

Memorandum 76-9

Subject: Study 77.40 - Nonprofit Corporations (Members)

INTRODUCTION

The provisions relating to members and memberships go to the heart of the character of nonprofit corporations. The list of characteristic features of nonprofit corporation set out in the next paragraph, which is drawn from 1 Ballantine & Sterling, California Corporation Laws § 408,01[5](4th ed. 1975), concentrates almost exclusively on the rights and obligations of members.

The important differences between business corporations and non-profit (or membership) corporations may be summarized as follows:

(1) Membership corporations may require the payment of dues as well as assessments by the members or by different classes of members,

(2) The liability for dues and assessments may be made personal and the indebtedness therefore may be collected by such methods as the directors may prescribe, either by action, or by sale or forfeiture of the membership, or both.

(3) Stock corporations ordinarily attempt no restriction or control over those who may become shareholders, but membership corporations customarily prescribe the qualifications of members.

(4) There are limitations upon the power to compel a member to remain a member against his will, that is, to refuse to let him resign or transfer his membership and to require him to continue paying dues even though he no longer uses the facilities of the organization.

(5) Membership corporations customarily safeguard and restrict the transfer of memberships and may altogether prohibit such transfers, And they may require large transfer fees.

(6) Membership corporations may exert extensive disciplinary powers over the members and may provide for the forfeiture of valuable memberships for misconduct with or without provision for payment of the value of the membership.

(7) Voting rights are generally restricted to certain classes of members, such as life members or regular members, and need not be given in proportion to the proprietary interest of the members of the corporation.

(8) The rights of the different classes of members may differ and may be unequal. Some may be required to pay dues, some to pay assessments, and some to pay both. Certain memberships may terminate after a specified period of time, others may be valid for the life of the holder, and others may continue indefinitely unless terminated by mutual consent. The different classes of membership may differ widely as to powers and privileges as well as to proprietary interests.

(9) Bylaw amendments are usually made by the directors or by the members having voting powers and need not be approved by the class of members affected even though the changes may affect their rights, privileges, or liabilities. Note, however, that since nonprofit corporations do not generally issue stock, the ultimate governing interest rests with members and the courts will protect that interest from unreasonable bylaw restrictions.

(10) The requirements as to a quorum of directors or members may be freely fixed in the bylaws. In fact, the requirements are customarily fixed, in the case of members, at less than a majority.

(11) There is no requirement as to the maintenance of a capital fund, and the corporation may buy back, forfeit, and reduce its memberships without reference to limitations applicable to the purchase by a

corporation organized for profit, of its own shares, or the reduction of its stated capital.

EXISTING LAW

Because of the central role that members and memberships have in nonprofit corporation law, and because there is no need for provisions governing members in the general corporation law, the existing California Nonprofit Corporation Law has an extensive and well-developed set of rules governing members and memberships. These rules are described in the excerpt from Ballantine & Sterling, attached as Exhibit I (blue).

To the staff's knowledge, the existing rules governing members and memberships are generally sound and workable, and there is no great need for change. For this reason, the attached draft provisions for the most part continue existing law without comment. There are a few changes embodied in the draft, which are discussed hereafter.

ANALYSIS

The general scheme of the attached draft is to provide rules governing members and membership rights in the absence of a provision to the contrary in the articles or bylaws. The basic substantive provisions are set out in Chapter 4--Members (Sections 5400-5410). In addition, the bylaws or articles are required or permitted to provide rules governing members and membership rights. See Article 6--Bylaws (Sections 5261, 5262).

The net effect of this scheme is that there is some overlap between the bylaw provisions and the substantive membership provisions. However, this is the scheme of the existing nonprofit corporation law, and

the staff believes that it is useful to persons and lawyers forming non-profit corporations to receive some indication of what should go into the articles or bylaws.

§ 5261. Required contents of bylaws

The provisions of Section 5261, which are drawn from existing Section 9301, are "required" to be stated in the bylaws or articles. However, the only consequence of failure to state these provisions is that the nonprofit corporation is governed by general rules that may be unduly restrictive for its purposes. The section thus serves merely for guidance of the incorporator.

Section 5261 encourages the statement of membership provisions in the bylaws rather than in the articles so that the articles will remain relatively simple. The Commission has previously requested that a provision be added precluding the board of directors from adopting, amending, or repealing bylaw provisions which affect members' voting rights; this the staff has not yet done.

§ 5262. Bylaws relating to members

While a nonprofit corporation may make provisions for expulsion of members, case law protects members against arbitrary and capricious expulsion. A member may be expelled only if there has been substantial compliance with the rules of the nonprofit corporation and the member has been offered a reasonable opportunity to be heard. See, e.g., Erickson v. Gospel Foundation of California, 43 Cal.2d 581, 275 P.2d 474 (1954); Cason v. Glass Bottle Blowers Ass'n, 37 Cal.2d 134, 231 P.2d 6 (1951); Taboada v. Sociedad Espanola etc., 191 Cal. 187, 215 P. 673

(1923); Ascherman v. San Francisco Medical Society, 39 Cal. App.3d 623, 114 Cal. Rptr. 68 (1974); Owen v. Board of Directors, 173 Cal. App.2d 112, 342 P.2d 424 (1959). In light of this extensive judicial development, the staff sees no need to attempt codification in this area. The staff suggests that a Comment be added to Section 5262 referring to this body of case law.

§ 5400. Members

The following discussion, prepared by Stan Ulrich, is concerned with three interrelated questions: whether artificial persons should be permitted to be members of nonprofit corporations, whether more than one person should be permitted to hold one membership, and whether a member should be permitted to hold more than one membership.

The specific nature of the provisions regulating membership is important primarily because the nonprofit corporation is ultimately controlled by the vote of its members, benefits frequently depend on membership, and, in many cases, the assets are distributed to members on dissolution.

Memberships held by artificial persons. Existing law is silent concerning whether corporations, partnerships, or other unincorporated associations may be members of nonprofit corporations. At the May 1974 meeting, the Commission indicated its inclination to make clear that such artificial persons may be members of nonprofit corporations. This may be accomplished in two ways. The statute could provide that such memberships are forbidden unless the articles or bylaws otherwise provide or that any person including artificial persons may be a member unless the articles or bylaws otherwise provide. Either one of these

rules would put the nonprofit corporation on notice of the possibility of admitting artificial persons as members. This is useful so that the nonprofit corporation will be more likely to deal with the problems of membership qualifications, dues and assessments, voting rights, and benefits before any problems arise.

The choice between these two alternatives depends primarily on what the Commission believes is the better rule to have where the nonprofit corporation does not make a special provision regarding such membership in its articles or bylaws. For example, if a nonprofit corporation having a monetary donation as its only qualification for membership remains silent on the matter of whether corporations and partnerships may be members, is it better to have a rule excluding such memberships or allowing them? Of course, in either case, after a problem arises, the corporation may change its articles or bylaws to either admit or exclude the corporation or partnership.

The sample forms for articles and bylaws of nonprofit corporations in 3 Ballantine & Sterling, California Corporation Laws (4th ed. 1975) and in California Nonprofit Corporations (Cal. Cont. Ed. Bar 1969) provide some support for the view that, if a nonprofit corporation wants corporation and partnerships and the like as members, it will provide for them whereas, if only natural persons and their families are to be members, there will not be a provision excluding membership of artificial entities. The forms for the bylaws of a social club and a charitable foundation in Ballantine & Sterling use the words "member" and "person" without including or excluding artificial persons although it is apparent that only natural persons are to be members. (See Forms 330 and 332.) The form for the bylaws of a trade association, by way of

contrast, provides for membership to be held by "persons, firms, corporations, or associations having a place of business in Shopping Center." (See Form 328.)

Accordingly, the staff recommends that membership of artificial persons and joint memberships should be forbidden unless the articles or bylaws otherwise provide.

When the provisions concerning voting rights are considered, we should provide for the manner of voting by artificial persons. Existing law is silent on this point.

More than one member per membership. At the May 1974 meeting, the Commission tentatively decided to permit family or group memberships. The existing law does not explicitly authorize such memberships; Section 9602 provides for "such memberships or classes thereof as the articles or by-laws specify." Some of the same problems may occur regarding family and group memberships as with partnership or association memberships. Hence, the staff recommends that family or group memberships or any other jointly held memberships be permitted only if the nonprofit corporation's articles or bylaws expressly provide for them.

When we draft the voting provisions, the same rules should apply for the voting of family and group memberships as apply to partnership memberships.

More than one membership per member. Section 9602 of existing law provides that "no member may hold more than one membership." The intent of this provision, added in 1949, is not clear. Section 9602 does allow for different classes of membership--this means that there may be different voting strengths, membership benefits, dues and assessments, and rights on dissolution. Perhaps the prohibition is intended to inhibit

the treatment of memberships as shares of stock--but that seems to be a matter better handled by the provisions concerning transfer of memberships. The restriction may be intended to prevent the acquisition of more and more voting power by purchase of additional memberships all at once or over a period of time although in many nonprofit corporations more voting power, benefits, and rights on dissolution may be obtained by seeking a higher class of membership. The following discussion from a treatise on the New York law may shed some light on the purpose of the one membership limitation:

Perhaps the most basic assumption of modern thought on not-for-profit corporations is that such organizations do not exist for the pursuit of the self-interest of their members in a proprietary or pecuniary sense. A corollary to the absence of proprietary interest is the presence of a right to participate in the uses and administration of power on a broad and democratic basis. These organizations are not machines for generating a return on invested wealth and are not designed to be operated or manipulated by the capital supplier. For this reason power need not be and should not be allocated on such a basis. Ideally it would be shared equally by all participants.

To a degree, the N-PCL moves toward the ideal in its provisions for members' voting rights; but it does fall short. Perhaps this is attributable to the draftsmen's recognition of the need for this single statute to cover a multitude of differing organizations many if not most of which themselves fall short of the ideal and prefer to remain there. In addition, the draftsmen faced a simple reality: We have yet to develop a fair and workable system of voluntary capital recruitment that will lead to the input of money without the extraction of power. In any event, the statute does require power to be shared and, imperfectly, shorn of its dollar base. [6 White, New York Corporations, Not-for-Profit Corporation Law para. 611.01 (13th ed. B. Prunty 1974)(footnote omitted).]

The staff has concluded that the one-membership limitation serves no significant purpose. The provision permitting different classes of memberships for all practical purposes allows nonprofit corporations to avoid the effect of the restriction. For example, in Erickson v. Gospel Foundation of California, 43 Cal.2d 581, 275 P.2d 474 (1954), the nonprofit corporation passed a bylaw giving a member one additional vote for

every \$1,000 donated to the corporation. This was upheld as a provision for different classes of membership. (It should be noted that the one membership per member limitation was not a part of the law when the bylaw in question was passed; however, the court's reasoning that the bylaw in effect created different membership classes would apply with equal force after the enactment of the restriction since the bylaw in question did not provide for acquisition of additional memberships.) The staff recommends that the one membership per member rule be eliminated. Instead, the law should provide that no member may hold more than one membership unless the articles or bylaws otherwise provide.

A related question involves the situation where a person is a member of a nonprofit corporation and, assuming the staff recommendation is adopted, such person is also a partner in a partnership which is a member of the nonprofit corporation. The staff thinks that this is not a serious enough problem to require a special statutory provision. However, it could be provided that, if the nonprofit corporation permits membership to be held by partnerships or other unincorporated associations or by groups or families and also retains the one membership per member rule, unless the articles or bylaws otherwise provide, the one membership per member rule is not violated by a person who holds an individual membership and also has part interest in a group or association membership.

§ 5403. Reduction of members below stated number

The majority vote language was added to this section at the direction of the Commission made at a previous meeting. However, there is a question whether the addition confuses more than it clarifies. Mr.

Robert E. Sullivan of Pillsbury, Madison & Sutro has written to us, "I do not believe the added words clarify the text since it is not clear whether it is a majority of all surviving members or those attending the meeting." Mr. Sullivan points out that, absent this language, existing nonprofit corporation law would permit action by a majority of a quorum at a meeting. The staff agrees and suggests that the words "by majority vote" be deleted so that general provisions of law will control.

§ 5405. Membership certificates

At the November 1975 meeting, the Commission requested the staff to give some consideration to replacing the statement on the membership certificate that the nonprofit corporation is "not one for profit" by a statement that the nonprofit corporation may not make distributions to members except to the extent permitted in the General Nonprofit Corporation Law.

The apparent purpose of marking membership certificates with an indication that the corporation is not one for profit is to avoid any possible confusion with a stock certificate and to make clear that the owner of the certificate is not entitled to participation in proceeds of operation of the nonprofit corporation. As such, requiring language that the nonprofit corporation may not make distributions to members would serve much the same purpose and perhaps do so more directly.

Nonetheless, the staff recommends against any change in existing law both because existing law appears to be fully adequate for its purposes and because of the impact of any change on existing nonprofit corporations.

§ 5407. Transfer of membership

The Commission added subdivision (b) to this section when it previously reviewed it to provide the nonprofit corporation with a means for keeping its membership list up to date.

§ 5408. Withdrawal of members

In the case of Haynes v. Annandale Golf Club, 4 Cal.2d 28, 47 P.2d 470 (1935), the plaintiff tendered his resignation as a member of the defendant nonprofit corporation, which the corporation refused to accept. The Supreme Court held that "When we consult the statute under which defendant is organized, we are forced to hold that it requires defendant to provide a way of escape for members, imposing only such restrictions upon the right of resignation as may be just and reasonable." 4 Cal.2d at 29. Section 5408 provides a new principal that, if the nonprofit corporation has no valid procedure for withdrawal of members, a member may resign on 30 days' notice, giving the corporation time to adjust its records and solicit a new member.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

EXHIBIT I

[Ballantine & Sterling, California Corporation Laws (4th ed. 1975)]

788.12

CALIFORNIA CORPORATION LAWS

§ 408.06. Membership in Nonprofit Corporations

[1]—Membership Defined

The term "member" includes each person signing the articles of incorporation and each person admitted to membership in the corporation.⁴⁸ Where neither the articles nor the bylaws provide for members of the corporation as such, and where the corporation has, in fact, no members other than the persons constituting its board of directors, the persons constituting its governing body or board are the members for the purpose of any statutory provision or rule of law relating to nonprofit corporations, and they are to exercise all rights and powers of members thereof.⁴⁹

[2]—Rights of Membership

[a]—Bylaw Provisions. The bylaws of a nonprofit corporation may, and should, make full provision for the membership structure, the admission of members, the conditions of the right of transfer (such as approval by the board of directors), the method of negotiating a sale of membership, the grounds and methods of expulsion, suspension, and termination of membership, and whether the rights of a member in the assets cease or survive upon death, expulsion, resignation, or other termination of membership.⁵⁰ Memberships may be made inheritable and transferable by affirmative provision in the articles or bylaws.

The rights and privileges of members, and other matters governed by the bylaws, are subject to the power of amendment, which may alter the membership structure and the rights and privileges of voting and nonvoting members, subject to equitable limitations against fraud and oppression.⁵¹

The courts will intervene to protect members against arbi-

⁴⁸ Corp. C. § 104.

⁴⁹ Corp. C. § 9603; and see *Coon v. Freeman*, 1 Cal3d 542, 83 Cal Rptr 217, 463 P2d 441 (1970).

⁵⁰ Corp. C. § 9402; see § 408.03[5] *supra*.

⁵¹ See Corp. C. §§ 9400, 9402, and see discussion in § 295 *supra*.

trary or illegal suspension or expulsion.⁶² The courts will also invalidate bylaws which inequitably restrict the membership's participation in the election of directors.⁶²

The bylaws may make provision for fees of admission and transfer, and, subject to any provisions in the articles, may provide for dues and assessments to be paid by members, or different classes of members, and the methods of their collection.⁶³

[b]—Limitations on Membership Rights. The wide power of regulation, discipline and control over the membership, and the rights and liabilities of the members, which may be reserved under the bylaws, is illustrated by an early California case⁶⁴ which approved the following restrictions on the rights of members: membership certificates were issued only on payment of the membership fee and were subject to all the bylaws then in force, or thereafter adopted; the bylaws were considered as an essential part of the contract of membership between the club and the members; a certificate of membership would be sold and transferred, by

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⁶² *Taboada v. Sociedad Espanola de Beneficencia Mutua*, 191 Cal 187, 215 P 673 (1923). The rule of this case has been extended by analogy to cover a doctor denied staff privileges by a private hospital. In *Ascherman v. San Francisco Medical Society*, 39 Cal App3d 623, 114 Cal Rptr 681 (1974), the court held that a private hospital could not deprive a physician of staff privileges without granting him minimal due process considerations and that an existing staff member is entitled to have his dismissal considered as required by the hospital's bylaws, and to a hearing even though the bylaws do not so provide.

⁶³ In *Braude v. Havenner*, 38 Cal App3d 526, 113 Cal Rptr 386 (1974) the court held that a bylaw providing for the nomination of directors in advance of the membership meeting by a committee appointed by the president, but permitting nominations by members only at the meeting, was an unreasonable restriction on the members' right to nominate, and hence elect, the directors. The limitation on the members' right to nominate directors was particularly objectionable because the bylaws provided only for a single newspaper publication as notice of the annual meeting.

⁶⁴ Corp. C. §§ 9301, 9403.

⁶⁴ *Annandale Golf Club v. Smith*, 110 Cal App (Supp) 765, 289 P 806 (1930).

an endorsement, to any candidate for membership who had been elected by the board of directors, paid a specified transfer fee, assumed the annual dues, and paid all other obligations of the assignor to the club; no resignation of a member would be effective until accepted by the board of directors, nor would the same be accepted while such member was in any way indebted to the club, nor until he had assigned and delivered, to the club, his certificate of membership; that each person, becoming a member after a certain date was required to pay a specified membership entrance fee; each regular member would pay specified annual dues, which were payable in monthly instalments on the first day of each and every month; on or before the tenth day of each month a statement would be mailed to each member, showing the amount of all indebtedness to the club, including a statement of all dues payable; the name of any member failing to pay his account before the first day of the next succeeding month would be posted in the club house; any member failing to pay his account within thirty days after his name had been posted would be automatically suspended until such indebtedness was paid; the board of directors had the power, by two-thirds vote, to expel a member and forfeit the membership of any member, for conduct liable to injure the welfare or character of the club, or in violation of the bylaws or established rules of the club, or when the dues were not paid; that such forfeiture would be effective only if such member was paid the amount of the appraisal of such member's property interest in the corporation, after deducting any indebtedness of the member to the club; no member of the club could advertise his membership for sale, but any member desiring to offer his membership for sale could receive from the secretary the names of applicants for membership, with whom he could negotiate a sale, and transfer of his membership, subject to the bylaws and rules and regulations enacted by the board of directors.

[3]—Meetings of Members

Subject to any provisions of the articles or bylaws, meetings of members of nonprofit corporations are to be called

§ 408.06

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and held as may be ordered by the directors, or by members holding not less than one-tenth of the voting power of all members.⁵⁶ Unless different provision is made by the articles or bylaws, each member is entitled to one vote, and may vote or act by proxy.⁵⁷ Voting may be by ballot, by mail, or by any reasonable means provided in the articles or bylaws. There is no right of cumulative voting unless such right is provided in the articles or in the bylaws. In lieu of permitting direct voting by the members on matters of policy concerning the corporation, the members may create a policymaking committee to act for such purposes.⁵⁸ Only members of the corporation are allowed to serve on the policymaking committee.

[4]—Classes of Membership

In the absence of a classification of memberships in the articles or bylaws, there is deemed to be but one class, and unless the articles or bylaws set forth the rule or rules fixing the respective voting, property, and the other rights and interests of each member or class of members, such rights and interests are deemed to be equal.⁵⁹ No member may hold more than one membership.⁶⁰ If an unincorporated association is incorporated under the General Nonprofit Corporation Law,⁶⁰ members of the association automatically become members of the corporation unless they file a written dissent with the secretary of the organization.⁶¹

[5]—Vacancies in Membership

Unless the articles or bylaws otherwise provide, a nonprofit corporation, having a stated number of members, is not to be

⁵⁶ Corp. C. § 9600. Compare Corp. C. § 2202(c), discussed in § 179 *supra*.

⁵⁶ Corp. C. § 9601.

⁵⁷ Corp. C. § 3632.5.

⁵⁸ Corp. C. § 9602.

⁵⁹ *Ibid*.

⁶⁰ See Corp. C. §§ 9202, 9203, 9300(f), and 9304(b).

⁶¹ Corp. C. § 9604.

dissolved, because the membership has been reduced below that number, but the surviving members, or member, may fill vacancies and continue the corporate existence.⁶² In the event that the articles and the bylaws do not provide for members as such, a nonprofit corporation has in fact no members other than the persons constituting its board of directors, for the purpose of any statute or rule of law governing nonprofit corporations, the persons constituting the governing body or board are the members of the corporation, and are to exercise all the rights and powers of members.⁶³

[6]—Membership Certificates

Membership in nonprofit corporations may be evidenced by certificates, upon the face of which must be clearly printed a statement that the corporation is not one for profit.⁶⁴ Such certificates do not entitle their holders to dividends.⁶⁵ Nonprofit corporations are no longer expressly forbidden to issue shares of stock,⁶⁶ but they are not authorized to do so, unless

⁶² Corp. C. § 9605.

⁶³ Corp. C. § 9603. It has been held, under this section, that articles of incorporation providing that the directors should be the only members of the corporation are valid. *Brown v. Nat'l Home Foundation*, 162 Cal App2d 513, 329 P2d 118 (1958), 75 ALR2d 427 (1961), cert. denied, 358 US 943, 79 S Ct 353 (1959).

For the construction of this section, see *Coom v. Freeman*, 1 Cal3d 542, 463 P2d 441 (1970) which held that provisions of Corp. C. § 9603 should be read in the alternative—that the directors are to be members when the articles or bylaws do not so provide or when the corporation has in fact no members other than the directors—rather than the construction proposed by the plaintiff that Corp. C. § 9603 applies only when the articles and bylaws have not so provided and when there are no members other than the directors.

⁶⁴ Corp. C. § 9607.

⁶⁵ *Ibid.* See Corp. C. §§ 12204, 12402-12404, 12451, 12452, 12800-12805 (cooperative corporations), discussed in Ch. XX *infra*; Agric. C., Div. 6, Ch. 4, §§ 1193, 1195-1197, 1206 (nonprofit cooperative associations). A share of stock is properly a contract for participation in the profits of a business corporation and is entirely inappropriate to a religious, social, or other nonprofit corporation. Shares represent contributions of capital for business purposes with the right to dividends.

⁶⁶ See Corp. C. § 34, prior to its amendment by Stats. 1943, Ch. 888.

under the law applicable to some special class (as, for example, a cooperative corporation).⁶⁷

[7]—Termination of Membership

Memberships may be terminated in the manner provided in the articles or bylaws. Unless the articles, the bylaws, or the law under which the corporation was formed provide otherwise, all the rights of a member in the corporation, or in its property, cease on his death or termination of his membership.⁶⁸

[8]—Transfer of Membership

No membership is transferable unless so provided in the articles or bylaws and such transfers are subject to any conditions or restrictions which may be prescribed.⁶⁹ If membership is made transferable to any extent, it may include valuable accompanying rights, such as the privilege of doing business as a member of a stock or produce exchange. Such rights may be reached by creditors, in a similar manner as a shareholder's interest in a stock corporation.

Every nonprofit corporation is required to keep a membership book containing the name and address of each member.⁷⁰

⁶⁷ See Corp. C. §§ 12204, 12205, 12402-12404, 12451, 12452, 12800-12802, all discussed in Ch. XX *infra*.

⁶⁸ Corp. C. § 9608. See also *Westbrook v. Social Center Hall Ass'n of Stockton*, 148 Cal App2d 815, 307 P2d 640 (1957).

⁶⁹ Corp. C. § 9609. See *Calvin Memorial Corp. v. Requa*, 5 Cal App3d 345, 85 Cal Rptr 107 (1970). See Corp. C. §§ 9301, 9303, 9402, 9403. See also *Hayden v. Security Homes Estate*, 175 Cal App2d 223, 346 P2d 42 (1959), where the bylaws of a cooperative real estate corporation provided that before membership shares would be offered for sale, they had to be first offered to the corporation. Furthermore, the transfer of shares would not be binding until recorded in the corporate books with the approval of the board of directors, and until the old certificates had been endorsed and surrendered and new ones issued in the name of the transferee. A member to whom shares were assigned by other members, without a transfer being made on the corporate books, was not entitled to assert, as against the corporation, any rights arising from the transfer.

⁷⁰ Corp. C. § 9605.

Termination of any membership must be recorded in the book, in addition to the date on which membership ceased. Note that where the articles and bylaws are silent as to membership in a nonprofit organization, resignation by a director from the board of directors also terminates his membership in the association.⁷¹

[9]—Membership Dues

The Code expressly authorizes nonprofit corporations to levy dues or assessments, or both, upon their members.⁷²

[10]—Liability of Members

Members of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the corporation.⁷³

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Chapter 5. Corporate Finance

Article 1. General Provisions

§ 5510. Levy of dues and assessments

Article 6. Bylaws§ 5261. Required contents of bylaws

5261. Except to the extent the articles expressly provide for the following, the bylaws shall set forth:

(a) The authorized number and qualifications of members of the non-profit corporation.

(b) The different classes of membership, if any.

(c) The property, voting, and other rights or interests of members or classes of members. If the property, voting, or other rights or interests, or any of them, be unequal, the rule or rules by which the respective property, voting, or other rights or interests of each member or class of members are fixed and determined.

(d) The liability of members to dues or assessments and the method of collection thereof.

Comment. Section 5261 continues the substance of the first two sentences of former Section 9301. See also former Sections 9402(b) and 9403. Although Section 5261 requires that the bylaws set forth certain matters, the introductory proviso permits these matters to be stated in the articles. See also Section 5251 and Comment thereto (articles may set forth any matter required or permitted to be stated in the bylaws).

In the absence of a provision in the articles or bylaws required by this section, the nonprofit corporation is governed by rules contained in Chapter 4 (commencing with Section 5400).

Subdivision (a). If the nonprofit corporation makes no provision for the number and qualifications of members, only natural persons may be members, and no member may hold more than one membership. Section 5400.

Subdivision (b). If the nonprofit corporation makes no provision for different classes of membership, it shall be deemed to have but one class. Section 5401(a).

Subdivision (c). If the nonprofit corporation makes no provision for property, voting, or other rights and interests of members or classes, or does not set forth the rules by which they are fixed and determined, the rights and interests of members are equal as to any right or

interest not so fixed. Section 5401(b). See also Section 7034 (distributive rights of members equal absent provision in articles).

Subdivision (d). A nonprofit corporation may levy dues or assessments only pursuant to provisions in its articles or bylaws. Section 5410. See also Section 5510 (levy of dues or assessments). It should be noted that a nonprofit corporation which levies dues or assessments may be subject to the Corporate Securities Law. See, e.g., Sections 25019 ("security" defined) and 25100(j) (exemption of certain securities).

Note. The Commission has previously directed that a provision be added which prohibits the board from adopting, amending, or repealing a bylaw which affects members' voting rights. The staff has not yet drafted such a provision.

§ 5262. Bylaws relating to members

5262. The bylaws of a nonprofit corporation may make provisions for:

(a) The admission, election, appointment, withdrawal, suspension, and expulsion of members.

(b) The transfer, forfeiture, and termination of membership, and whether the property interest of members shall cease at their death or the termination of membership, and the mode of ascertaining the property interest, if any, at the death or the termination of membership.

(c) Fees of admission and transfer fees.

Comment. Subdivision (a) of Section 5262 continues the substance of former Section 9402(a). Unless the bylaws make reasonable provision for withdrawal of members, a member may withdraw upon 30 days' written notice to the nonprofit corporation. Section 5408. It should be noted that a nonprofit corporation may expel a member only in substantial compliance with its provisions for expulsion and only if the member has been afforded a reasonable opportunity to be heard. See, e.g., Erickson v. Gospel Foundation of California, 43 Cal.2d 581, 275 P.2d 474 (1954); Ascherman v. San Francisco Medical Society, 39 Cal. App.3d 623, 114 Cal. Rptr. 68 (1974).

Subdivision (b) continues the substance of former Section 9402(c). Absent a provision for transfer of memberships, no member may transfer his membership or any right arising therefrom. Section 5407. Absent a provision relating to termination of membership, all rights of a member cease on death or other termination. It should be noted that one ground for forfeiture of membership may be failure to pay dues, assessments, or charges. Section 5510.

Subdivision (c) continues the first portion of former Section 9403.

CHAPTER 4. MEMBERS

§ 5400. Members

5400. (a) Unless the articles or bylaws otherwise provide, only natural persons may be members of a nonprofit corporation.

(b) Unless the articles or bylaws otherwise provide, no member may hold more than one membership, a fractional membership, or a joint interest in a membership.

Comment. Section 5400 is new; it provides general rules regarding who or what may be members of nonprofit corporations and how the membership may be held which apply in the absence of any article or bylaw to the contrary.

Subdivision (a) makes clear that the nonprofit corporation must provide in its articles or bylaws for the admission to membership of other than natural persons. Hence, if the nonprofit corporation desires to permit business corporations, other nonprofit corporations, or partnerships or other unincorporated associations to be members, it must affirmatively provide therefor in its articles or bylaws. Former law did not provide a rule applicable where the articles or bylaws remained silent. When a nonprofit corporation provides in its articles or bylaws that corporations, partnerships, associations, families, or other groups may become members, the corporation should make any other necessary provisions regarding classes of members, voting rights of the different types of members (including multiple or fractional voting), the benefits and privileges available to different membership classes, additional qualifications for admission to membership, and dues and assessments. See Section 5261.

Subdivision (b) makes clear that, unless a different rule is provided in the nonprofit corporation's articles or bylaws, each member may have no more or less than one membership. Former law permitted different classes of memberships but forbade the holding of more than one membership. See former Section 9602. The former General Corporation Law permitted the corporation to forbid voting of fractional shares. See former Section 2215. The prohibition of holding more than one membership was emasculated by the rule that different classes of memberships could be established with different voting power. See Erickson v. Gospel Foundation of California, 43 Cal.2d 581, 275 P.2d 474 (1954) (bylaw permitting one vote for every donation by a member of \$1,000 to the nonprofit corporation in effect created different membership classes). Under subdivision (b), the corporation is free to provide for the creation of different classes of members by permitting the acquisition of

more than one membership. It also makes clear that family or group membership may be provided. Where such special membership classes are provided, the nonprofit corporation should also consider special provisions concerning voting rights, benefits and privileges, membership qualifications, and dues and assessments. See Section 5261.

Note. The staff has not yet drafted provisions relating to voting of memberships held by artificial persons or relating to fractional voting.

§ 5401. Membership classes

5401. (a) A nonprofit corporation shall have such memberships or classes thereof as the articles or bylaws specify and, in the absence of any such classification of members, there shall be deemed to be but one class.

(b) Unless the articles or bylaws set forth the rule or rules fixing the respective voting, property, and other rights and interests of each member or class of members, the rights and interests of members shall be equal as to any right or interest not so fixed.

Comment. Section 5401 continues the substance of former Section 9602 with the exception of the prohibition of a member holding more than one membership, which is superseded by Section 5400.

§ 5402. Directors as members

5402. Where neither the articles nor bylaws of a nonprofit corporation provide for members or where the nonprofit corporation has, in fact, no members other than the persons constituting its board of directors, the board of directors are, for the purpose of any law relating to nonprofit corporations, the members of the nonprofit corporation and shall exercise all the rights and powers of members thereof.

Comment. Section 5402 continues the substance of former Section 9603. See Coon v. Freeman, 1 Cal.3d 542, 463 P.2d 441, 83 Cal. Rptr. 217 (1970).

§ 5403. Reduction of members below stated number

5403. If the members of a nonprofit corporation having a stated number of members are reduced below that number by death, withdrawal, or otherwise, the nonprofit corporation shall not be dissolved for that reason; but the surviving or continuing members, or member, may by majority vote fill vacancies and continue the corporate existence unless the articles or bylaws provide otherwise.

Comment. Section 5403 continues the substance of former Section 9605 with the addition of the words "by majority vote" to make clear that only a majority of the surviving members may fill vacancies and continue the corporate existence.

§ 5404. Membership book

5404. (a) Every nonprofit corporation shall keep a membership book containing the name and address of each member.

(b) Termination of any membership shall be recorded in the book together with the date on which the membership ceased.

Comment. Section 5404 continues the substance of former Section 9606.

§ 5405. Membership certificates

5405. (a) Membership in nonprofit corporations may be evidenced by certificates.

(b) A statement that the nonprofit corporation is not one for profit shall be printed in clear type upon the face of each such certificate.

Comment. Section 5405 continues the substance of former Section 9607.

§ 5406. Termination of membership

5406. (a) Memberships may be terminated in the manner provided in the articles or bylaws.

(b) Unless the articles, the bylaws, or the law under which the nonprofit corporation was formed provide otherwise, all the rights of a member in the nonprofit corporation, or in its property, cease on death or other termination of the membership.

Comment. Section 5406 continues the substance of former Section 9608.

§ 5407. Transfer of membership

5407. (a) No member may transfer the membership or any right arising therefrom unless the articles or bylaws so provide.

(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 therein.

Comment. Subdivision (a) of Section 5407 continues the substance of former Section 9609.

Subdivision (b) is new; it enables the nonprofit corporation to keep its membership list updated.

§ 5408. Withdrawal of members

5408. Unless the articles or bylaws provide a reasonable procedure for withdrawal of members, a member may withdraw upon 30 days' written notice to the nonprofit corporation. Withdrawal terminates all future rights, powers, and obligations of membership, but it does not terminate the member's liability for debts incurred prior to withdrawal.

Comment. Section 5408 is new. It codifies the holding in Haynes v. Annandale Golf Club, 4 Cal.2d 28, 47 P.2d 470 (1935) (nonprofit organization may impose only reasonable restrictions on a member's right to resign), and provides a procedure for resignation in the absence of a procedure in the articles or bylaws.

§ 5409. Liability of members

5409. Members of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the nonprofit corporation.

Comment. Section 5409 continues the substance of former Section 9610.

§ 5410. Levy of dues and assessments

5410. Nonprofit corporations may levy dues or assessments or both upon their members pursuant to any provisions of their articles or by-laws authorizing the levy of dues or assessments.

Comment. Section 5410 continues the substance of former Section 9611.

CHAPTER 5. CORPORATE FINANCE

Article 1. General Provisions§ 5510. Levy of dues and assessments

5510. (a) The articles or bylaws may authorize dues or assessments or both to be levied upon all members or classes of membership alike, or in different amounts or proportions or upon a different basis upon different members or classes of membership and may exempt some members or classes of membership from either dues or assessments or both.

(b) The articles or bylaws may fix the amount and method of collection of dues or assessments or both, or may authorize the board of directors to fix the amount thereof from time to time, and make them payable at such times or intervals and upon such notice and by such methods as the directors may prescribe.

(c) The articles or bylaws may fix the amount and method of collection of charges owed to the nonprofit corporation.

(d) Dues, assessments, or charges, or all of them, may be made enforceable by action or by sale or forfeiture of membership, or both, upon reasonable notice.

Comment. Section 5510 augments Sections 5261(d) (liability of members to dues and assessments) and 5410 (authority of nonprofit corporations to levy dues and assessments).

Subdivision (a) continues the substance of the third sentence of former Section 9301.

Subdivision (b) continues the substance of the fourth sentence of former Section 9301.

Subdivision (c) is new.

Subdivision (d) continues the substance of the last sentence of former Section 9301 with the addition of a provision for the collection of charges owed to the nonprofit corporation in the manner of dues or assessments.

Corporations Code § 9301 (repealed)

9301. The authorized number and qualifications of members of the corporation, the different classes of membership, if any, the property, voting, and other rights and privileges of members, and their liability to dues or assessments and the method of collection thereof, shall be set forth either in the articles or in the by-laws, which shall not, however, provide for the issuance of more than one membership to any member.

If the voting, property or other rights or interests, or any of them, be unequal, the articles or by-laws shall set forth the rule or rules by which the respective voting, property or other rights or interests of each member or class of members are fixed and determined.

The articles or by-laws may authorize dues or assessments or both to be levied upon all members or classes of membership alike, or in different amounts or proportions or upon a different basis upon different members or classes of membership and may exempt some members or classes of membership from either dues or assessments or both.

The articles or by-laws may fix the amount and method of collection of dues or assessments or both, or may authorize the board of directors to fix the amount thereof from time to time, and make them payable at such times or intervals, and upon such notice, and by such methods as the directors may prescribe. Dues or assessments or both may be made enforceable by action or by the sale or forfeiture of membership, or both, upon reasonable notice.

Comment. The first two sentences of former Section 9301 are continued in Section 5261 with the exception of the proviso relating to more than one membership, which is superseded by Section 5400. The third and fourth sentences are continued in Section 5510.

Corporations Code § 9402 (repealed)

9402. The by-laws of a nonprofit corporation may make provisions for:

(a) The admission, election, appointment, withdrawal, suspension, and expulsion of members.

(b) The qualifications of members and different classes of memberships, and the property, voting, and other rights, interests, or privileges, or any of them, of members or classes of members.

(c) The transfer, forfeiture, and termination of membership, and whether the property interest of members shall cease at their death or the termination of membership, and the mode of ascertaining the property interest, if any, at death or the termination of membership.

(d) The manner of voting by members and whether cumulative voting and proxy voting shall be allowed.

(e) The making of annual reports and financial statements to the members.

Comment. Subdivision (a) of former Section 9402 is continued in Section 5262(a). Subdivision (b) is superseded by Section 5261. Subdivision (c) is continued in Section 5262(b).

Note. The staff has not yet disposed of subdivisions (d) and (e).

Corporations Code § 9403 (repealed)

9403. The by-laws of a nonprofit corporation may make provisions for fees of admission and transfer fees, and, subject to any provisions in the articles, may provide pursuant to Section 9301 for dues and assessments to be paid by members or different classes of members and the methods of collection thereof.

Comment. The portion of former Section 9403 relating to fees of admission and transfer is continued in Section 5262(c). The portion relating to dues and assessments is continued in Sections 5261(d), 5410, and 5510.

CHAPTER 4. MEMBERS

Corporations Code § 9602 (repealed)

9602. A nonprofit corporation shall have such memberships or classes thereof as the articles or by-laws specify, but no member may hold more than one membership, and in the absence of any such classification of members there shall be deemed to be but one class. Unless the articles or by-laws set forth the rule or rules fixing the respective voting, property and other rights and interests of each member or class of members, the rights and interests of members shall be equal as to any right or interest not so fixed.

Comment. The substance of former Section 9602 is continued in Section 5401 with the exception of the prohibition of a member holding more than one membership, which is continued in Section 5400.

Corporations Code § 9603 (repealed)

9603. Where neither the articles nor by-laws of a nonprofit corporation provide for members thereof as such, and in any case in which any nonprofit corporation has, in fact, no members other than the persons constituting its board of directors, the persons for the time being constituting its governing body or board are, for the purpose of any statutory provision or rule of law relating to nonprofit corporations, the members of the corporation and shall exercise all the rights and powers of members thereof.

Comment. The substance of former Section 9603 is continued in Section 5402.

Corporations Code § 9605 (repealed)

9605. If the members of a nonprofit corporation having a stated number of members are reduced below that number by death, withdrawal, or otherwise, the corporation shall not be dissolved for that reason; but the surviving or continuing members, or member, may fill vacancies and continue the corporate existence, unless the articles or by-laws provide otherwise.

Comment. The substance of former Section 9605 is continued in Section 5403.

Corporations Code § 9606 (repealed)

9606. Every nonprofit corporation shall keep a membership book containing the name and address of each member. Termination of any membership shall be recorded in the book, together with the date on which the membership ceased.

Comment. The substance of former Section 9606 is continued in Section 5404.

Corporations Code § 9607 (repealed)

9607. Membership in nonprofit corporations may be evidenced by certificates. A statement that the corporation is not one for profit shall be printed in clear type upon the face of each such certificate.

Comment. The substance of former Section 9607 is continued in Section 5405.

Corporations Code § 9608 (repealed)

9608. Memberships may be terminated in the manner provided in the articles or by-laws. Unless the articles, the by-laws, or the law under which the corporation was formed provide otherwise, all the rights of a member in the corporation, or in its property, cease on death or other termination of his membership.

Comment. The substance of former Section 9608 is continued in Section 5406.

Corporations Code § 9609 (repealed)

9609. No member may transfer his membership or any right arising therefrom, unless the articles or by-laws so provide.

Comment. The substance of former Section 9609 is continued in Section 5407.

Corporations Code § 9610 (repealed)

9610. Members of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the corporation.

Comment. The substance of former Section 9610 is continued in Section 5409.

Corporations Code § 9611 (repealed)

9611. Nonprofit corporations may levy dues or assessments or both upon their members pursuant to any provisions of their articles or by-laws authorizing the levy of dues or assessments.

Comment. The substance of former Section 9611 is continued in Section 5410.