

## Memorandum 76-17

Subject: Study 77.200 - Nonprofit Corporations (Dissolution--Distribution of Assets)

Attached to this memorandum is a redrafted version of the portion of the nonprofit corporation law relating to distribution of assets on dissolution. The new draft incorporates Commission decisions made at the January, 1976, meeting, and indicates those sections which were tentatively approved. We hope to approve the remaining sections at this meeting. The staff notes the following points about the new draft:

§ 5214. Incorporation of subordinate body

This section continues existing law that provides a special rule for distribution of assets of a subordinate body on dissolution. We plan to compile this provision along with other special provisions relating to subordinate bodies in one place near the front of the nonprofit corporation law.

§ 5520. Attorney General supervision of trust property

Although this section does not strictly relate to disposition of assets on dissolution, it is an important provision relating to supervision of charitable assets by the Attorney General, which the Commission should be aware of. Also attached for the Commission's information as Exhibit I (pink) is the Uniform Supervision of Trustees for Charitable Purposes Act.

§ 7011. Notice to Attorney General

The Commission requested that the staff give consideration to penalties for the failure of the directors to notify the Attorney General of a dissolution. The staff believes that this should be done when the duties, standards of care, and liabilities of directors generally are discussed. However, if

a distribution of assets is made without prior notice to the Attorney General, any amount improperly distributed should be recoverable from the members in the same manner as distributions made without prior payment or provision for corporate debts and liabilities. The staff has revised Section 7037 (recovery of improper distribution to members) accordingly.

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

The Commission requested the staff to give consideration to whether the bylaws should be permitted to specify distribution of assets to persons other than members. Present law permits only the articles to specify such distribution. The staff can see no obstacle to extending this to the bylaws as well: other membership rights and obligations are included in the bylaws, and a bylaw adopted by the directors can be amended by the members. Other jurisdictions permit this to be done in the bylaws. The ALI-ABA Model Nonprofit Corporation Act (§ 46(d)) provides:

Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others.

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

The Commission directed the staff to develop language for this section to the effect that assets held by charitable corporations or on trust should be distributed in accordance with the purposes for which the assets were received. Other jurisdictions that have confronted this drafting problem have responded with the provisions excerpted below:

New York, Not-for-Profit Corporation Law § 1005(a)(3)(A)

Assets received and held by the corporation for a purpose specified as [charitable] or which are legally required to be used for a particular purpose shall be distributed to one or more domestic or foreign corporations or other organizations engaged in activities substantially similar to those of the dissolved corporation.

Ohio, Revised Statutes § 1702.49(2)

In the case of a charitable corporation:

(a) assets held by it in trust for specified purposes shall be applied so far as is feasible in accordance with the terms of the trust;

(b) the remaining assets not held in trust shall be applied so far as is feasible towards carrying out the purposes stated in its articles;

(c) in the event and to the extent that, in the judgment of the trustees, it is not feasible to apply the assets as provided [above, the assets are applied in order of the court in an action to which the Attorney General is a party].

ALI-ABA, Model Nonprofit Corporation Act § 46(c)

Assets received and held by the corporation subject to limitations permitting their use only for charitable [purposes] shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation.

Oleck, Proposed Uniform Nonprofit Organizations Act § 86(e)

In the case of any corporation having property or funds legally required to be used for particular or charitable purposes, the Court upon 20 days' personal notice to the Attorney General and four weeks' notice to the members, creditors, and contributors to the funds of the corporation by [publication], may make an order that such property or its proceeds shall be transferred to such other corporation or association as shall be specified, to be administered or used in such manner as in the judgment of the Court will best accomplish the general purposes for which the corporation so dissolved was organized or for which the property or funds are legally required to be used, without regard to and free from any express or implied restriction, limitation, or direction imposed upon such corporation.

Following the model of these provisions, the staff has written into Section 703<sup>4</sup> the standard of disposition "in conformity with the purposes of the trust or the charitable purposes for which the nonprofit corporation was organized."

The Commission also asked the staff to consider the imposition of a time limit for making a petition for court disposition of charitable assets. The

staff suggests only that court disposition be available at any time up to the actual distribution by the board. This will allow the Attorney General and interested parties adequate time during the winding up of affairs and settlement of corporate liabilities to make the petition and yet protect the security of the transfer once it has been made. This rule in effect makes the board of directors the proper body for applying the cy pres or other trust standard to the charitable assets, absent a petition for court supervision. Where the Attorney General has not been given notice, and the distribution is made without a petition, the Attorney General may seek to recover distributions to members pursuant to Section 7037. Whether the Attorney General may also seek to invalidate a transfer made by the board to persons other than members pursuant to Corporations Code Section 9505 and the Uniform Supervision of Trustees for Charitable Purposes Act (Govt. Code §§ 12580-12597), is a question that is left open by the staff draft; the staff believes that this is a matter more appropriately determined by the court on a case-by-case basis, applying equitable principles.

Respectfully submitted,

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Assistant Executive Secretary

EXHIBIT I

ARTICLE 7

Uniform Supervision of Trustees for Charitable Purposes Act

[Added by Stats 1959 ch 1258 § 2, effective June 30, 1959.]

Former Article 7, consisting of §§ 12580-12596, was added by Stats 1955 ch 1820 § 1 and repealed by Stats 1959 ch 1258 § 1, effective June 30, 1959.

- § 12580. Citation of article
- § 12581. Corporations and trustees to which article applicable
- § 12582. "Trustee"
- § 12582.1. "Charitable corporation"
- § 12583. Governmental entities, corporations, organizations and persons to which article inapplicable
- § 12584. Establishment and maintenance of register of charitable corporations and trustees: Investigation
- § 12585. Duty of charitable corporation or trustee to file copy of instrument providing for title, powers or duties
- § 12586. Duty of charitable corporation or trustee to file reports: Rules and regulations: Copy of account filed in court as report: Time for filing first report
- § 12587. Attorney General's power to make additional rules and regulations
- § 12588. Investigation of transactions and relationships of corporations and trustees: Requiring appearance and production of books, etc.
- § 12589. Order for attendance: Contents: Review
- § 12590. Availability of register, copies of instruments and reports for public inspection
- § 12591. Proceedings to secure compliance with article and to invoke jurisdiction of court: Additional powers and duties of Attorney General: Effect of article on court's jurisdiction
- § 12592. Application of article regardless of contrary provision of instrument
- § 12593. Furnishing Attorney General with copies of documents
- § 12594. Filing with Attorney General list of applications for exemption from taxation
- § 12595. Construction of act
- § 12596. Time within which Attorney General may bring action to enforce charitable trust
- § 12597. Provision in judgment for payment of expense incurred by state

§ 12580. Citation of article

This article may be cited as the Uniform Supervision of Trustees for Charitable Purposes Act.

**§ 12581. Corporations and trustees to which article applicable**

This article applies to all charitable corporations and trustees holding property for charitable purposes over which the State or the Attorney General has enforcement or supervisory powers.

**§ 12582. "Trustee"**

"Trustee" means (a) any individual group of individuals, corporation, or other legal entity holding property in trust pursuant to any charitable trust, (b) any corporation which has accepted property to be used for a particular charitable corporate purpose as distinguished from the general purposes of the corporation, and (c) a corporation formed for the administration of a charitable trust, pursuant to the directions of the settlor or at the instance of the trustee.

**§ 12582.1. "Charitable corporation"**

"Charitable corporation" means any nonprofit corporation organized under the laws of this State for charitable or eleemosynary purposes and any similar foreign corporation doing business or holding property in this State for such purposes.

**§ 12583. Governmental entities, corporations, organizations and persons to which article inapplicable**

This article does not apply to the United States, any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or to any of their agencies or governmental subdivisions, to any religious corporation sole or other religious corporation or organization which holds property for religious purposes, or to any officer, director, or trustee thereof who holds property for like purposes, to a cemetery corporation regulated under Chapter 19 of Division 3 of the Business and Professions Code, or to a charitable corporation organized and operated primarily as a religious organization, educational institution or hospital.

**§ 12584. Establishment and maintenance of register of charitable corporations and trustees: Investigation**

The Attorney General shall establish and maintain a register of charitable corporations and trustees subject to this article and of the particular trust or other relationship under which they hold property for charitable purposes and, to that end, may conduct whatever investigation is necessary, and shall obtain from public records, court officers, taxing authorities, trustees, and other sources, whatever information, copies of instruments, reports, and records are needed for the establishment and maintenance of the register.

**§ 12585. Duty of charitable corporation or trustee to file copy of instrument providing for title, powers or duties**

Every charitable corporation and trustee subject to this article who has received property for charitable purposes shall file with the Attorney General, within six months after any part of the income or principal is authorized or required to be applied to a charitable purpose, a copy of the articles of incorporation or other instrument providing for his title, powers or duties. If any part of the income or principal is authorized or required to be applied to a charitable purpose at the time this article takes effect, the filing shall be made within six months thereafter.

**§ 12586. Duty of charitable corporation or trustee to file reports: Rules and regulations: Copy of account filed in court as report: Time for filing first report**

(a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Superintendent of Banks of the State of California or to the Comptroller of Currency of the United States, every charitable corporation and trustee subject to this article shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. He may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than four (4) months and fifteen (15) days following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied

to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four (4) months and fifteen (15) days following the close of such calendar or fiscal period.

**§ 12587. Attorney General's power to make additional rules and regulations**

The Attorney General may make additional rules and regulations necessary for the administration of this article.

**§ 12588. Investigation of transactions and relationships of corporations and trustees: Requiring appearance and production of books, etc.**

The Attorney General may investigate transactions and relationships of corporations and trustees subject to this article for the purpose of ascertaining whether or not the purposes of the corporation or trust are being carried out in accordance with the terms and provisions of the articles of incorporation or other instrument. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title, and evidence of assets, liabilities, receipts, or disbursements in the possession or control of the person ordered to appear.

**§ 12589. Order for attendance: Contents: Review**

When the Attorney General requires the attendance of any person, as provided in Section 12588, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least 14 days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena and, upon application of the Attorney General, obedience to the order may be enforced by the Superior court in the county where the person receiving it resides or is found, in the same manner as though the notice were a subpoena. The court, after hearing, for cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend or postpone all or any part of its provisions.

**§ 12590. Availability of register, copies of instruments and reports for public inspection**

Subject to reasonable rules and regulations adopted by the Attorney General, the register, copies of instruments, and the reports filed with the Attorney General shall be open to public inspection. The Attorney General shall withhold from public inspection any instrument so filed whose content is not exclusively for charitable purposes.



**§ 12591. Proceedings to secure compliance with article and to invoke jurisdiction of court: Additional powers and duties of Attorney General: Effect of article on court's jurisdiction**

The Attorney General may institute appropriate proceedings to secure compliance with this article and to invoke the jurisdiction of the court. The powers and duties of the Attorney General provided in this article are in addition to his existing powers and duties. Nothing in this article shall impair or restrict the jurisdiction of any court with respect to any of the matters covered by it, except that no court shall have jurisdiction to modify or terminate any trust of property for charitable purposes unless the Attorney General is a party to the proceedings.

**§ 12592. Application of article regardless of contrary provision of instrument**

This article shall apply regardless of any contrary provisions of any instrument.

**§ 12593. Furnishing Attorney General with copies of documents**

Every person who offers for probate any instrument which establishes a testamentary trust of property for charitable purposes or who records in any county or city and county any inter vivos transfer of property for charitable purposes shall furnish a copy of such document to the Attorney General. The custodian of the records of a court having jurisdiction of probate matters or of charitable trusts shall furnish such copies of papers, records and files of his office relating to the subject of this article as the Attorney General requires.

**§ 12594. Filing with Attorney General list of applications for exemption from taxation**

Every officer, agency, board, or commission of this State receiving applications for exemption from taxation of any corporation, charitable trust or similar relationship in which the corporation or trustee is subject to this article shall annually file with the Attorney General a list of all applications received during the year.

**§ 12595. Construction of act**

This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**§ 12596. Time within which Attorney General may bring action to enforce charitable trust**

Any action brought by the Attorney General against trustees or other persons holding property in trust for charitable purposes or against any charitable corporation or any director or officer thereof to enforce a charitable trust or to impress property with a trust for charitable purposes or to recover property or the proceeds thereof for and on behalf of any charitable trust or corporation, may be brought at any time within ten (10) years after the cause of action shall have accrued.

**§ 12597. Provision in judgment for payment of expense incurred by state**

In any proceeding brought by the Attorney General to secure compliance with the provisions of Sections 12584 to 12587, inclusive, or any regulation issued pursuant thereto, the judgment, if in favor of the state, shall provide that the person having the responsibility or duty to comply with such provisions on behalf of any charitable trust or charitable corporation, shall pay the reasonable expense necessarily incurred by the state in the investigation and prosecution of such action.

OUTLINE

- § 5214. Incorporation of subordinate body
- § 5520. Attorney General supervision of trust property

CHAPTER 20. GENERAL PROVISIONS RELATING TO DISSOLUTION

Article 1. Winding up

- § 7011. Notice to Attorney General

Article 3. Distribution of Assets

- § 7030. When distribution may be made
- § 7031. Adequate provision for payment of debts and liabilities
- § 7032. Distribution among members or in accordance with articles or bylaws
- § 7033. Return of assets held on condition
- § 7034. Disposition of assets held on trust or by charitable corporation
- § 7035. Manner of distribution
- § 7036. Deposit of distribution to members
- § 7037. Recovery of improper distribution to members

APPENDIX (pink pages)

Corporations Code § 2505 (repealed)

CHAPTER 6. WINDING UP AND DISSOLUTION

Corporations Code § 2800 (repealed)

Corporations Code § 9801 (repealed)

Corporations Code § 2802 (repealed)

§ 5214. Incorporation of subordinate body

5214. (a) A corporation may be formed under the General Nonprofit Corporation Law, subject to the requirements of this section, for the purpose of incorporating any subordinate body instituted or created under the authority of any head or national association, lodge, order, beneficial association, fraternal or beneficial society, labor union, foundation, federation, or any other society, organization, or association. The fact that the head or national body is unincorporated does not prevent the incorporation of the subordinate body.

(b) The rules governing the incorporation and operation of unincorporated associations govern the incorporation of any subordinate body.

(c) The seal of the subordinate body shall be its corporate seal.

(d) Whenever the charter of a subordinate body incorporated pursuant to this section is surrendered to, taken away, or revoked by the head or national body granting it, the subordinate body shall dissolve. After paying its debts and obligations or making adequate provision therefor, the subordinate body may collect obligations owed to it and may sell property which is not designed for the exclusive use of the organization. Notwithstanding Article 3 (commencing with Section 7030) of Chapter 20, the subordinate body shall then deliver any remaining property or obligations owed to it and any remaining proceeds of the sale of property to the head or national body to be disposed of in accordance with the laws of the head or national body.

Comment. Subdivisions (a)-(c) of Section 5214 continue former Section 9203; for the rules governing incorporation of unincorporated associations, see Section 5213. Subdivision (d) continues former Section 9802; it is an exception to the provisions of Sections 7030-7037 (distribution of assets on dissolution of nonprofit corporation).

§ 5520. Attorney General supervision of trust property

5520. (a) A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the state, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed.

(b) In case of any such failure or departure, the Attorney General shall institute, in the name of the state, the proceedings necessary to correct the noncompliance or departure.

Comment. Section 5520 continues former Section 9505.

Note. Section 10207 (charitable and eleemosynary corporations) is a comparable provision which we will dispose of when we consider the other provisions of Part 3 (commencing with Section 10200).

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§ 7011

CHAPTER 20. GENERAL PROVISIONS RELATING TO DISSOLUTION

Article 1. Winding Up

§ 7011. Notice to Attorney General

7011. Upon commencement of involuntary or voluntary proceedings for winding up a nonprofit corporation, the board shall give written notice thereof to the Attorney General. The notice shall contain such information as is reasonably required in rules established by the Attorney General.

Comment. Section 7011 is new. It is designed to facilitate performance of the Attorney General's supervisory duties over assets held on trust or by a charitable corporation. See Section 7034 (disposition of assets held on trust or by charitable corporation); see also Section 7037 (recovery of distribution to members made without prior notice to Attorney General of dissolution).

Involuntary proceedings are commenced when the court order for winding up is entered. Section [1805]. Voluntary proceedings are commenced upon adoption of the resolution of members or directors electing to wind up or upon the filing of a written consent of members thereto. Section [1903].

Note. The staff has not yet drafted provisions relating to commencement of dissolution proceedings or to the liability of directors for failure to comply with statutory requirements. The question whether this section should be applicable in cases of merger, radical change of purposes, or divestment of assets is deferred until those subjects are considered.

Article 3. Distribution of Assets

§ 7030. When distribution may be made

7030. (a) After determining that all the known debts and liabilities of a nonprofit corporation in the process of winding up have been paid or adequately provided for, the board shall distribute all the remaining corporate assets in the manner provided in this article.

(b) If the winding up is by court proceeding or subject to court supervision, the distribution shall not be made until after the expiration of any period for the presentation of claims which has been prescribed by order of the court.

Comment. Subdivision (a) of Section 7030 continues the portion of the first paragraph of former Section 9801 that related to payment or adequate provision for debts and obligations of the nonprofit corporation. For a comparable provision, see Section 2004 (General Corporation Law). Payment of a debt or liability has been adequately provided for if the conditions of Section 7031 are satisfied. For recovery of assets distributed to members without compliance with this section, see Section 7037.

Subdivision (b) is comparable to the second sentence of Section 2004 (General Corporation Law).

Distribution of assets of a nonprofit corporation on dissolution may be made only after the requirements of Section 7030 are satisfied. Distribution of assets generally is provided for in Section 7032 (distribution among members or in accordance with articles). There are special rules for assets held on condition requiring return (Section 7033), assets held on trust or by a charitable corporation (Section 7034), and assets held by a subordinate body (Section 5214).

Note. The staff has not yet reviewed the need for subdivision (b).

§ 7031. Adequate provision for payment of debts and liabilities

7031. (a) The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, has been adequately provided for if the payment has been provided for by either of the following means:

(1) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and the provision (including the financial responsibility of such persons) was determined in good faith and with reasonable care by the board to be adequate at the time of any distribution of the assets by the board pursuant to this article.

(2) The amount of the debt or liability has been deposited as provided in Section 7036.

(b) This section does not prescribe the exclusive means of making adequate provision for debts and liabilities.

Comment. Section 7031 continues provisions applicable to nonprofit corporations by former Section 5001 through former Section 9800. It is comparable to Section 2005 (General Corporation Law). "Financially responsible persons" includes financially responsible corporations. See Section 18 ("person" includes "corporation").



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

7032. Unless otherwise provided in this article, assets held by a nonprofit corporation shall be distributed among the members in accordance with their respective rights therein or disposed of in such other manner as may be provided in the articles or bylaws.

Comment. Section 7032 continues the substance of that portion of the first paragraph of former Section 9801 that related to distribution of assets to members or as otherwise provided in the articles, with the addition of a provision permitting provision otherwise in the bylaws. For a comparable provision, see Section 2004 (General Corporation Law) (distribution of remaining corporate assets among shareholders according to their respective rights and preferences). Section 7032 governs distribution of the remaining assets of a nonprofit corporation on dissolution unless the assets fall within the terms of Section 7033 (return of assets held on condition), 7034 (disposition of assets held on trust or by charitable corporation), or 5214 (delivery of assets held by subordinate body).

The respective rights of the members are determined by reference to the articles and bylaws. Absent relevant classifications, the property rights of members are equal. See Section 5401. The articles may, however, provide a disposition of assets other than distribution to members.

It should be noted that, if assets of a nonprofit corporation are distributable to members on dissolution, the nonprofit corporation will not qualify for income tax exemption under Revenue and Taxation Code Section 23701d or Internal Revenue Code Section 501(c)(3). Moreover, the memberships will be "securities" within the meaning of the Corporate Securities Law of 1968 and may not be exempt from the qualification requirements of that law. See Sections 25019 and 25100(j); see also California Corporations Commissioner, Release 15-C (May 15, 1970).

Tentatively Approved  
January 1976

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§ 7033

§ 7033. Return of assets held on condition

7033. Assets held by a nonprofit corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with such requirements.

Comment. Section 7033 is new. It is comparable to Section 46 of the ALI-ABA Model Nonprofit Corporation Act. Section 7033 is consistent with the common law in California. See In re Los Angeles County Pioneer Society, 40 Cal.2d 852, 866, 257 P.2d 1, 9 (1953), cert. denied, 346 U.S. 888 (1953).

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

7034. (a) Assets held by a nonprofit corporation on trust or by a nonprofit corporation organized for charitable purposes shall be distributed to one or more domestic or foreign nonprofit corporations or associations in conformity with the purposes of the trust or the charitable purposes for which the nonprofit corporation was organized.

(b) Upon petition therefor by the Attorney General or any person concerned in the dissolution at any time before the distribution of assets, the disposition required in subdivision (a) shall be made by decree of the superior court of the county in which the nonprofit corporation has its principal office in proceedings to which the Attorney General is a party.

Comment. Section 7034 continues the substance of the second paragraph of former Section 9801. The disposition of assets provided in Section 7034 applies only where the assets are not held on condition requiring return, transfer, or conveyance. See Section 7033.

Subdivision (a) applies both to assets received on express trust and to assets received by a charitable corporation whether or not on trust. A nonprofit corporation organized exclusively for charitable purposes holds its assets in trust for the purposes enumerated in its articles of incorporation even though they were not otherwise expressly earmarked for charitable trust purposes when acquired by the corporation. See, e.g., Pacific Home v. County of Los Angeles, 41 Cal.2d 844, 257 P.2d 1 (1953). Whether a nonprofit corporation is deemed to be a charitable corporation for the purposes of subdivision (a) is a question of fact to be determined by reference not only to its articles of incorporation but also to the manner of conducting its activities. See, e.g., Lynch v. Spilman, 67 Cal.2d 251, 62 Cal. Rptr. 12, 431 P.2d 636 (1967); In re

Los Angeles County Pioneer Society, 40 Cal.2d 852, 257 P.2d 1, cert. denied, 346 U.S. 888 (1953). Charitable purposes are not defined by statute but left to judicial development.

Subdivision (a) also has the effect of preserving the doctrine of cy pres in dispositions governed by Section 7034. Former Section 9801 was silent as to this point, but case law required application of the cy pres doctrine. See, e.g., In re Veterans' Industries, Inc., 8 Cal. App.3d 902, 88 Cal. Rptr. 303 (1970); Metropolitan Baptist Church of Richmond, Inc. v. Younger, 48 Cal. App.3d 850, 121 Cal. Rptr. 899 (1975).

Subdivision (b) requires a court decree of distribution under Section 7034 only upon petition therefor by the Attorney General or an interested party and only if the petition is made prior to actual distribution of assets. The Attorney General receives notice of the corporate dissolution pursuant to Section 7011 and may intervene pursuant to subdivision (b). A distribution made to members without the required notice to the Attorney General is recoverable under Section 7037. It should be noted that, while the Attorney General may consent to a proposed distribution by a nonprofit corporation or recommend others for consideration by the court, neither such consents nor recommendations by the Attorney General are binding upon the court upon whom the ultimate responsibility for the proper application of the standard of subdivision (a) rests. In re Veterans' Industries, Inc., supra.

Note. The question whether provisions governing corporations sole should be integrated with this section is deferred.

§ 7035. Manner of distribution

7035. (a) Unless the articles or bylaws otherwise provide, distribution of assets may be made either in money or in property or securities and either in installments from time to time or as a whole, if this can be done fairly and ratably and in conformity with the rights of the distributees.

(b) Distribution of assets shall be made as soon as reasonably consistent with the beneficial liquidation of corporate assets.

Comment. Section 7035 continues provisions applicable to nonprofit corporations by former Sections 5002 and 5003 through former Section 9800. It is comparable to Section 2006 (General Corporation Law). Section 7035 applies only to distributions among members or other distributees where there are no contrary requirements in the articles. Where the articles provide otherwise, the distribution is not made pursuant to Section 7035 but is made in accordance with the requirements of the articles or bylaws.

§ 7036. Deposit of distribution to members

7036. (a) If any creditors, members, or other persons entitled to the corporate assets are unknown or fail to accept their payment or distribution or their whereabouts cannot be ascertained after diligent inquiry, or the existence or amount of a claim of a creditor, member, or other person is contingent, contested, or not determined, or if the ownership of any membership is in dispute, the nonprofit corporation may deposit any such payment or distribution or the maximum amount of such claim with the State Treasurer or with a bank or trust company in this state in trust for the benefit of those lawfully entitled thereto. Such payment or distribution shall be paid over by the depository to the lawful owners, their representatives, or assigns upon satisfactory proof of title.

(b) For the purpose of providing for the transmittal, receipt, accounting for, claiming, management, and investment of all distributions deposited in the State Treasury under the provisions of subdivision (a), such distribution shall be deemed to be paid or delivered for deposit in the State Treasury under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure and may be recovered in the manner prescribed therein.

Comment. Section 7036 is comparable to Section 2008 (General Corporation Law). Subdivision (a) continues provisions applicable to nonprofit corporations by former Sections 5009 and 5010 through former Section 9800. Subdivision (b) continues provisions applicable to nonprofit corporations by former Section 5011 through former Section 9800.

§ 7037. Recovery of improper distribution to members

7037. (a) Whenever in the process of winding up a nonprofit corporation any distribution of assets has been made, otherwise than under an order of court, without prior notice to the Attorney General pursuant to Section 7011, or without prior payment or adequate provision for payment of any of the debts and liabilities of the nonprofit corporation, any amount so improperly distributed to any member may be recovered by the nonprofit corporation. Any of such members may be joined as defendants in the same action or brought in on the motion of any other defendant.

(b) Suit may be brought in the name of the nonprofit corporation to enforce the liability under subdivision (a) against any or all members receiving the distribution by the Attorney General or by any one or more creditors of the nonprofit corporation, whether or not they have reduced their claims to judgment.

(c) Members who satisfy any liability under this section shall have the right of ratable contribution from other members similarly liable. Any member who has been compelled to return to the nonprofit corporation more than the member's ratable share of the amount improperly distributed or of the amount needed to pay the debts and liabilities of the nonprofit corporation may require that the nonprofit corporation recover from any or all of the other members such proportion of the amounts received by them upon the improper distribution as to give contribution to those held liable under this section and make the distribution of assets fair and ratable, according to the respective rights of the members, after proper distribution of assets or payment or adequate provision for payment of all the debts and liabilities of the nonprofit corporation.

(d) As used in this section, "process of winding up" includes proceedings under Chapters 18 and 19 and also any other distribution of assets to members made in contemplation of termination or abandonment of the corporate activities.

Comment. Section 7037 continues provisions applicable to nonprofit corporations by former Section 5012 through former Section 9800. Section 7037 is comparable to Section 2009 (General Corporation Law). Although a nonprofit corporation may make distributions to persons or groups other than members (see Sections 7032-7034), Section 7037 is limited to recovery of distributions made to members. The directors may be liable for improper distributions to members or other distributees pursuant to Section [316].

For the requirement of notice to the Attorney General in case of dissolution, see Section 7011. The Attorney General, in addition to petitioning for court distribution of charitable assets under Section 7034 and to seeking recovery of assets from members pursuant to this section, may also seek restitution of improper distributions from other distributees. See Section 5520 (Attorney General supervision of trust property) and Govt. Code §§ 12580-12597 (Uniform Supervision of Trustees for Charitable Purposes Act). For the obligation to pay or adequately provide for debts and liabilities, prior to distribution, see Section 7030. Adequate provision for debts and liabilities is defined in Section 7031.

Note. The staff has not yet drafted provisions relating to the liability of directors. "The need for subdivision (d) will be determined after provisions relating to winding up have been drafted."



APPENDIXCorporations Code § 9505 (repealed)

9505. A nonprofit corporation which holds property subject to any public or charitable trust is subject at all times to examination by the Attorney General, on behalf of the State, to ascertain the condition of its affairs and to what extent, if at all, it may fail to comply with trusts which it has assumed or may depart from the general purposes for which it is formed. In case of any such failure or departure the Attorney General shall institute, in the name of the State, the proceedings necessary to correct the noncompliance or departure.

Comment. Section 9505 is continued as Section 5520.

## CHAPTER 6. WINDING UP AND DISSOLUTION

Corporations Code § 9800 (repealed)

9800. A nonprofit corporation may dispose of all or substantially all of its assets, or may be wound up or dissolved, or both, in the same manner and with the same effect as a stock corporation, under the General Corporation Law, subject to the provisions of Section 9801.

Comment. Section 9800 is superseded by Chapters 10 (commencing with Section 6010)(sales of assets), 18 (commencing with Section 6810)(involuntary dissolution), 19 (commencing with Section 6910)(voluntary dissolution), and 20 (commencing with Section 7010)(general provisions relating to dissolution) of Division 2.

Corporations Code § 9801 (repealed)

9801. Upon the dissolution or winding up of a nonprofit corporation, after paying or adequately providing for the debts and obligations of the corporation, the directors or persons in charge of the liquidation shall divide any remaining assets among the members in accordance with their respective rights therein, or dispose of them in such other manner as may be provided in the articles, unless the corporation holds its assets on any trust or is organized for a charitable purpose or purposes.

If the corporation holds its assets on trust, or is organized for a charitable purpose or purposes, the assets shall be disposed of in such manner as may be directed by decree of the superior court of the county in which the corporation has its principal office, upon petition therefor by the Attorney General or any person concerned in the liquidation, in proceedings to which the Attorney General is a party.

This section does not apply where the charter of an incorporated subordinate body is surrendered to, taken away, or revoked by the head or national body.

Comment. The portion of the first paragraph of former Section 9801 that related to payment or adequate provision for debts and obligations is continued in Section 7030. The portion of the first paragraph that related to distribution of assets to members or as otherwise provided in the articles is continued in Section 7032.

The second paragraph of former Section 9801 is continued in Section 7034. The last paragraph of former Section 9801 is continued in Section 5214.

Corporations Code § 9802 (repealed)

9802. Whenever the charter of a subordinate body incorporated pursuant to this part is surrendered to, taken away, or revoked by the head or national body granting it, the subordinate body shall dissolve. The subordinate body shall pay its debts and obligations or make adequate provision therefor. The subordinate body may collect obligations owed to it and may sell property which is not designed for the exclusive use of the organization. The subordinate body shall then deliver any remaining property or obligations owed to it and any remaining proceeds of the sale of property to the head or national body, to be disposed of in accordance with the laws of the head or national body.

Comment. Former Section 9802 is continued in Section 5214.