General Corporation Law or any other corporation law of this state.

§ 110. "Articles"

The Commission deferred judgment on the question of defining "articles" to include plans of merger or consolidation until the substantive provisions for merger or consolidation are addressed.

§ 120. "Bylaws"

The staff should redraft this definition, distinguishing between minor sets of rules (e.g., the rules of the dining room) and the corporate bylaws. It was suggested that the language "but do not include . . . ." be used to make this distinction.

§ 125. "Charitable purposes"

This section should be revised to provide in substance as follows:

"Charitable purposes" means those purposes which the common law of this state defines as charitable purposes.

The Comment to this section should refer to the current common law definition of "charitable" which is contained in Lynch v. Spilman, 67 Cal.2d 251, 261, 431 P.2d 636, 642, 62 Cal. Rptr. 12, 18 (1967). It should also note that the definition of charitable must be flexible as, historically, the term has undergone numerous changes. The Comment should make adequate cross-reference to all special provisions which apply exclusively to "charitable" corporations.

§ 130. "Corporation" or "domestic corporation"

This section is made unnecessary by the decision to always use "nonprofit" when referring by statute to a "nonprofit corporation." (See Section 155.)

§ 142. "Incorporator"

This section was deleted.

§ 143. "Insolvent"

The Commission deferred consideration of this definition until the substantive provisions where the term is used, are considered.

§ 145. "Member"; "membership"

The Commission instructed the staff to revise this definition in light of the possibility that a membership may be held by more than one person, i.e., husband and wife, family, partnership, and the like.

The consultant recommended that the concept of "a membership" be defined stating that "a membership" may be held by more than one person.

The Commission noted that the problem of how memberships held by more than one person are to be voted should be studied.

§ 150. "Membership corporation"

The staff should reconsider the need for this term and explain in the Comment why it is necessary.

§ 155. "Not-for-profit corporation" or "nonprofit corporation"

This section should be revised to delete the reference to "special acts" and also to delete subdivision (b) and the wording "exclusively for a purpose or purposes, not for pecuniary or financial gain." The substance of the following definition was recommended:

"Nonprofit corporation" means a corporation formed under this division or existing on the date this division becomes operative for a purpose or purposes for which a corporation may be formed under this division.

In general, the Commission decided to omit from the definition restrictions upon nonprofit status such as the rule prohibiting distributions of profit to members, directors, or officers. These restrictions should be set forth in other substantive provisions. Moreover, this definition should make clear that, unless otherwise provided, the term includes only domestic nonprofit corporations.

The Commission deferred consideration of the remaining sections of Chapter 1 until after the substantive provisions covering these matters are addressed. The staff should make these sections consistent with the policy decisions which are made when the latter provisions are considered.

§ 201. Incorporators

The words "first directors" should be substituted for "incorporators."

§ 301. Purposes

This section was revised to state in substance:

Except as otherwise provided by statute and subject to the laws and regulations applicable to the particular class of corporations or line of activity, a nonprofit corporation may be formed under this division for any lawful purpose.

The Comment should make complete reference to all of the consequences and limitations on nonprofit status; for example, the prohibition on distributing profits to members, officers, or directors. The Comment should also state that the Commission disapproves of the decision in Santos v. Chappell, 65 Misc.2d 559, 318 N.Y.S.2d 570 (Sup. Ct. 1971)(New York court held that a real estate brokers' association which conducted a multiple listing service violated the New York Not-for-Profit Corporation Law as that law does not permit a corporation to engage in activities for the profit of all or part of its members).

§ 302. Unincorporated association may incorporate

The phrase "if the requirements of Section 301 are met" was deleted. Moreover, the staff was directed to study further the need for this section.

§ 303. Powers of the corporation

The last clause of the first sentence was revised for clarity to read "and, only in furtherance of its corporate purposes, may."

Subdivision (c) was revised to insert the words "and rules" after the word "bylaws."

Subdivision (e) was revised to read:

Conduct its affairs including engaging in business within and without the state and qualify to conduct its affairs in any other state, territory, dependency, or foreign country.

Subdivision (f) should be redrafted to make clear that "other corporations" includes both business and nonprofit corporations.

Subdivision (k) was revised to read: "Make charitable contributions."

The Comment to this section should state that nothing precludes a corporation from listing powers in its articles, but such a list is not binding unless there is an express limitation. Moreover, the Comment should note that subdivision (g) does not exempt a nonprofit corporation from any other statutes regulating trust companies.

§ 304. Effect of articles on authority of officers and directors; ultra vires acts

This section should be redrafted for clarity. In particular, subdivision (b) should be limited to charitable corporations. Except for charitable corporations, ultra vires should not be a defense where third-party rights are involved. However, in the case of charitable corporations, the courts should be given an equitable power to enjoin transactions affecting third parties. Moreover, in such a proceeding, the court should be given the power to limit third-party damages to exclude anticipated profits.

§ 401. Corporate name

The staff should consider redrafting this section to prohibit a non-charitable corporation from using a name which is likely to mislead the public into believing that it is charitable.

The word "established" should be deleted from paragraph (1) of subdivision (a), and the phrase "or Section 310 of the Corporations Code" should be added at the end of paragraph (3) of subdivision (a).

The last sentence of the Comment should be reworded to state that subdivision (b) is designed to protect the public from deceptively named corporations.

§ 501. Required provisions

Subdivision (c) should be amended to read as follows: "That the corporation is organized pursuant to the Nonprofit Corporation Law--General Provisions."

The Commission directed the staff to study whether the location of the principal office of the corporation should be required to be stated in the articles.

The Commission noted that, if it adopts a provision permitting a double-tier board of directors, the nonprofit corporation should be required to state in its articles that it is adopting such a board structure.

The Comment to this section should make reference to the fact that, pursuant to Section 303, a nonprofit corporation possesses the powers listed in Section 303 subject only to limitations in the articles or in other statutes.

§ 502. Permissible provisions

The Comment to this section should also make reference to the statutory powers listed in Section 303.

§ 503. Execution of articles

Subdivision (a) was revised to read in substance as follows:

(a) Except as provided in subdivision (b), each person named in the articles to act in the capacity of a first director shall personally sign the articles of incorporation.

This revision is consistent with the Commission's decision to abolish the anachronistic concept of incorporators. The Commission believes that there is no persuasive reason to permit other persons besides first directors to sign the articles.

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Subdivision (b) should be revised to substitute the word "signed" for the words "subscribed and execution thereof personally acknowledged before an officer authorized to take acknowledgments."

The Comment should state that the required affidavit may be a statement signed under penalty of perjury. See Code Civ. Proc. § 2015.5.

§ 504. Filing of articles; effect of filing; dissenting member of unincorporated association

The staff should draft provisions giving dissenting members of unincorporated associations undergoing incorporation an appraisal remedy for the value of their membership. An arbitration procedure was recommended. The arbitrator is to determine if there is a market value for the membership and, if a value exists, its amount. It was recommended that the decision of the arbitrator be final. The Commission deferred judgment on whether or not this dissenting member's remedy should also be applied to the merger situation.

The Commission expressed approval of the provision giving the corporation the right to limit its term of existence.

§ 505. Filing copy of articles with county clerk

This section was deleted. No useful purpose could be discovered for filing articles with the county clerk.

§ 551. Right to amend the articles

This section should be amended to delete the words "not amend its articles to alter statements which appear in the original articles of the names and addresses of the first directors." This change is consistent with the Commission's decision to abolish unnecessary formalities. The Commission directed the staff to make additional efforts to improve the clarity of this section.

§ 552. Adoption of amendments generally

Subdivision (a) should be redrafted to eliminate the requirement that the board must approve amendments to the articles. It is the Commission's view that membership approval should be sufficient to authorize amendments.

The language "by resolution of a majority of the voting members" was adopted. [The staff requests that the Commission reconsider this decision in light of the fact that members may have unequal votes.]

The Commission suggested that language be added to subdivision (b) to make clear that the policymaking committee is to be representative of the members.

§ 553. Adoption by incorporators

This section was deleted. This revision is consistent with the decision to abolish incorporators.

§ 554. Minor amendments

The title to this section should be changed to: "Amendments adopted by the board."

Subdivision (b) was deleted as unnecessary given the fact that the post-office address is not required to be set forth in the articles.

Furthermore, if, after study, it is determined that the location of the principal office should not be required to be set forth in the articles, then this section should be abolished.

§ 555. Form of amendment; construction

Subdivision (a) should be revised so that it is consistent with previous decisions abolishing incorporators and board approval of amendments.

§ 556. Certificate of amendment

Paragraph (2) of subdivision (c) was deleted as unnecessary. Paragraph (3) of subdivision (b) and paragraph (5) of subdivision (c) were deleted to remove references to incorporators. The staff was directed to revise the section so that it is consistent with previous decisions.

§ 557. Filing of certificate

Subdivision (b) was deleted. The Commission believes that filing amendments with the county clerk serves no useful purpose.

§ 558. Restatement of articles

References to "acknowledgment" and "incorporators" should be deleted.

§ 560. Effect of article

This section is to be reviewed after the entire code has been completed to determine whether or not it is necessary. It was suggested that a possible approach to this problem is to define "majority" to include other percentage where applicable.

§ 561. Action by Attorney General, member, officer, or director

This section is to be reconsidered after staff research has been completed on the existing and the proper role of the Attorney General.

Concern was expressed that this action might encourage unnecessary lawsuits, but final judgment on the matter was deferred.

§ 601. Required provisions

A provision which prohibits the board from adopting, amending, or repealing a bylaw which affects members' voting rights should be added to the statute.

§ 603. Adoption; amendment; repeal

The sentence "whenever a bylaw is adopted pursuant to this section requiring a larger percentage of membership vote or consent, it shall not be amended or repealed by a lesser percentage" was deleted from subdivision (b). The danger of a small faction of the members taking advantage of a nonprofit corporation's small quorum requirement to adopt such a bylaw outweighs the fact that a bylaw requiring a higher percentage vote for adoption of a bylaw governing a certain matter can always be circumvented by repealing the bylaw itself prior to adoption of the certain matter by majority vote.

The Comment to this section should list the areas where this code limits the power of the board to adopt, amend, or repeal bylaws.

§ 604. Record book

The Comment perhaps should make clear that machine-readable data is not sufficient to satisfy the "book" requirement.

§ 701. Members

Subdivision (a) should be revised to implement the decision to permit family or group memberships.

The Commission directed the staff to study carefully the issue of whether a member should be restricted to holding only one membership. If this restriction is maintained, the problem of a partner and his partnership both holding a membership should be addressed.

The first phrase of subdivision (b) should be revised to read: "If neither the articles nor bylaws provide for members or if there are in fact no members other than the persons constituting the board of directors." This change merely clarifies the meaning of the section.

Subdivision (c) should be deleted in conformity with the previous decision to eliminate incorporators.

§ 703. Membership certificates

Subdivision (c) was deleted. The Commission rejected a statutory provision that would require surrender of the membership certificate to the corporation prior to transfer. A provision permitting the corporation to require notification of transfer of membership should be drafted and located in Section 705 (transfer of membership).

§ 704. Termination of membership

Subdivision (b) was revised to state in substance as follows: "Unless the articles provide otherwise, no member may be expelled except for cause." The Commission rejected the concept of a hearing before the board prior to expulsion.

The Comment should make cross-reference to Section 708 which provides one ground for expulsion (failure to pay dues, assessments, or charges).

The last sentence of subdivision (c) should be revised to read in substance as follows: "Such resignation terminates all future rights, powers, and obligations of membership, but it does not end the member's liability for debts incurred prior to the termination of membership." (The underlined words were added for clarity.)

§ 705. Transfer of membership

A subdivision (b) should be added to this section stating in substance:

(b) The articles or bylaws may provide that the nonprofit corporation is not bound by a transfer of membership until notice of the transfer is received in the manner specified in such articles or bylaws.

This provides the nonprofit corporation with a means for keeping its membership list up to date.

§ 708. Dues; assessments

Subdivision (c) should be broadened to cover "charges" as well as dues and assessments. Charges to the nonprofit corporation should also be enforceable in the manner provided for dues and assessments.

As a warning for the unwary, the Comment should include a cross-reference to the provisions of the Corporate Securities Law which might apply.

§ 709. Reduction of members below stated number

The last clause should be amended to state: "and the surviving or continuing members may by majority vote fill vacancies and continue the corporate existence" (the underlined words were added for clarity).

§ 751. Regular and annual meetings

The last clause of subdivision (b) was revised to state in substance: "50 members or 10 percent of the membership, whichever number is smaller, may call the meeting at any time thereafter after giving notice as provided in Section 754." The Commission believes that one member of a nonprofit corporation should not possess the power to call a meeting even if it is overdue. A nonprofit corporation should be permitted to dispense with required meetings of the members if the general consensus is that the meeting is unnecessary.

§ 752. Special meetings

This section should be rewritten for clarity. Moreover, the words "or abridged" should be added to the last sentence after the word "abolish." The Commission decided that the flat "10-percent" rule was a correct percentage for calling a special meeting as it should be more difficult to call a special meeting than a required meeting which is overdue.

§ 753. Adjournments

This section should be divided into two sentences for clarity. Moreover, the time limit is to be broadened to apply to all adjournments and not simply to meetings where directors are to be elected. Accordingly, the first sentence should read in substance: "Any regular or special meeting may be adjourned for periods not exceeding 15 days each."

§ 754. Notice to members of meetings

The notice provisions should be revised to take into account the various kinds of organizations where mailed notice is inappropriate (e.g., religious corporations or social clubs). The Commission believes, if possible, that there should be statutory rules setting forth what constitutes proper notice; however, published notice was rejected as an alternative for nonprofit corporations under any circumstances. It was suggested that a rule of mailed notice be established, but that, as an alternative to this, a provision should be designed permitting the articles or bylaws to provide a different manner of providing notice such as (1) placing notice in a conspicuous place in the nonprofit corporation's office, (2) giving it at the last meeting of the members, or (3) putting it in the organization's regular periodical.

§ 756. Record date for determining members

The limits for the record date should be revised to state: "not more than 50 nor less than 10 days prior."

§ 757. List of members eligible to vote

The section should be reworded so that the phrase "at least 10 days prior to the meeting" follows the word "who" in the **previous** line.

The Comment should make reference to Section 902 which creates a more general right to inspect the membership list.

§ 758. Voting rights; voting by class; manner of voting

The staff should consider the problem of how to handle voting when a membership is controlled by more than one person. It was suggested that the bylaws might provide for fractional voting but, in the absence of a provision in the bylaws, the rule should be that each membership must be cast as one vote.

§ 759. Cumulative voting

The Comment should refer to any special provisions which prohibit certain nonprofit corporations from employing cumulative voting.

§ 760. Proxies

Subdivision (e) should be redrafted for clarity.

Next Meeting

The Commission determined that it will continue its review of the staff draft at the June meeting. The Commission will begin its review with Section 761 and continue through the remainder of the draft until it is completed. If time permits, the Commission will then review decisions made at the May meeting and consider additional matters with respect to the sections covered at the May meeting.

APPROVED

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Executive Secretary