

February 13, 1976

Time

Place

February 26 - 7:00 p.m. - 10:00 p.m.
February 27 - 9:00 a.m. - 4:30 p.m.
February 28 - 9:00 a.m. - 12:00 noon

State Bar Building
601 McAllister Street
San Francisco 94102

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

February 26-28, 1976

February 26

1. Minutes of January 15-17, 1976, Meeting (sent 1/28/76)
2. Administrative Matters
 Memorandum 76-25
3. 1976 Legislative Program
 Memorandum 76-5 (enclosed)
4. Study 63.60 - Evidence (Duplicates)
 Memorandum 76-21 (enclosed)
5. Study 39.230 - Enforcement of Judgments (Supplementary Proceedings)
 Memorandum 75-70 (sent to you for January 1976 meeting)
 Note: We will start on page 9 with Section 705.060
6. Study 39.260 - Enforcement of Judgments (Nonmoney Judgments)
 Memorandum 75-71 (sent to you for January 1976 meeting)
7. Study 39.150 - Credit Card Sales
 Memorandum 76-1 (sent to you for January 1976 meeting)

February 27 and 28

8. Study 67 - Unincorporated Associations (Service of Process)
 Memorandum 76-22 (enclosed)
 Recommendation (attached to Memorandum)
9. Study 77 - Nonprofit Corporations (Generally)
 Memorandum 76-24 (to be sent)

February 13, 1976

10. Study 77.20 - Nonprofit Corporations (Organization)

New Business Corporations Law (sent to you for January 1976 meeting)
(bring to meeting)

Name; Purpose; Formation

Memorandum 76-7 (sent to you for January 1976 meeting)

Note: We will start on page 5210--1 with Section 5210
First Supplement to Memorandum 76-7 (sent to you for January
1976 meeting)

Second Supplement to Memorandum 76-7 (sent 1/20/76)

Powers

Memorandum 76-8 (sent to you for January 1976 meeting)

First Supplement to Memorandum 76-8 (sent to you for January
1976 meeting)

11. Study 77.40 - Nonprofit Corporations (Members)

Memorandum 76-9 (sent to you for January 1976 meeting)

12. Study 77.200 - Nonprofit Corporations (Dissolution--Distribution of Assets)

Memorandum 76-17 (sent 2/9/76)

13. Study 77.70 - Nonprofit Corporations (Voting of Memberships)

Memorandum 76-20 (sent 2/9/76)

14. Study 77.80 - Nonprofit Corporations (Members Derivative Action)

Memorandum 76-19 (sent 1/30/76)

15. Study 63.50 - Evidence (Admissibility of Business Records)

Memorandum 76-13 (sent 1/23/76)

Note: We will review the proposed legislation starting on
page 11 of the staff draft of the recommendation;
after the February meeting, the preliminary portion
and statute will be revised to reflect decisions
made at the February meeting and presented for
review by the Commission prior to sending the tenta-
tive recommendation out for comment.

16. Study 63.70 - Evidence (Psychotherapist-Patient Privilege)

Memorandum 76-18 (sent 1/28/76)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

FEBRUARY 26, 27, AND 28, 1976

San Francisco

A meeting of the California Law Revision Commission was held in San Francisco on February 26, 27, and 28, 1976.

Present: John N. McLaurin, Chairman
Howard R. Williams, Vice Chairman
John J. Balluff, February 26 and 27
John D. Miller
Thomas E. Stanton, Jr.

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

Members of Staff Present:

John H. DeMouilly Nathaniel Sterling
Stan G. Ulrich Robert J. Murphy III
JoAnne Friedenthal, February 26

Commission Consultants Present:

G. Gervaise Davis (nonprofit corporations), February 27 and 28
Professor Stefan A. Riesenfeld (creditors' remedies), February 26

The following persons were present as observers on days indicated:

February 26

Carl M. Olsen, County Clerk-Sheriff, San Francisco

February 27

W. A. Hutchins, California State Automobile Ass'n, San Francisco
Robert McMahon, State Bar (staff to Corporations Committee), Los Angeles
James Molinelli, California State Automobile Ass'n, San Francisco
R. H. Nida, Automobile Club of So. California, Los Angeles

February 28

Robert A. Cook, Robert A. Cook & Staff, Inc., San Jose
W. A. Hutchins, California State Automobile Ass'n, San Francisco
Robert McMahon, State Bar (staff to Corporations Committee), Los Angeles
James Molinelli, California State Automobile Ass'n, San Francisco
R. H. Nida, Automobile Club of So. California, Los Angeles

ADMINISTRATIVE MATTERS

Minutes of January 15-17, 1976, Meeting

The Minutes of the January 15-17, 1976, meeting were approved as submitted.

Schedule for future meetings

The following is the schedule for future meetings:

March

March 11 - 7:00 p.m. - 10:00 p.m. Los Angeles
March 12 - 9:00 a.m. - 5:00 p.m.
March 13 - 9:00 a.m. - 12:00 noon

April

April 22 - 7:00 p.m. - 10:00 p.m. San Francisco
April 23 - 9:00 a.m. - 5:00 p.m.
April 24 - 9:00 a.m. - 12:00 noon

May

May 13 - 7:00 p.m. - 10:00 p.m. Los Angeles
May 14 - 9:00 a.m. - 5:00 p.m.
May 15 - 9:00 a.m. - 12:00 noon

June

June 17 - 7:00 p.m. - 10:00 p.m. San Francisco
June 18 - 9:00 a.m. - 5:00 p.m.
June 19 - 9:00 a.m. - 12:00 noon

July

July 8 - 7:00 p.m. - 10:00 p.m. Los Angeles
July 9 - 9:00 a.m. - 5:00 p.m.

Contract With Peter A. Whitman

The Commission considered Memorandum 76-25. The Commission unanimously approved, and directed the Executive Secretary to execute on behalf of the Commission, a contract with Peter A. Whitman, Palo Alto lawyer, for services as an expert consultant on the nonprofit corporation study. It was noted that members of the Legislature have indicated that the Commission's recommendation on this topic must be pub-

lished in time for the 1977 legislative session and that there are few experts in this field. The Commission gratefully acknowledged the generous contribution toward law reform of the firm of Spaeth, Blase, Valentine, and Klein, Palo Alto, in releasing Mr. Whitman under a public service sabbatical leave to serve as an expert consultant to the Commission on a full-time basis for four months, starting approximately March 15, 1976.

The Contract will require Mr. Whitman to:

(1) Provide expert consultation to the staff of the Law Revision Commission and to the Law Revision Commission concerning the subject of nonprofit corporation law.

(2) Prepare background studies and reports concerning various aspects of this topic to be determined by the Commission through its Executive Secretary.

(3) Review statutory provisions and Comments on portions of the statute on this topic drafted or to be drafted by members of the staff of the Commission and prepare statutory provisions and Comments on portions of the topic to be determined by the Executive Secretary.

The compensation for Mr. Whitman's services as an expert consultant should be \$5,000, which may be paid in monthly installments of \$1,250 upon satisfactory completion of each month of full time devoted to the performance of his obligations under the contract. This compensation, together with the reduced compensation paid by his law firm during the period of his public service sabbatical leave, will permit Mr. Whitman to serve as an expert consultant without any great financial sacrifice.

In addition to the compensation, the contract should provide an amount not exceeding \$750 to cover Mr. Whitman's travel expenses in attending Commission meetings, State Bar committee meetings, and legislative hearings.

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STUDY 39.150 - CREDIT CARD SALES

The Commission considered Memorandum 76-1 concerning the use of credit cards in attachment and execution sales and determined not to attempt to develop a statute permitting credit card sales in view of the complex problems outlined in the memorandum.

STUDY 39.230 - SUPPLEMENTARY PROCEDURES

The Commission continued its consideration of the draft of Chapter 5 (Supplementary Procedures) of the Enforcement of Judgments title which was attached to Memorandum 75-70. The Commission made the following decisions:

§ 705.050. Order applying property to satisfaction of judgment

The order after examination applying property to the satisfaction of the judgment should include the costs incurred in the examination proceeding including the costs of witness mileage fees provided by Section 705.070.

§ 705.060. Arrest for failure to appear

Section 705.060 should be written as a limitation on the power of the court to hold a person in contempt for failure to appear to cases where he has been served with notice of the examination by one of the persons listed in the section. The Comment should note that the general contempt provisions are applicable, subject to this limitation. The language in brackets to the effect that the person may be arrested and brought before the court to answer concerning his property should not be included in this section since the creditor would not be able to receive notice of the time of such examination. This section should also provide that attorney's fees are an item of costs where the person has been served by one of the persons listed in the section but has failed to appear.

§ 705.070. Attendance outside county of residence; tender of mileage fees

Section 705.070 should provide that witnesses are to receive the same mileage fees that witnesses normally receive in place of the fee of \$0.15 per mile, one way, currently provided. The last sentence of this section providing that such mileage fees are an item of costs and that the judgment debtor's property may be applied to the satisfaction of such costs should be deleted from this section and incorporated in Section 705.050.

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§ 705.080. Examination proceedings in other counties

The last sentence of Section 705.080 providing for a filing fee should be moved to an appropriate part of the Government Code. The Comment should contain a cross-reference to such provision.

§ 705.110. Creditor's suit against third persons

Language should be added at the beginning of Section 705.110 to make clear that the judgment creditor is no longer required to exhaust his remedies by way of a writ of execution or supplementary proceedings before he may resort to a creditor's suit. This section should provide that the residence of the judgment debtor is not to be considered in determining the proper venue. (A similar provision should be added to Section 488.550 of the Attachment Law when the Enforcement of Judgments title is introduced.) A provision should be added to the effect that, if it is shown that the judgment debtor is entitled to the possession of personal property in the third person's possession, the third person is to hold the property until it can be levied upon under the writ of execution already issued against the judgment debtor's property or under a new writ. A provision should be added to provide for the disposition of any property remaining after the sale and satisfaction of the judgment.

STUDY 63.50 - EVIDENCE (ADMISSIBILITY OF BUSINESS RECORDS)

Mr. Robert A. Cook of Robert A. Cook & Staff, Inc., Notaries Public, 111 North Market Street, Suite 700, San Jose, California 95113, appeared before the Commission in connection with Memorandum 76-13 (Admissibility of Business Records). Although the Commission did not take up Memorandum 76-13, the Commission asked Mr. Cook to address himself to problem areas in the administration of the existing business records statute (Evid. Code §§ 1560-1566) where the Commission might be able to recommend reforms. Mr. Cook suggested the following matters for the Commission's attention:

1. Subdivision (c) of Evidence Code Section 1560 requires that records mailed pursuant to a subpoena duces tecum be "separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of witness, and date of subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed. . . ." Subdivision (d) requires that the records "remain sealed and shall be opened only at the time of trial, deposition, or other hearing, upon the direction of the judge, officer, body, or tribunal conducting the proceeding, in the presence of all parties. . . ." Mr. Cook stated that custodians who mail records rarely follow this procedure. He suggested that the statute be revised to conform to actual practice, and that notaries be permitted to open the envelope in which the records are received prior to the date of deposition to insure that they are complete and accurate.

2. Subdivision (b) of Section 1560 requires the custodian to mail subpoenaed records "within five days after the receipt of such subpoena" in order to avoid the necessity of a personal appearance. Mr. Cook stated that this requirement is poorly complied with, and that more effective sanctions for noncompliance are needed.

3. Subdivision (b) of Section 1560 allows the custodian to avoid a personal appearance in response to a subpoena by mailing "a true, legible, and durable copy of all the records described in such subpoena." Mr. Cook stated that such copies are frequently illegible, and that statutory authority is needed to allow the subpoenaing party to specify that only the original records will suffice under Section 1560.

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STUDY 63.60 - EVIDENCE (DUPLICATES)

The Commission considered Memorandum 76-21. The Commission determined to adopt the substance of the amendment proposed by the State Bar Committee on the Administration of Justice, but such amendment should be rephrased to refer to the "writing itself" rather than to the "original." Assembly Bill 2580 should be amended on page 2, line 14, after "itself" to insert: "or (3) the party opposing the introduction of the duplicate has not had an opportunity to examine the writing itself and to compare the duplicate with the writing itself."

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STUDY 67 - UNINCORPORATED ASSOCIATIONS (SERVICE OF PROCESS)

The Commission considered Memorandum 76-²²~~24~~ and the attached draft of a Recommendation Relating to Service of Process on Unincorporated Associations (February 1976). The recommendation was approved for printing and submission to the Legislature. Editorial changes suggested by Commissioners or determined to be necessary by the staff should be made before the recommendation is sent to the printer.

It was noted that Assemblyman Knox has introduced the proposed legislation contained in the recommendation as Assembly Bill 3128. The Executive Secretary was directed to send a copy of the recommendation to each member of the State Bar Committee on Corporations with a request that committee send the Commission any comments the committee may have on the recommendation.

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STUDY 77 - NONPROFIT CORPORATIONS (GENERALLY)

The Commission considered Memorandum 76-24 relating to general problems in drafting a new nonprofit corporation statute, particularly the need for and utility of short sections. The Commission directed the staff to include in the preliminary part of the nonprofit corporation recommendation an analysis of the problems, similar to that contained in the Memorandum.

STUDY 77.20 - NONPROFIT CORPORATIONS (ORGANIZATION AND BYLAWS)

The Commission resumed consideration of Memorandum 76-7, commencing with Section 5126, relating to name, purposes, and formation of non-profit corporations. The Commission also considered the First Supplement to Memorandum 76-7, relating to de facto corporations, the Second Supplement to Memorandum 76-7, containing comments of Mr. Robert Sullivan, Memorandum 76-8, relating to corporate powers, and the First Supplement to Memorandum 76-8, relating to the defense of ultra vires. The Commission made the following determinations with respect to the staff draft provisions attached to the foregoing memoranda.

§ 5126. Filed

This section was tentatively approved.

§ 5128. Nonprofit corporations

The staff noted that it was not seeking approval of this section at this time. The Commission directed the staff to investigate the extent to which there may exist any nonprofit corporations created by special act of the Legislature.

§ 5210. Any lawful purpose other than distribution of dividends

This section was tentatively approved. The sentence in the Comment referring to the subjective intent of the incorporators was deleted, and the Comment should be expanded to refer to remedies for violation.

§ 5220. Nonprofit corporation formed by executing and filing articles

This section was tentatively approved.

§ 5221. Execution of articles

This section was revised to read:

5221. One or more persons named in the articles to act in the capacity of an initial director shall execute the articles by personally signing the articles.

§ 5222. Filing of articles

This section was tentatively approved, with the deletion of the phrase "unless otherwise expressly provided by law."

§ 5223. Evidence of corporate formation and existence

This section was tentatively approved. The staff was directed to research the interrelation between this section and the alter ego doctrine, and to put the results of the research in the Comment.

§ 5230. Powers of nonprofit corporation

This section should be revised to follow the scheme of the business corporation law: A. nonprofit corporation has all the powers of a natural person, followed by an enumeration of specific powers that are not necessarily those of a natural person. The enumeration might be placed in a separate subdivision that does not limit the general grant of powers of a natural person.

Subdivision (a) (corporate seal) should be revised to simply permit use of a corporate seal, and a separate section devised to deal with the effect of the corporate seal or lack thereof.

Subdivision (d) (pay reasonable compensation) should be deleted.

Subdivision (e) (sue and be sued) should be deleted, and a reference made to the specific provision authorizing a corporation to be sued.

Subdivision (f) (make contracts) should be examined by the staff to determine the necessity for it.

Subdivision (k) (charitable contributions) should be revised to conform to the language of Section 207(e) of the business corporation law.

Subdivision (l) (participate in business arrangement) should be examined, along with the authority of a nonprofit corporation to form a business corporation or to hold stock, particularly with reference to federal limitations on the accumulation of assets by foundations.

The staff should also examine the other provisions of this section to determine to what extent they are necessary in light of the adoption of the general rule that a nonprofit corporation has all of the powers of a natural person. In addition, the staff should examine the provisions of Section 207 of the business corporation law to determine whether any should be included in this section, and particularly, the staff should adapt Section 207(f) (pension funds) to nonprofit corporations.

§ 5231. Defense of ultra vires

Subdivision (a) of this section should be redrafted and reorganized for clarity. In the revision process the staff should investigate whether any person other than the Attorney General is given standing to sue under the rubric "the state," and if not, to refer specifically to the Attorney General. The staff should also investigate the meaning of the phrase "where third parties have not acquired rights thereby," and redraft it for clarity.

In subdivision (c), the phrase "or to be performed" should be added to conveyances or contracts made in this state by nonprofit corporations.

§ 5232. Enjoining ultra vires act of charitable corporation

This section was tentatively approved with the following changes:

- (1) The leadline of the section should be revised to refer to corporations holding assets on charitable trust.
- (2) The reference in subdivision (a) to assets held on trust should be modified by the word "charitable."
- (3) The last sentence of subdivision (b), relating to damages where performance of a contract is enjoined, was deleted.

§ 5235. Power to engage in business activity

This section was tentatively approved, with the insertion of the words "lawful activities in furtherance of or incidental to" before "purposes" in subdivision (b). The Comment to this section should refer to the possible sanctions for violation of the section.

§ 5236. Distributions to members prohibited

This section was tentatively approved, with the deletion of the words "as such" from subdivision (a). The Comment should refer to the possible sanctions for violation of the section.

§ 5240. Reservation of corporate name

This section was tentatively approved. The staff was directed to investigate the possibility of extending the corporate name reservation where the Secretary of State refuses to file articles of incorporation during the dispute over the refusal to file.

§ 5241. Name which is likely to mislead or tends to deceive

This section should be split so that the prohibition on names likely to mislead the public is separate from the prohibition on names that resemble each other so closely as to tend to deceive. In addition, the part concerning misleading names should include an express prohibition of a noncharitable corporation using a charitable name. The staff should investigate the possibility of constructing a grandfather clause for corporations whose names violate this section as amended. The part concerning names that resemble each other should be reviewed to determine to what extent names of associations should come within its prohibitions.

§ 5242. Agreement to use name that is substantially the same

This section was tentatively approved.

§ 5243. Name in which "bank," "trust" or related terms appear

This section was deleted. The Comment to the section on the use of misleading names should refer to the fact that a nonprofit corporation cannot use the term bank, trust, trustee, etc. in such a way as to mislead people into the belief that it is a banking institution or a trust company, without the certificate of approval of the Superintendent of Banks.

§ 5244. Enjoining name violations

This section was tentatively approved. The other provisions of this article should be redrafted to impose substantive limitations on the use of names by nonprofit corporations, rather than procedural limitations on the ability of the Secretary of State to file articles.

§ 5250. Required contents of articles

Subdivision (b) should be revised to make clear that the nonprofit corporation may make a general statement of purposes and/or a specific statement, and that it may adopt limitations for tax purposes in the manner provided in Section 202(b) of the General Corporation Law.

Subdivision (d) should be revised to require the names and addresses of one or more persons who serve as initial directors. The staff should give consideration to moving the last portion of subdivision (d) to the chapter relating to directors.

A corporation organized as a charitable corporation must so state in its articles, and must send a copy of the articles to the Attorney General.

Business and Professions Code Sections 700, 701, 6185

These Sections were tentatively approved, subject to relocation in the Nonprofit Corporation Law.

Corporations Code §§ 20004, 20005

These Sections were tentatively approved, subject to relocation in the Nonprofit Corporation Law.

Repealers: Sections 9000, 9001, 9002, 9200, 9201, 9201.1, 9201.2, 9202, 9203, 9300, 9304, 9304.5, 9604

These sections were tentatively approved.

STUDY 77.40 - NONPROFIT CORPORATIONS (MEMBERS)

The Commission considered Memorandum 76-9 relating to members of nonprofit corporations. The Commission took the following action with respect to the draft statute attached to the memorandum:

§ 5261. Required contents of bylaws

This section was tentatively approved. Subdivision (a) should be revised to make clear that a nonprofit corporation is not required to specify a number of members, or to have any members at all.

§ 5262. Bylaws relating to members

This section was tentatively approved.

§ 5400. Members

This section was tentatively approved. A grandfather clause should be drafted for corporations that will be in violation of subdivision (a) (only natural persons may be members unless articles or bylaws provide otherwise) upon its enactment. A subdivision (c) should be added to read:

(c) Unless the articles or bylaws provide otherwise, if the articles or bylaws provide for members other than natural persons, a natural person may be a member and have an interest in one or more members other than natural persons, even though the articles or bylaws do not provide that a member may hold more than one membership.

§ 5401. Membership classes

This section was tentatively approved.

§ 5402. Directors as members

This section was tentatively approved.

§ 5403. Reduction of members below stated number

This section was tentatively approved, with the insertion of the phrase "of the surviving or continuing members" after "by majority vote," absent a quorum.

§ 5404. Membership book

This section was deleted. The record of members, and the sanctions for failing to keep the record, will be considered with books and records generally.

§ 5405. Membership certificates

This section should be revised to make clear that it does not apply to identification cards, but only to ownership interests that are transferable.

§ 5406. Termination of membership

This section should be revised to provide a presumption against termination of membership on death. In making the revision, the staff should consider whether heirs should be required to present a claim to membership within a short period of time, whether in case of death the corporation should be required to buy the membership, whether the corporation should be required to accept as a member an heir that it has not approved, whether descent of memberships in charitable corporations should be absolutely precluded, and whether the presumption against termination should be limited to proprietary interests in nonprofit corporations.

The staff was also directed to investigate the possibility of incorporating in the statute an express statement that a member may not be expelled without due process, and the possibility of declaring forfeit a membership where the member has not been heard from for a period of time, e.g., three years.

§ 5407. Transfer of membership

This section was tentatively approved. Subdivision (b) should have an introductory clause linking it with subdivision (a).

§ 5408. Withdrawal of members

This section should be rephrased in terms of surrender of membership. The word "reasonable" was deleted from the phrase "reasonable procedure for withdrawal." The second sentence should be subject to provisions of the articles or bylaws, and should refer to dues, assessments, and charges rather than to debts.

§ 5409. Liability of members

This section was tentatively approved.

§ 5410. Levy of dues and assessments

This section was tentatively approved.

§ 5510. Levy of dues and assessments

This section was tentatively approved. The Commission directed the staff to consider possible approaches to permitting members to avoid burdensome assessments. Among the approaches suggested were permitting withdrawal upon assessment or increase of assessment, requiring class approval for imposition of assessment, or permitting withdrawal upon imposition of assessment for future liabilities.

Corporations Code Sections 9301, 9402, 9403, 9602, 9603, 9605, 9607, 9609,
9610, 9611 (repealed)

These repealers were tentatively approved.

STUDY 77.200 - NONPROFIT CORPORATIONS (DISSOLUTION--DISTRIBUTION OF ASSETS)

The Commission considered Memorandum 76-17 relating to distribution of assets on dissolution of nonprofit corporations. The Commission reviewed the attached draft statute, making the following determinations:

§ 5214. Incorporation of subordinate body

This section was tentatively approved. The preliminary part of the report and the Comment should call attention to subdivision (d) and specifically request comments on it. Also, the staff should collect any relevant cases in the Comment to subdivision (d).

§ 5520. Attorney General supervision of trust property

The Commission referred this section to the staff for review and coordination with the Uniform Supervision of Charitable Trusts Act and for improvement of the wording. The staff should also consider whether the section should be expanded to refer to business as well as nonprofit corporations. The Commission determined to delete the reference to "public trusts," and indicate in the Comment that this deletion is not intended to change existing law, citing cases broadly construing the meaning of "charitable trust."

§ 7011. Notice to Attorney General

This section was revised to require notice only by nonprofit corporations holding assets for charitable purposes. The staff should investigate whether notice should be given by "the board," "the nonprofit corporation," or "the persons in charge of the liquidation." The Attorney General's rulemaking authority should be limited to rules (and possibly regulations) consistent with the purposes of this act.

§ 7030. When distribution may be made

This section was tentatively approved, with the addition of the phrase "subject to the notice provisions in Section 7011."

§ 7031. Adequate provision for payment of debts and liabilities

This section was tentatively approved.

§ 7032. Distribution among members or in accordance with articles or bylaws

This section was tentatively approved.

§ 7033. Return of assets held on condition

This section had previously been tentatively approved.

§ 7034. Disposition of assets held on trust or by charitable corporation

Subdivision (a) of this section should be revised to insert the term "charitable" before "trust." It should also be revised to make clear that it applies only on dissolution, and that only that portion of the assets held on trust are covered by the subdivision. The staff should consider whether the distributees should be limited to nonprofit corporations and associations.

Subdivision (b) should be revised to provide that upon 30 days' notice of intent to distribute assets, the Attorney General may waive the right to petition for a court order of distribution, and the distribution may thereupon be made without court proceeding. The statute should make clear, however, that such waiver does not affect the right of the donor or another interested party to subsequently attack the distribution.

The Commission directed the staff to consider adoption of a scheme similar to that outlined for subdivision (b) for use in connection with

distributions of all or substantially all of the corporate assets in situations other than formal dissolution, e.g., mergers and sales of assets.

§ 7035. Manner of distribution

This section was tentatively approved. The staff should review this section in connection with the remainder of the dissolution provisions, and if a plan of distribution is provided, cross-refer in this section to the plan of distribution.

§ 7036. Deposit of distribution of members

This section was tentatively approved, after redrafting to place plurals in the singular. The staff should also consider revision to eliminate the "if" construction.

§ 7037. Recovery of improper distribution to members

The references in this section to the Attorney General should be deleted. The staff should investigate what statute of limitations applies to actions under this section. The staff was directed to write to the State Bar Committee for more information on the operation of subdivision (c), particularly the meaning of "compelled" and "require," and the question of control of the litigation (will the board be reconstituted, and so on).

Corporations Code Sections 9800, 9801, 9802 (repealed)

These repealers were tentatively approved.

APPROVED

Date

Chairman

Executive Secretary