

GENERAL NONPROFIT CORPORATION LAW

TENTATIVE DRAFT

Attached are portions of the Law Revision Commission's tentative draft of the new General Nonprofit Corporation Law. The tentative draft will be augmented as new provisions are approved. In case of revisions of approved sections, replacement pages will be provided as necessary.

It is important to note the following features of the tentative draft:

(1) It is not a complete draft, and some chapters have not yet been included.

(2) Many of the chapters that are included in the draft have not yet been fully developed. This is particularly true of Chapters 1 (General Provisions and Definitions) and 2 (Organization and Bylaws).

(3) Only those sections with the annotation "Tentatively Approved" have received the tentative approval of the Law Revision Commission. Approval of those sections is tentative only, and some will require revision and coordination with other provisions of the nonprofit corporation law as they are produced.

Rough Outline

GENERAL NONPROFIT CORPORATION LAW

DIVISION 2. GENERAL NONPROFIT CORPORATION LAW

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

- § 5000. Short title
- § 5101. Application of general provisions
- § 5102. Scope of division

Article 2. Filing of Instruments

- § 5120. Filing by Secretary of State
- § 5121. Delayed effective date of instruments
- § 5122. Revocation certificates
- § 5123. Instruments conforming to law
- § 5124. Filing fees

Article 3. Certificates of Correction

- § 5130. Correction of instruments
- § 5131. Contents of certificate of correction
- § 5132. Execution of certificate of correction
- § 5133. Limitations on certificate of correction
- § 5134. Effective date of corrected instrument unaffected by filing certificate of correction
- § 5135. Rights and liabilities affected by filing certificate of correction

Article 4. Definitions

- § 5151. Approved by (or approval of) the board
- § 5154. Articles
- § 5156. Business corporation
- § 5169. Filed
- § 5172.5. Nonprofit corporation
- § 5173. Officers' certificate
- § 5179. Proxy
- § 5193. Verified
- § 5194. Vote

CHAPTER 2. ORGANIZATION AND BYLAWS

Article 1. Purposes

- § 5210. Any lawful purpose other than distribution of dividends
- § 5211. Medical services corporation
- § 5212. Legal services corporation
- § 5213. Incorporation of unincorporated association
- § 5214. Incorporation of subordinate body

Article 2. Formation

- § 5220. Nonprofit corporation formed by executing and filing articles
- § 5221. Execution of articles
- § 5222. Filing of articles
- § 5223. Evidence of corporate formation and existence
- § 5224. Additional requirement for charitable corporations

Article 3. Powers

- § 5230. Powers of nonprofit corporation
- § 5231. Defense of ultra vires
- § 5232. Enjoining ultra vires act of nonprofit corporation holding assets on charitable trust
- § 5235. Power to engage in business activity
- § 5236. Distributions to members prohibited

Article 4. Corporate Name

- § 5240. Reservation of corporate name
- § 5241. Name which tends to deceive
- § 5242. Agreement to use name that is substantially the same
- § 5243. Name which is likely to mislead or contains the word "charitable"
- § 5244. Sanctions for name violations

Article 5. Articles of Incorporation

- § 5250. Required contents of articles
- § 5251. Permitted contents of articles

Article 6. Bylaws

- § 5260. Adoption of bylaws
- § 5261. Required contents of bylaws
- § 5262. Bylaws relating to members

CHAPTER 3. DIRECTORS AND MANAGEMENT

CHAPTER 4. MEMBERS

- § 5400. Members
- § 5401. Membership classes
- § 5402. Directors as members
- § 5403. Reduction of members below stated number
- § 5405. Membership certificates
- § 5406. Termination of membership
- § 5407. Transfer of membership
- § 5408. Withdrawal of members
- § 5409. Liability of members
- § 5410. Levy of dues and assessments

CHAPTER 5. CORPORATE FINANCE

Article 1. General Provisions

- § 5510. Levy of dues and assessments

Article 2. Trust Property

Article 3. Common Trust Funds

CHAPTER 6. MEMBERS' MEETINGS AND CONSENTS

CHAPTER 7. VOTING OF MEMBERSHIPS

CHAPTER 8. MEMBERS' DERIVATIVE ACTIONS

Article 1. Right to Bring Derivative Action

- § 5810. Right of member to bring derivative action
- § 5811. Action by member; contemporaneous membership rule
- § 5812. Exception to contemporaneous membership rule; notice and hearing

Article 2. Preconditions to Derivative Action

- § 5820. Effort to secure action from board; exception
- § 5821. Notice to nonprofit corporation of cause of action

Article 3. Security for Defendant's Expenses; Exception

- § 5830. Motion for security for defendant's expenses; extension of time
- § 5831. Grounds of motion for security
- § 5832. Hearing and determination of motion; amount of security
- § 5833. Increase or decrease of security; noticed motion; maximum amount
- § 5834. Time for furnishing security; effect of failure to furnish

- § 5835. Stay of proceedings
- § 5836. Recourse to security
- § 5837. Effect of court's determinations
- § 5838. Bond to avoid motion proceedings
- § 5839. Exception to security for defendant's expenses

Article 4. Discontinuation of Derivative Action

- § 5840. Discontinuation of action; court approval

CHAPTER 9. AMENDMENT OF ARTICLES

Article 1. Purposes of Amendments

- § 5910. Permissible amendments of articles
- § 5911. Amendments to delete initial directors and initial agent
- § 5912. Extension of corporate existence
- § 5913. Amendment of articles of charitable corporation

Article 2. Adoption and Approval of Amendments

- § 5920. Vote required in articles
- § 5921. Adoption of amendments before members admitted
- § 5922. Adoption of amendments by board and members
- § 5923. Adoption of amendments by board alone
- § 5924. Adoption of amendments by policymaking committee
- § 5925. When class vote required

Article 3. Certificates of Amendment

- § 5930. Certificate of amendment
- § 5931. Contents of certificate of amendment
- § 5932. Certificate of amendment to establish wording of amendment
- § 5933. Effect of filing certificate of amendment

Article 4. Restatement of Articles

- § 5940. Restated articles
- § 5941. Contents of restated articles
- § 5942. Approvals required for restated articles
- § 5943. Effect of restated articles

CHAPTER 10. SALES OF ASSETS

CHAPTER 11. MERGER

CHAPTER 12. REORGANIZATIONS

CHAPTER 13. DISSENTERS' RIGHTS

CHAPTER 14. BANKRUPTCY REORGANIZATIONS AND ARRANGEMENTS

CHAPTER 15. RECORDS AND REPORTS

Article 1. Books and Records Generally

- § 6510. Required books and records
- § 6511. Form of records; place where kept
- § 6512. Information to assessor
- § 6513. Liability for false report, record, or entry

Article 2. Annual Report; Financial Statements

- § 6520. Annual report required unless bylaws otherwise provide
- § 6521. Presentation of annual report
- § 6522. Annual report; financial information
- § 6523. Annual report; membership information
- § 6524. Additional required information
- § 6525. Providing member with copy of annual report
- § 6526. Corporation having no members
- § 6527. Members' right to obtain fiscal information
- § 6528. Reports to Attorney General not affected
- § 6529. Judicial enforcement
- § 6529.5. Application of article

Article 3. Statement Identifying Corporate Officers and
Principal Office; Designation of Agent for Service

- § 6530. Applicable filing period defined
- § 6531. Statement identifying officers, principal office, and principal activity
- § 6532. Designation of agent for service
- § 6533. Filing new statement when information changes
- § 6534. Statement of resignation as agent; notice to corporation
- § 6535. When designation of new agent required
- § 6536. Renewal forms
- § 6537. New statement supersedes previous statement; disposal of superseded statement
- § 6538. Providing public with copies of statements
- § 6539. No fee required
- § 6540. Procedure upon failure to file statement

CHAPTER 16. RIGHTS OF INSPECTION

Article 1. General Provisions

Article 2. Membership Records

Article 3. Books, Records, and Minutes

Article 4. Directors' Rights of Inspection

Article 5. Judicial Enforcement

CHAPTER 17. SERVICE OF PROCESS

Article 1. Manner of Service Generally

§ 6710. Additional method for serving domestic corporation

Article 2. Service on Designated Agent

§ 6720. Service on designated agent for service

Article 3. Service on Secretary of State

§ 6730. Service on Secretary of State

§ 6731. Notice to corporation

§ 6732. Record of service; certificate of Secretary of State as evidence

CHAPTER 18. INVOLUNTARY DISSOLUTION

Article 1. Application of Chapter

Article 2. Proceedings by Directors or Members

Article 3. Proceedings by State

Article 4. General Provisions Concerning Involuntary Dissolution

CHAPTER 19. VOLUNTARY DISSOLUTION

Article 1. Application of Chapter

Article 2. Election to Dissolve; Revocation

Article 3. Commencement and Conduct of Proceedings

Article 4. General Provisions Concerning Voluntary Dissolution

CHAPTER 20. GENERAL PROVISIONS RELATING TO DISSOLUTION

Article 1. Avoidance of Dissolution by Purchase; Procedures

Article 2. Directors and Officers

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
- § 7035.5. Plan of distribution
- § 7036. Deposit of distribution to creditors, members, and other persons
- § 7037. Recovery of improper distribution to members

Article 4. Continuation After Dissolution

Article 5. Conditions for Dissolution of Certain Nonprofit Corporations

CHAPTER 21. FOREIGN NONPROFIT CORPORATIONS

CHAPTER 22. CRIMES AND PENALTIES

CHAPTER 23. TRANSITION PROVISIONS

APPENDIX

Part 1 of Division 2 of the Corporations Code (repealed)

General Nonprofit Corporation Law (§§ 9000-9802)

404/103

§ 5000

Tentatively Approved
January 1976

DIVISION 2. GENERAL NONPROFIT CORPORATION LAW

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

Article 1. General Provisions

§ 5000. Short title

5000. This division shall be known and may be cited as the General Nonprofit Corporation Law.

Comment. Section 5000 continues former Section 9000. For a comparable provision, see Section 100(a)(General Corporation Law).

404/396

§ 5101

Tentatively Approved
January 1976

§ 5101. Application of general provisions

5101. Unless the provision or the context otherwise requires, the provisions of this chapter govern the construction of this division.

Comment. Section 5101 is the same in substance as Sections 5 (Corporations Code) and 101 (General Corporation Law). Unless otherwise provided in this division, the general provisions and definitions found among the general provisions of the Corporations Code are applicable. See, e.g., Sections 6-18.

Substance Tentatively
Approved January 1976

§ 5102. Scope of division

5102. (a) Subject to the provisions of Chapter 23 (transition provisions), the provisions of this division apply to every nonprofit corporation now existing or hereafter formed unless:

(1) The nonprofit corporation is expressly exempted from the operation thereof.

(2) There is a special provision applicable to the nonprofit corporation inconsistent with the provisions of this division, in which case the special provision prevails.

(b) The existence of nonprofit corporations formed or existing on the date of the enactment of this division shall not be affected by the enactment of this division nor by any change in the requirements for the formation of nonprofit corporations nor by the amendment or repeal of the laws under which they were formed or created.

(c) Neither the repeals effected by the enactment of this division nor the enactment of this title nor the amendment thereof shall impair or take away any existing liability or cause of action against any nonprofit corporation, its members, directors, or officers incurred prior to the time of such enactment or amendment.

(d) The provisions of Division 1 (commencing with Section 100) do not apply to nonprofit corporations.

Comment. Subdivision (a) of Section 5102 continues former Section 9001. For express exemptions from the operation of the General Nonprofit Corporation Law, see [to be supplied]. For special provisions

applicable to nonprofit corporations that are inconsistent with the General Nonprofit Corporation Law, see [to be supplied]. Special provisions relating to nonprofit corporations in this or other codes that are not expressly repealed remain in effect.

Subdivisions (b) and (c) are the same in substance as subdivisions (b) and (c) of Section 102 (General Corporation Law).

Subdivision (d) supersedes former Section 9002. Unlike former law, the new General Nonprofit Corporation Law provides a complete set of rules governing nonprofit corporations and does not incorporate by reference nor is it governed in any way by the General Corporation Law. It should be noted, however, that court decisions under comparable provisions of the General Corporation Law, to the extent they concern problems common to business and nonprofit corporations, may be useful in construing the provisions of the General Nonprofit Corporation Law.

Note. With each change in the law that the new General Nonprofit Corporation Law makes, the Commission must consider its effect on existing corporations and whether compliance is required. This section and Section 5172.5 ("nonprofit corporation" defined) are related.

The staff is at present researching the special provisions and exemptions for nonprofit corporations.

Substance Tentatively
Approved January 1976

Article 2. Filing of Instruments

§ 5120. Filing by Secretary of State

5120. (a) Upon receipt of any instrument for filing pursuant to this division, the Secretary of State shall, if it conforms to law, file the instrument in the office of the Secretary of State and endorse the date of filing thereon.

(b) The Secretary of State shall file a document as of any requested future date, including a Saturday, Sunday, or legal holiday, if the document is received in the Secretary of State's office at least one business day prior to the requested date of filing.

(c) The date of filing is the date the instrument is received by the Secretary of State unless withheld from filing for a period of time pursuant to a request by the party submitting it for filing. In the case of an instrument resubmitted for filing pursuant to Section 5117, the date of filing is the date the instrument was first received by the Secretary of State.

Comment. Section 5120 is the same in substance as Section 110(a) (General Corporation Law).

Note. The staff has not yet developed a definition of "instrument" or distinguished between "instruments" (subdivisions (a) and (c)) and "documents" (subdivision (b)).

The staff will follow the proposed amendment to Section 110(a) in Assembly Bill 2849.

043/199

§ 5121

Tentatively Approved
January 1976

§ 5121. Delayed effective date of instruments

5121. (a) Any instrument filed with respect to a nonprofit corporation (other than original articles) may specify that the instrument is to become effective on a date not later than 90 days after the filing date.

(b) If no revocation certificate is filed, the instrument becomes effective on the date specified.

Comment. Section 5121 is the same in substance as portions of Section 110(c) (General Corporation Law).

404/933

§ 5122

Not Approved; See Minutes
January 1976

§ 5122. Revocation certificates

5122. (a) An instrument filed with a delayed effective date may be prevented from becoming effective by a revocation certificate filed on or before the specified effective date.

(b) The revocation certificate shall state that, by appropriate corporate action, the instrument has been revoked and is null and void.

(c) The revocation certificate shall be executed in the same manner as the original instrument except that, in the case of a merger agreement, the certificate need only be executed on behalf of one of the constituent nonprofit corporations.

Comment. Section 5122 is the same in substance as portions of Section 110(c)(General Corporation Law).

Note. The staff has yet to check with the Secretary of State concerning the meaning of the phrase "by appropriate corporate action."

The staff has not yet drafted provisions relating to mergers.

068/612

§ 5123

Tentatively Approved
January 1976

§ 5123. Instruments conforming to law

5123. (a) If the Secretary of State determines that an instrument submitted for filing or otherwise submitted does not conform to law, the Secretary of State may return the instrument to the person submitting it. An instrument does not fail to conform to law because it is not accompanied by the full filing fee if the unpaid portion of the fee does not exceed the limits established by the policy of the Secretary of State for extending credit in such cases.

(b) An instrument returned pursuant to subdivision (a) may be resubmitted accompanied by a written opinion of the member of the State Bar of California submitting the instrument, or representing the person submitting it, to the effect that the specific provision of the instrument objected to by the Secretary of State does conform to law and stating the points and authorities upon which the opinion is based.

(c) The Secretary of State shall rely, with respect to any disputed point of law (other than the application of Article 4 (commencing with

Section 5240) of Chapter 2 and of Sections [2101] and [2106]), upon a written opinion pursuant to subdivision (b) in determining whether the instrument conforms to law.

Comment. Section 5123 is the same in substance as portions of Section 110(b), (c).

Note. The references to Sections 2101 and 2106 are corporate name provisions for foreign corporations, a matter the staff has not yet reviewed.

406/002

§ 5124

Staff Draft

§ 5124. Filing fees

5124. The fees of the Secretary of State for filing instruments by or on behalf of nonprofit corporations are prescribed in Article 3 (commencing with Section 12180) of Chapter 3 of Part 2 of Division 3 of Title 2 of the Government Code.

Comment. Section 5124 is the same in substance as Section 108 (General Corporation Law).

Note. The staff has not yet investigated whether there will be a need for amendments to the Government Code fee provisions.

Tentatively Approved
March 1976

Article 3. Certificates of Correction

§ 5130. Correction of instruments

5130. An agreement, certificate, or other instrument relating to a domestic or foreign nonprofit corporation filed pursuant to the provisions of this division may be corrected with respect to a misstatement of fact contained therein, a defect in the execution thereof, or any other error or defect contained therein by filing a certificate of correction.

Comment. Article 2 (commencing with Section 5130) is the same in substance as Section 109 (General Corporation Law). It continues provisions of former Section 127, which were applicable to nonprofit corporations through former Section 9002.

Tentatively Approved
March 1976

§ 5131. Contents of certificate of correction

5131. The certificate of correction shall be entitled "Certificate of Correction of _____ (insert here the title of the agreement, certificate, or other instrument to be corrected and name(s) of nonprofit corporation or nonprofit corporations)" and shall set forth the following:

(a) The name or names of the nonprofit corporation or nonprofit corporations.

(b) The date the agreement, certificate, or other instrument being corrected was filed.

(c) The provision in the agreement, certificate, or other instrument as corrected and, if the execution was defective, wherein it was defective.

Comment. See Comment to Section 5130.

968/668

§ 5132

Tentatively Approved
March 1976

§ 5132. Execution of certificate of correction

5132. The certificate of correction shall be signed and verified or acknowledged as provided in this division with respect to the agreement, certificate, or other instrument being corrected.

Comment. See Comment to Section 5130.

Note. This section should be reviewed after it is determined whether acknowledgments will be required in various contexts.

968/669

§ 5133

Tentatively Approved
March 1976

§ 5133. Limitations on certificate of correction

5133. (a) No certificate of correction shall alter the wording of any resolution which was in fact adopted by the board or the members.

(b) No certificate of correction shall effect a corrected amendment of articles which amendment as so corrected would not in all respects have complied with the requirements of this division at the time of filing of the certificate of amendment.

Comment. See Comment to Section 5130.

Note. Subdivision (b) is to be reviewed for need and for clarity.

968/670

§ 5134

Tentatively Approved
March 1976

§ 5134. Effective date of corrected instrument unaffected by filing certificate of correction

5134. The filing of the certificate of correction shall not alter the effective date of the agreement, certificate, or instrument being corrected, which shall remain as its original effective date.

Comment. See Comment to Section 5130.

Tentatively Approved
March 1976

§ 5135. Rights and liabilities affected by filing certificate of correction

5135. The filing of the certificate of correction does not affect any right or liability accrued or incurred before the filing except that any right or liability accrued or incurred by reason of the error or defect being corrected is extinguished by the filing if the person having the right has not detrimentally relied on the original instrument.

Comment. See Comment to Section 5130.

Note. The staff has not yet investigated the problem of notice to persons who might have relied on the incorrect instrument.

Tentatively Approved
March 1976

Article 4. Definitions

§ 5151. Approved by (or approval of) the board

5151. "Approved by (or approval of) the board" means approved or ratified by the vote of the board.

Comment. Section 5151 is the same in substance as Section 151 (General Corporation Law). The vote required for approval of the board is [to be supplied]. The phrase defined in this section is used in the following provisions:

§ 5922 (adoption of amendments by board and members)

§ 5923 (adoption of amendments by board alone)

§ 5942 (approvals required for restated articles)

Note. Whether approval of the board should include approval by authorized committees is deferred until consideration of directors and committees. Likewise, the provisions for the vote of directors will be drafted at that time.

Whether it is appropriate to use the word "vote," which is a defined term, will be determined later.

269/018

§ 5154

Tentatively Approved
January 1976

§ 5154. Articles

5154. "Articles" includes the articles of incorporation, amendments thereto, amended articles, and restated articles.

Comment. Section 5154 is the same in substance as Section 154 (General Corporation Law). It continues former Section 102, which was applicable to nonprofit corporations through former Section 9002.

Note. The question whether this section should include certificates of incorporation and agreements of merger is deferred.

404/381

§ 5156

Tentatively Approved
March 1976

§ 5156. Business corporation

5156. "Business corporation" means a corporation organized under Division 1 (commencing with Section 100) of Title 1 or a business cor-

poration organized under any predecessor general corporation law or by any act of the Legislature creating a private corporation prior to the enactment of a general incorporation statute.

Comment. Section 5156 adopts the definition of "corporation" found in Section 162 (General Corporation Law).

Note. Consideration will be given to expanding this definition to all corporations other than nonprofit.

968/624

§ 5169

Tentatively Approved
February 1976

§ 5169. Filed

5169. "Filed," unless otherwise expressly provided, means filed in the office of the Secretary of State.

Comment. Section 5169 is the same in substance as Section 169 (General Corporation Law).

Note. The staff has not yet determined whether the proviso of this section is necessary.

§ 5172.5. Nonprofit corporation

5172.5. "Nonprofit corporation" means a corporation organized under this division or under any predecessor general or special nonprofit corporation law, or by any act of the Legislature creating a private nonprofit corporation prior to the enactment of a general nonprofit incorporation statute.

Comment. Section 5172.5 is new; for a comparable definition of "corporation," see Section 162 (General Corporation Law).

Note. The staff has not yet investigated the extent to which the new statute can or should be applied to preexisting nonprofit corporations or to foreign nonprofit corporations. This section and Section 5111 (scope of division) are related.

The staff has not yet investigated whether any nonprofit corporations created by act of Legislature prior to enactment of a general law do exist.

§ 5173. Officers' certificate

5173. "Officers' certificate" means a certificate signed and verified by each of the following persons:

- (a) The chairman of the board.
- (b) The president or any vice president.
- (c) Either the secretary, the chief financial officer, the treasurer, or any assistant secretary or assistant treasurer.

Comment. Section 5173 is the same in substance as Section 173 (General Corporation Law). The requirements for verification may be found in Section 5193. The phrase defined in this section is used in the following provisions:

- § 5931 (contents of certificate of amendment)
- § 5940 (restated articles)

404/382

§ 5179

Tentatively Approved
March 1976

§ 5179. Proxy

5179. (a) "Proxy" means a written authorization signed by a member or the member's attorney in fact giving another person or persons power to vote with respect to the membership of the member.

(b) "Signed" for the purpose of this section means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic transmission, or otherwise) by the member or the member's attorney in fact.

Comment. Section 5179 is the same in substance as Section 179 (General Corporation Law). For provisions relating to proxies, see Sections 5640 (form of proxy), 5263 (bylaws relating to voting rights), and 5705 (proxies).

Tentatively Approved
March 1976

§ 5193. Verified

5193. (a) "Verified" means that the statement contained in a certificate or other document is declared to be true of the own knowledge of the person executing it by either of the following means:

(1) An affidavit signed under oath before an officer authorized to administer oaths by the laws of this state or of the place where it is executed.

(2) A declaration in writing executed "under penalty of perjury" that states the date and place of execution (whether within or without this state).

(b) Any affidavit sworn to without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

Comment. Section 5193 is the same in substance as Section 193 (General Corporation Law). The term defined in this section is used in the following provisions:

§ 5052 (execution of certificate of correction)

§ 5173 (officers' certificate)

404/383

§ 5194

Not Approved; See Minutes
March 1976

§ 5194. Vote

5194. "Vote" includes authorization by written consent.

Comment. Section 5194 is comparable to Section 194 (General Corporation Law).

Note. Section 194 is subject to Sections 307(f) and 603(d); the staff has not yet examined these provisions.

This section must be reviewed in the light of its potential application to voting by directors and voting by a policymaking committee of members.

Tentatively Approved
February 1976

CHAPTER 2. ORGANIZATION AND BYLAWS

Article 1. Purposes

§ 5210. Any lawful purpose other than distribution of dividends

5210. Subject to the laws and regulations applicable to the particular class of nonprofit corporation or line of activity, a nonprofit corporation may be formed for any lawful purposes other than the distribution of gains, profits, or dividends to members.

Comment. Section 5210 continues the substance of a portion of the first sentence of former Section 9200. Section 5210 permits incorporation for such purposes as religious, charitable, social, educational, cemetery, or for rendering services, but does not limit incorporation to these purposes. The requirement of former Section 9200 that the corporate purposes be ones for which individuals lawfully may associate themselves is not continued; it is unnecessary in light of the general limitation of Section 5210 that the nonprofit corporation be formed only for lawful purposes.

The articles of a nonprofit corporation must preclude distribution of the proceeds of its operations to members except to the extent provided in this division. See Section 5250. It should be noted, however, that this section does not prohibit a nonprofit corporation from operating a business or from making profits thereon. See Section 5235(a) (power to engage in business activity). Any profits must be applied to the lawful corporate purposes (Section 5235(b)) and may not be distributed to members except to the extent permitted by Section 5236. Violation of this section may subject the nonprofit corporation or its directors to the following sanctions: [to be supplied].

The introductory portion of Section 5210 recognizes that there may be limitations on the purposes for which particular types of nonprofit

corporations may be formed. See, e.g., Sections 5211 (medical services corporations) and 5212 (legal services corporations). It should also be noted that a nonprofit corporation may be formed, subject to Section 5210, for the purpose of incorporating an unincorporated association (Section 5213) or subordinate body (Section 5214).

043/172

§ 5211

Tentatively Approved
February 1976

§ 5211. Medical services corporation

5211. (a) A nonprofit corporation may be formed under this division for the purposes of defraying or assuming the cost of professional services of licentiates under any chapter of Division 2 (commencing with Section 500) of the Business and Professions Code or of rendering any such services, but it may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(1) At least one-fourth of all licentiates of the particular profession residing in California become members.

(2) Membership in the nonprofit corporation and an opportunity to render professional services upon a uniform basis are available to all licensed members of the particular profession or, in the case of refractions or eye applicances, to all licentiates expressly authorized by law to render such services.

(3) Voting by proxy and cumulative voting are prohibited.

(4) A certificate is issued to the nonprofit corporation by the particular professional board whose licentiates have become members, finding compliance with the requirements of subdivisions (1), (2), and (3).

(b) Any such nonprofit corporation shall be subject to supervision by the particular professional board under which its members are licensed and shall also be subject to Section [9505] of the Corporations Code.

Comment. Section 5211 continues former Corporations Code Sections 9201 and 9201.1.

Note. A new section number has yet to be assigned to Corporations Code Section 9505 (property subject to supervision by Attorney General).

043/171

§ 5212

Tentatively Approved
February 1976

§ 5212. Legal services corporation

5212. (a) Nonprofit corporations may be formed under this division for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but any such nonprofit corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(1) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Profes-

sional Conduct of the State Bar of California concerning such system or systems.

(2) Membership in the nonprofit corporation and an opportunity to render professional services upon a uniform basis are available to all active members of the State Bar of California.

(3) Voting by proxy and cumulative voting are prohibited.

(4) A certificate is issued to the nonprofit corporation by the State Bar of California finding compliance with the requirements of subdivisions (1), (2), and (3).

(b) Any such nonprofit corporation shall be subject to supervision by the State Bar of California and shall also be subject to Section [9505] of the Corporations Code.

Comment. Section 5212 continues former Corporations Code Section 9201.2.

Note. A new section number has yet to be assigned to Corporations Code Section 9505 (property subject to supervision by Attorney General).

999/552

§ 5213

Tentatively Approved
February 1976

§ 5213. Incorporation of unincorporated association

5213. (a) A corporation may be formed under this division, subject to the requirements of this section, for the purpose of incorporating any existing unincorporated association or

organization. As used in this section, "unincorporated association" includes but is not limited to society, library, school, college, club, church, trustees of a charitable trust, and chamber of commerce.

(b) The articles of incorporation shall set forth the name of the existing unincorporated association.

(c) The articles of incorporation shall be subscribed by the presiding officer or acting presiding officer and the secretary or clerk or similar officer of the association or by at least a majority of its governing board or body, and there shall be attached thereto the affidavit of the subscribing officers, board, or body that the association has duly authorized its incorporation and has authorized said officers, board, or body to execute the articles of incorporation.

(d) The members of the association shall be members of the non-profit corporation so created unless they file their dissent in writing with the secretary thereof.

Comment. Subdivision (a) of Section 5213 continues former Section 9202; subdivision (a) is subject to Section 5210 (proper corporate purposes). Subdivision (b) continues subdivision (f) of former Section 9300; subdivision (b) is in addition to the requirements of Section 5250 (required contents of articles). Subdivision (c) continues subdivision (b) of former Section 9304, with the exception of the acknowledgment requirement, which is omitted as unnecessary; subdivision (c) is an exception to the provisions of Section 5221 (execution of articles). Subdivision (d) continues former Section 9604.

Note. The staff has not yet devised an appraisal remedy for dissenting members of an unincorporated association.

Tentatively Approved
February 1976

§ 5214. Incorporation of subordinate body

5214. (a) A corporation may be formed under this division, 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). The Commission invites comments concerning this subdivision.

Note. The staff has not yet collected for the Comment cases relating to subdivision (d).

Tentatively Approved
February 1976

Article 2. Formation

§ 5220. Nonprofit corporation formed by executing and filing articles

5220. A nonprofit corporation may be formed under this division by executing and filing articles of incorporation.

Comment. Section 5220 supersedes a portion of former Section 9200 which provided that a nonprofit corporation may be formed by three or more persons. Section 5220 deletes the concept of incorporators, who perform no necessary function. One or more initial directors execute and file the articles and are fully empowered to govern the affairs of the nonprofit corporation until the selection of their successors. See Sections 5221 (execution of articles) and 5250 (required contents of articles). For a comparable provision, see Section 200(a) (General Corporation Law).

Tentatively Approved
February 1976

§ 5221. Execution of articles

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

Comment. Section 5221 supersedes former Section 9304(a). Under Section 5221, "other persons desiring to associate with" the first directors are no longer permitted to sign the articles. Section 5221

also eliminates the acknowledgment requirements of former Section 9304(a) since they served no useful purpose. For an exception to the provision of Section 5221, see Sections 5213 (incorporation of unincorporated association) and 5214 (incorporation of subordinate body). For a comparable provision, see Section 200(b)(General Corporation Law).

043/187

§ 5222

Tentatively Approved
February 1976

§ 5222. Filing of articles

5222. The corporate existence begins upon the filing of the articles and continues perpetually unless otherwise expressly provided in the articles.

Comment. Section 5222 is the same in substance as Section 200(c) (General Corporation Law) except that the exception for other laws is not continued because it is inapplicable to nonprofit corporations. Section 5222 supersedes former Section 9304.5. It eliminates the requirement that articles be filed with the county clerk of the county in which the nonprofit corporation is to have its principal office. See Section 5169 ("filed" means filed with Secretary of State). For the duty of the Secretary of State to file and endorse the date of filing on the articles, see Section 5115.

Section 5222, unlike former Section 9304.5, authorizes the nonprofit corporation to limit in the articles the term of its existence. See also Section 5251(b)(1)(permitted contents of articles).

045/196

§ 5223

Tentatively Approved
February 1976

§ 5223. Evidence of corporate formation and existence

5223. For all purposes other than an action in the nature of quo warranto, a copy of the articles of a nonprofit corporation duly certified by the Secretary of State is conclusive evidence of the formation of the corporation and prima facie evidence of its corporate existence.

Comment. Section 5223 is the same in substance as Section 209 (General Corporation Law). It continues former Section 313, which was applicable to nonprofit corporations through former Section 9002. See, e.g., Barber v. Irving, 226 Cal. App.2d 560, 38 Cal. Rptr. 142 (1964); see also Cavin Memorial Corp. v. Regua, 5 Cal. App.3d 345, 85 Cal. Rptr. 107 (1970). For an action in the nature of quo warranto, see Section 803 of the Code of Civil Procedure.

Note. The staff has not yet researched or included in the Comment material relating to the interrelation of this section with the alter ego doctrine.

404/104

§ 5224

Substance Tentatively
Approved February 1976

§ 5224. Additional requirement for charitable corporations

5224. Promptly upon formation, a nonprofit corporation organized for charitable purposes shall send a copy of its articles to the Attorney General.

Comment. Section 5224 is new. It is designed to assist the Attorney General in his supervisory duties under the Uniform Supervision of Trustees for Charitable Purposes Act.

Not Approved; See Minutes
February 1976

Article 3. Powers

§ 5230. Powers of nonprofit corporation

5230. Subject to any limitation provided by statute or in its articles, a nonprofit corporation has the following powers which may be exercised only in furtherance of its corporate purposes:

(a) Adopt, use, and at will alter a corporate seal, but failure to affix a seal does not affect the validity of any instrument.

(b) Adopt, amend, and repeal bylaws.

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

(d) Appoint such subordinate officers, employees, or other agents as the activities of the nonprofit corporation may require and allow them reasonable compensation for services rendered.

(e) Sue and be sued.

(f) Make contracts.

(g) Receive property by devise or bequest and otherwise acquire and hold any real or personal property including shares of stock, bonds, and securities of other corporations and nonprofit corporations.

(h) Act as trustee under any trust incidental to the principal purposes of the nonprofit corporation and receive, hold, administer, and expend funds and property subject to such trust.

(i) Convey, exchange, lease as lessor, mortgage, encumber, transfer upon trust, or otherwise dispose of any real or personal property.

(j) Borrow money, contract debts, and issue bonds, notes, and debentures, and secure the payment or performance of its obligations.

(k) Make charitable contributions.

(l) Participate with others in any partnership, joint venture, or other association, transaction, or arrangement of any kind which the nonprofit corporation would have power to conduct itself, whether or not such participation involves sharing or delegation of control with or to others.

(m) Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the nonprofit corporation.

Comment. Section 5230 empowers a nonprofit corporation to engage in a wide range of activities in furtherance of its corporate purposes. However, as provided by the introductory clause, the listed powers may be subject to limitations provided by other statutes or the nonprofit corporation may restrict the statutory powers available by a provision in its articles. Section 5230 does not substantially alter prior law applicable to nonprofit corporations. See former Section 9501. However, for clarity, several powers which would have been included within the general grant of authority of subdivision (h) of former Section 9501 are listed in this section.

Subdivisions (a) and (b) are the same as subdivisions (a) and (b), respectively, of Section 207 (General Corporation Law). Subdivision (c) is derived from subdivision (e) of former Section 801 (former General Corporation Law) and subdivision (c) of Section 207 (General Corporation Law). Subdivision (d) is based on subdivision (d) of former Section 801 (former General Corporation Law).

Subdivisions (e), (f), (g), (h), (i), and (j) are nearly identical to subdivisions (a), (b), (c), (d), (e), and (f), respectively, of former Section 9501 (former General Nonprofit Corporation Law). It

should be noted that subdivision (h), empowering the nonprofit corporation to act as a trustee, does not excuse compliance with other laws regulating trustees. The language of subdivision (c) of former Section 9501 to the effect that the nonprofit corporation could receive property by devise or bequest "subject to the laws regulating the transfer of property by will" has been omitted from subdivision (g) of Section 5230 because it is superfluous in light of the introductory provision.

Subdivision (k) is derived from subdivision (g) of former Section 802 (former General Corporation Law). Subdivision (l) is based on subdivision (h) of Section 207 (General Corporation Law) but provides a limitation derived from Section 7502(a)(11) of the Pennsylvania Corporation Not-for-profit Code to the effect that the nonprofit corporation may participate in partnerships and the like only when the nonprofit corporation would have power to conduct such activities itself.

Subdivision (m) is identical to subdivision (h) of former Section 9501 (General Nonprofit Corporation Law).

Note. The Comment to this section should refer to Sections 5251(b)(3) (articles may limit powers) and 5250 (corporate powers may be limited in articles).

045/197

§ 5231

Substance Tentatively
Approved February 1976

§ 5231. Defense of ultra vires

5231. (a) No limitation upon the activities, purposes, or powers of the nonprofit corporation or upon the powers of the members, officers, or directors, or the manner of exercise of such powers, contained in or implied by the articles or by Chapters 18, 19, and 20 shall be asserted as between the nonprofit corporation or any member and any

third person, except in a proceeding (1) by a member or the state to enjoin the doing or continuation of unauthorized activities by the nonprofit corporation or its officers, or both, in cases where third parties have not acquired rights thereby, (2) to dissolve the nonprofit corporation, or (3) by the nonprofit corporation or by a member suing in a representative suit against the officers or directors of the nonprofit corporation for violation of their authority.

(b) Any contract or conveyance made in the name of a nonprofit corporation which is authorized or ratified by the board, or is done within the scope of authority, actual or apparent, conferred by the board or within the agency power of the officer executing it, except as the board's authority is limited by law other than this division, binds the nonprofit corporation, and the nonprofit corporation acquires rights thereunder whether the contract is executed or wholly or in part executory.

(c) This section applies to contracts and conveyances made or to be performed by foreign nonprofit corporations in this state and to all conveyances by foreign nonprofit corporations of real property situated in this state.

Comment. Section 5231 is the same in substance as Section 208 (General Corporation Law). It continues provisions of former Section 803 which were applicable to nonprofit corporations through former Section 9002. See, e.g., Osteopathic Physicians & Surgeons v. California Medical Ass'n, 224 Cal. App.2d 378, 36 Cal. Rptr. 641 (1964). For an exception to Section 5231, see Section 5232 (enjoining ultra vires act of charitable corporation).

Note. The staff has not yet:

(1) Drafted provisions relating to dissolution or to foreign non-profit corporations.

(2) Researched whether the board's authority is limited by law outside the General Nonprofit Corporation Law.

(3) Revised subdivision (a) for clarity or researched the meaning of "the state" and "where third parties have acquired rights thereby."

045/198

§ 5232

Tentatively Approved
February 1976

§ 5232. Enjoining ultra vires act of nonprofit corporation holding assets on charitable trust

5232. (a) Notwithstanding Section 5231, in the case of a nonprofit corporation that holds its assets on any charitable trust or that is organized for a charitable purpose, a limitation described in subdivision (a) of Section 5231 may be asserted by a member or director of the nonprofit corporation in an action to enjoin the doing or continuation of unauthorized activities by the nonprofit corporation or its officers, or both, regardless of whether third parties have acquired rights thereby.

(b) In an action under this section, the court may enjoin the performance of a contract if all the parties to the contract are parties to the action and if it is equitable to do so.

Comment. Section 5232 is new; for a comparable provision, see ALI-ABA Model Nonprofit Corporation Act § 6(a). See also Molt v. College of Osteopathic Physicians & Surgeons, 61 Cal.2d 750, 40 Cal. Rptr. 244, 394 P.2d 932 (1964) (minority trustees of charitable corporation may seek to

enjoin unauthorized corporate activity). Section 5232 establishes an exception to the limitations on use of the ultra vires doctrine found in Section 5231.

404/108

§ 5235

Tentatively Approved
February 1976

§ 5235. Power to engage in business activity

5235. (a) Subject to any limitations contained in the articles and applicable laws, a nonprofit corporation may engage in business activity.

(b) Any gain or profit that results from business activity of a nonprofit corporation shall be applied only to lawful activities in furtherance of or incidental to the purposes for which the nonprofit corporation is formed.

Comment. Section 5235 is new.

Subdivision (a) supersedes the portion of the second sentence of former Section 9200 which provided that "carrying on business at a profit as an incident to the main purposes of the corporation" is not forbidden. Subdivision (a) makes clear that a corporation may carry on a business for profit whether or not the business is "incident" to its main purposes. See People ex rel. Groman v. Sinai Temple, 20 Cal. App.3d 614, 99 Cal. Rptr. 603 (1971). For a comparable provision, see Section 206 (General Corporation Law). One major limitation on the business activity of nonprofit corporations is found in subdivision (b).

Subdivision (b) requires that any gains or profits of the business be applied to the purposes of the nonprofit corporation. It should be

noted that a nonprofit corporation may not have as a purpose the distribution of gains, profits, or dividends to members. Section 5210. Nor may a nonprofit corporation distribute any such gains, profits, or dividends to members. Section 5236. Violation of this section may subject the nonprofit corporation or its directors to the following sanctions: [to be supplied].

404/120

§ 5236

Tentatively Approved
February 1976

§ 5236. Distributions to members prohibited

5236. (a) A nonprofit corporation shall not distribute any gains, profits, or dividends to members.

(b) Notwithstanding subdivision (a), a nonprofit corporation may, subject to any limitations in the articles or bylaws, do any of the following, none of which shall be deemed to be a distribution of gains, profits, or dividends:

- (1) Pay compensation to members for services rendered.
- (2) Confer benefits upon members in conformity with the purposes for which it is formed.
- (3) Make distributions to members upon dissolution or winding up to the extent permitted by this division.

Comment. Section 5236 is new; for a comparable provision, see the last portion of Section 26 of the ALI-ABA Model Non-Profit Corporation Act.

Subdivision (a) continues a limitation formerly found in the second sentence of Section 9200. A nonprofit corporation may not be formed for profit-distribution purposes (Section 5210), and this limitation must be stated in the articles. Section 5250. While subdivision (a) continues the limitation of former law that profits, gains, or dividends may not be distributed, this limitation is subject to the provisions of subdivision (b). Violation of this provision may subject the nonprofit corporation or its directors to the following sanctions: [to be supplied].

Subdivision (b) lists major areas of withdrawal of corporate proceeds which do not violate the prohibition of subdivision (a). Paragraph (1) is new; compensation may be limited or precluded in the articles or bylaws. Paragraph (2) supersedes the portion of former Section 9200 permitting the formation of a nonprofit corporation for the purpose of rendering services. It makes clear that a nonprofit corporation may provide benefits to its members without violating the prohibition against distributions of gains, profits, or dividends as such. This codifies case law. People ex rel. Groman v. Sinai Temple, 20 Cal. App.3d 614, 99 Cal. Rptr. 603 (1971) (discount on price of cemetery land to members of nonprofit corporation is proper). Paragraph (3) continues portions of former Section 9200 permitting distributions on dissolution. For limitations on such distributions, see Sections 7030-7037.

Tentatively Approved
February 1976

Article 4. Corporate Name

§ 5240. Reservation of corporate name

5240. (a) Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by this article and, upon the issuance of the certificate, the name stated therein shall be reserved for a period of 60 days.

(b) The Secretary of State shall not issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same nonprofit corporation; nor shall consecutive reservations be made by or for the use or benefit of the same nonprofit corporation of names so similar as to fall within the prohibitions of Section 5241.

Comment. Section 5240 is the same in substance as Section 201(c) (General Corporation Law). It continues provisions of former Section 310 which were applicable to nonprofit corporations through former Section 9002. The fee for a certificate of reservation of corporate name is now four dollars. Govt. Code § 12199.

Note. The staff has not yet resolved the problem that may occur where a corporate name reservation expires during a period of dispute over whether the Secretary of State will file corporate articles.

Tentatively Approved
February 1976

§ 5241. Name which tends to deceive

5241. A nonprofit corporation shall not adopt a name which is the same as, or resembles so closely as to tend to deceive, any of the following:

- (a) The name of a domestic business or nonprofit corporation.
- (b) The name of a foreign business or nonprofit corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101 or 7101.
- (c) A name which a foreign business corporation has assumed under subdivision (b) of Section 2106 or 7106.
- (d) A name which will become the record name of a domestic or foreign business or nonprofit corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or pursuant to Section 5116.
- (e) A name which is under reservation for another business or nonprofit corporation.

Comment. Section 5241 is the same in substance as a portion of Section 201(b) (General Corporation Law). It continues provisions of former Section 310 which were applicable to nonprofit corporations through former Section 9002.

In addition to the prohibitions contained in Section 5241, there may be other applicable name limitations in other statutes. See, e.g., Sections 5243 (names likely to mislead), 12950 (use of word "cooperative"); Fin. Code § 5501 (building and loan and savings and loan associations); 36 U.S.C. § 379 (use of words "Olympic" or "Olympiad").

Note. The staff has not yet considered whether any of these provisions may be extended to associations which have registered with the Secretary of State.

Tentatively Approved
February 1976

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

5242. (a) Notwithstanding Section 5241, a nonprofit corporation may adopt a name that is substantially the same as the name of either of the following:

- (1) An existing domestic business or nonprofit corporation.
- (2) A foreign business or nonprofit corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101 or 7101.

(b) A nonprofit corporation may adopt a name pursuant to subdivision (a) only if both of the following conditions are satisfied:

- (1) The nonprofit corporation proves the consent by the affected domestic or foreign business or nonprofit corporation.
- (2) The Secretary of State finds that, under the circumstances, the public is not likely to be misled.

Comment. Section 5242 is the same in substance as a portion of Section 201(b) (General Corporation Law). It is new to nonprofit corporation law.

Substance Tentatively
Approved February 1976

§ 5243. Name which is likely to mislead or contains the word "charitable"

5243. A nonprofit corporation shall not adopt either of the following:

- (a) A name which is likely to mislead the public.
- (b) A name in which the word "charitable" or its equivalent appears unless the nonprofit corporation is organized for charitable purposes.

Comment. Subdivision (a) of Section 5243 is the same in substance as a portion of Section 201(b) (General Corporation Law). It continues a provision of former Section 310 which was applicable to nonprofit corporations through former Section 9002. This provision supersedes former Section 309, which is continued in the General Corporation Law as Section 201(a). Under the former provision, a nonprofit corporation was precluded from using the terms "bank," "trust," "trustee," or related terms, absent a certificate from the Superintendent of banks. Subdivision (a) likewise precludes such use at least in a context in which it appears that a nonprofit corporation is a banking institution or trust company.

Subdivision (b) of Section 5243 is new. It is a specific application of the general rule stated in subdivision (a). A nonprofit corporation that is organized for charitable purposes must so state in its articles (Section 5250) and is subject to Article 7 (commencing with Section 12580) of Chapter 6 of Part 2 of Division 3 of Title 2 of the Government Code (Uniform Supervision of Trustees for Charitable Purposes Act).

Note. The staff has not yet investigated the advisability of a grandfather clause for those corporations now existing which might violate this section upon its enactment.

Tentatively Approved
February 1976

§ 5244. Sanctions for name violations

5244. (a) The Secretary of State shall not file articles which violate the provisions of this article.

(b) The use by a nonprofit corporation of a name in violation of this article may be enjoined notwithstanding the filing of its articles by the Secretary of State.

Comment. Section 5244 is comparable to portions of Section 201(b) (General Corporation Law). It continues portions of former Section 310, which were applicable to nonprofit corporations through former Section 9002. It should be noted that a nonprofit corporation may not use a name that is deceptively similar to that of a domestic nonprofit association. Law v. Crist, 41 Cal. App.2d 862, 107 P.2d 953 (1941).

Substance Tentatively
Approved February 1976

Article 5. Articles of Incorporation

§ 5250. Required contents of articles

5250. The articles of incorporation shall set forth:

(a) The name of the nonprofit corporation.

(b) That the nonprofit corporation is organized pursuant to the General Nonprofit Corporation Law for any lawful purposes and that the nonprofit corporation shall not distribute gains, profits, or dividends to members except to the extent permitted in the General Nonprofit Corporation Law. If the nonprofit corporation is organized for charitable purposes, the articles shall specifically so state. The articles shall not set forth any further or additional statement with respect to the purposes or powers of the nonprofit corporation except by way of limitation or except as expressly required by any law of this state other than this division or by any federal or other statute or regulation (including the Internal Revenue Code and regulations thereunder as a condition of acquiring or maintaining a particular status for tax purposes).

(c) The names and addresses of one or more persons who are to act in the capacity of initial directors until the election of their successors. These persons may be given such titles as are deemed appropriate, but they shall be subject to all laws of this state relating to directors except as otherwise provided in this division.

Comment. Section 5250 supersedes former Section 9300; for a comparable provision, see Section 202 (General Corporation Law).

Subdivision (a) continues subdivision (a) of former Section 9300. For limitations on corporate names, see Article 4 (commencing with Section 5240).

Subdivision (b) eliminates the requirement of subdivision (b) of former Section 9300 of a statement of specific and primary purposes, but adds the requirement that a nonprofit corporation organized for charitable purposes must specifically so state. See Section 5251(b)(3). Absent a limitation in the articles, a nonprofit corporation may engage in any lawful activity, and Section 5230 confers full corporate powers.

Subdivision (b) also continues the requirement of subdivision (c) of former Section 9300 that the nonprofit corporation state that it is organized under the General Nonprofit Corporation Law and adds the requirement that the articles state that the nonprofit corporation may not make distributions to members except as provided in this division. A nonprofit corporation may be formed for any lawful purpose other than to make such distributions (Section 5210), and such distributions are prohibited except to the extent provided in Section 5236.

Subdivision (c) continues the first two sentences of subdivision (e) of former Section 9300.

Note. The staff has not yet drafted the following provisions:

- (1) Grandfather clause to excuse compliance with newly-required provisions.
- (2) Laws relating to directors and exceptions for first directors named in the articles and possibly relocating the last portion of subdivision (c) among such provisions.
- (3) Designation of initial agent for service of process.

Not Approved; See Minutes
March 1976

§ 5251. Permitted contents of articles

5251. (a) The articles of incorporation may set forth any provision, not in conflict with law, for the management of the activities and for the conduct of the affairs of the nonprofit corporation, including any provision which is required or permitted by this division to be stated in the bylaws.

(b) The following provisions shall not be effective unless expressly provided in the articles:

(1) A provision limiting the duration of the nonprofit corporation's existence to a specified date.

(2) A provision requiring, for any or all corporate actions, the vote of a larger proportion or all of the members or any class of members, or a larger proportion or all of the directors, than is otherwise required by this division.

(3) A provision limiting or restricting the activity in which the nonprofit corporation may engage or the powers which the nonprofit corporation may exercise or both.

(4) Any other provision required by this division to be provided in the articles to be effective.

Comment. Section 5251 supersedes former Section 9303. The pattern of the general Nonprofit Corporation Law is to specify rules regulating the affairs of nonprofit corporations absent contrary provisions in the articles or bylaws. Some of the rules may not be varied, however. See, e.g., Section 5236 (distributions to members prohibited). Other rules may be varied only in the articles; subdivision (b) of Section 5251 relates to rules of this type.

Subdivision (a) is the same in substance as Section 204(d). See also former Sections 9303 and 5261 (contents of bylaws except to the extent expressly provided in the articles).

Subdivision (b)(1) is the same in substance as Section 204(a)(4) (General Corporation Law). See also Section 5222 (corporate existence is perpetual unless otherwise provided in the articles). Subdivision (b)(2) is the same in substance as Section 204(a)(5) (General Corporation Law). It supersedes former Sections 9303 and 3632 (articles may require greater percentage of voting power for adoption of amendments to the articles). See also Section 5920 (vote required in articles). Subdivision (b)(3) is the same in substance as Section 204(a)(6) (General Corporation Law). See also Sections 5250 (articles), 5230 (corporate powers may be limited in articles), and 5235 (right to engage in business activity may be limited in articles). Subdivision (b)(4) is new.

Note. Section 5251 is comparable to Section 204 of the business corporations law. The staff has not, however, completed review of all the provisions of Section 204 to determine if any others should go into Section 5251. In particular, the staff notes that Section 5251(b)(2) might be subject to the exceptions listed in Section 204(a)(5), which preclude higher vote requirements for election and removal of directors and for voluntary dissolution; these matters will be considered independently.

Subdivisions (a) and (b) should be made into separate sections.

Article 6. Bylaws§ 5260. Adoption of bylaws

[NOT YET DRAFTED]

405/368

§ 5261

Tentatively Approved
February 1976§ 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, if any.
- (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).

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).

998/835

§ 5262

Tentatively Approved
February 1976

§ 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 Section _____. See also 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, the rights of a member do not cease on death or other termination. (Section 5406.) 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.

Tentatively Approved
February 1976

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.

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

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. See also Section 5703 (voting of membership held by corporation).

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) (by-law 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. See also Section 5704 (voting of membership held by two or more persons).

Tentatively Approved
February 1976

§ 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.

Tentatively Approved
February 1976

§ 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).

405/407

§ 5403

Tentatively Approved
February 1976.

§ 5403. Reduction of members below stated number

5403. (a) 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.

(b) Unless the articles or bylaws provide otherwise, the surviving or continuing members may, in the absence of a quorum, by majority vote of the surviving or continuing members fill vacancies and continue the corporate existence.

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

405/409

§ 5405

Substance Tentatively
Approved February 1976

§ 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 membership certificate which is transferable and which represents an ownership interest in the nonprofit corporation.

Comment. Section 5405 continues the substance of former Section 9607, making clear that the limitation of subdivision (b) applies only to certificates of ownership.

405/410

§ 5406

Not Approved; See Minutes
February 1976

§ 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.

Tentatively Approved
February 1976

§ 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) Where the articles or bylaws provide for transfer of the membership or any right arising therefrom, they may also provide that the nonprofit corporation is not bound by the transfer until notice is received in the manner specified in the articles or bylaws.

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.

Substance Tentatively
Approved February 1976

§ 5408. Withdrawal of members

5408. (a) Unless the articles or bylaws provide a procedure for withdrawal of members, a member may surrender membership upon 30 days' written notice to the nonprofit corporation.

(b) Unless the articles or bylaws otherwise provide, surrender of membership terminates all future rights, powers, and obligations of the membership, but it does not terminate the member's liability for dues, assessments, and charges incurred prior to surrender.

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.

101/141

§ 5409

Tentatively Approved
February 1976

§ 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.

101/142

§ 5410

Tentatively Approved
February 1976

§ 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 bylaws authorizing the levy of dues or assessments.

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

Tentatively Approved
February 1976

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.

Note. The staff has not yet drafted provisions to permit members to avoid the effect of unduly burdensome assessments by withdrawal or otherwise.

Tentatively Approved
March 1976

CHAPTER 8. MEMBERS' DERIVATIVE ACTIONS

Article 1. Right to Bring Derivative Action

§ 5810. Right of member to bring derivative action

5810. A member of a domestic or foreign nonprofit corporation may institute and maintain an action in the right of the nonprofit corporation only as provided in this chapter.

Comment. Section 5810 makes explicit the right of a member of a nonprofit corporation to bring a derivative suit. Before the enactment of this chapter, Section 834 of the former General Corporation Law (predecessor of Section 800 of the new General Corporation Law) governed such actions in the right of nonprofit corporations. See former Sections 103 ("shareholder" includes "member") and 9002 (incorporating provisions of General Corporation Law). See also Ashton v. Dashaway Ass'n, 81 Cal. 61, 22 P. 660 (1890). References in Section 800 to voting trusts and voting trust certificates have not been continued in this chapter because the General Nonprofit Corporation Law does not provide for voting trusts.

Note. The staff will give further consideration to the inclusion of foreign nonprofit corporations in this section when we consider the general subject of foreign nonprofit corporations.

404/340

§ 5811

Substance Tentatively
Approved March 1976

§ 5811. Action by member; contemporaneous membership rule

5811. An action may be brought pursuant to this chapter only by a plaintiff who satisfies both of the following requirements:

(a) That the plaintiff is a member of the nonprofit corporation at the time the action is commenced.

(b) Except as otherwise provided in Section 5812, that the plaintiff was a member of the nonprofit corporation at the time of the transaction (or any part thereof) complained of or holds a membership which devolved upon the plaintiff by operation of law from a person who was a member at such time.

Comment. Section 5811 is based on a portion of subdivision (b)(1) of Section 800 of the General Corporation Law and subdivision (a)(1) of former Section 834. Section 5811, however, states its rules in substantive rather than procedural form.

404/341

§ 5812

Substance Tentatively
Approved March 1976

§ 5812. Exception to contemporaneous membership rule; notice and hearing

5812. (a) A plaintiff who does not satisfy the requirement of subdivision (b) of Section 5811 may be permitted to maintain an action under this chapter if the plaintiff shows and the court determines that all of the following conditions exist:

(1) There is a strong prima facie case in favor of the claim asserted on behalf of the nonprofit corporation.

(2) No other similar action has been or is likely to be instituted.

(3) The plaintiff acquired the membership before there was disclosure to the public or to the plaintiff of the alleged wrongdoing.

(4) Unless the action can be maintained, the defendant may retain a gain derived from the defendant's alleged willful breach of a fiduciary duty.

(5) The requested relief will not result in unjust enrichment of the nonprofit corporation or any member of the nonprofit corporation.

(b) The court's determinations shall be made at a preliminary hearing held on noticed motion.

Comment. Section 5812 provides an exception to the contemporaneous membership rule provided in subdivision (b) of Section 5811. Section 5812 is substantively the same as a portion of subdivision (b)(1) of Section 800 of the General Corporation Law. The procedure normally applicable to noticed motions applies to motions under this section; hence, the provision in subdivision (b)(1) of Section 800 concerning the nature of the evidence at the hearing has not been continued.

Substance Tentatively
Approved March 1976

Article 2. Preconditions to Derivative Action

§ 5820. Effort to secure action from board; exception

5820. (a) Before bringing an action pursuant to this chapter, the plaintiff shall make an effort to secure from the board the action the plaintiff desires unless such effort would be futile.

(b) Such efforts or the reasons for not making them shall be alleged with the particularity in the complaint.

Comment. Section 5820 is based on a portion of subdivision (b)(2) of Section 800 of the General Corporation Law and subdivision (a)(2) of former Section 834. Like Section 5811, subdivision (a) of Section 5820 is stated as a substantive rather than a procedural rule. Subdivision (b) continues the requirement of subdivision (b)(2) of Section 800 that the efforts to secure the desired action from the board be stated with particularity in the complaint.

Substance Tentatively
Approved March 1976

§ 5821. Notice to nonprofit corporation of cause of action

5821. Before bringing an action pursuant to this chapter, the plaintiff shall do either of the following:

(a) Inform the nonprofit corporation or the board in writing of the ultimate facts of each cause of action against each defendant.

(b) Deliver to the nonprofit corporation or the board a true copy of the complaint that the plaintiff proposes to file.

Comment. Section 5821 is based on a portion of subdivision (b)(2) of Section 800 of the General Corporation Law and subdivision (a)(2) of former Section 834. Like subdivision (a) of Section 5811, Section 5821 is stated in substantive rather than procedural form.

Substance Tentatively
Approved March 1976

Article 3. Security for Defendant's Expenses; Exception

§ 5830. Motion for security for defendant's expenses; extension of time

5830. (a) Except as otherwise provided in Section 5839, in an action pursuant to this chapter, at any time within 30 days after service of summons upon the nonprofit corporation or upon a defendant who is an officer or director of the nonprofit corporation or held such office at the time of the transaction complained of, the nonprofit corporation or such other defendant may move the court for an order requiring the plaintiff to furnish security for the reasonable expenses, including attorney's fees [and expenses for which the nonprofit corporation may become liable pursuant to Section _____], that may be incurred by the moving party in connection with the action as provided in this article.

(b) On application of the nonprofit corporation or such other defendant, the court may, for good cause shown, extend the 30-day period provided by subdivision (a) for an additional period or periods not exceeding 60 days.

Comment. Subdivision (a) of Section 5830 is the same in substance as a portion of subdivision (c) of Section 800 of the General Corporation Law. Section 5839, which is noted in the introductory phrase of subdivision (a), makes the motion procedure inapplicable where the action is brought by 50 members or at least 10 percent of the members, whichever number is smaller.

Subdivision (b) is the same in substance as the last sentence of subdivision (c) of Section 800 of the General Corporation Law and the last sentence of subdivision (b) of former Section 834.

See Section 5838 (bond to avoid motion proceedings).

Note. The blank section reference in subdivision (a) is intended to hold a place until the provisions concerning indemnification of officers and directors are considered.

404/960

§ 5831

Substance Tentatively
Approved March 1976

§ 5831. Grounds of motion for security

5831. (a) A motion by the nonprofit corporation shall be made upon the grounds that there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against the nonprofit corporation will benefit the nonprofit corporation or its members.

(b) A motion by a defendant who is an officer or director or held such office at the time of the transaction complained of shall be made upon either or both of the following grounds:

(1) That there is no reasonable possibility that the prosecution of the cause of action alleged in the complaint against such defendant will benefit the nonprofit corporation or its members.

(2) That such defendant did not participate in the transaction complained of in any capacity.

Comment. Section 5831 is the same in substance as a portion of subdivision (c) of Section 800 of the General Corporation Law and a portion of subdivision (b) of former Section 334. Section 5831 makes more specific the nature of the showing required to be made by each type of defendant in order to prevail on the motion for security under this article.

Substance Tentatively
Approved March 1976

§ 5832. Hearing and determination of motion; amount of security.

5832. (a) If the court, after the hearing on the motion, determines that the grounds for the motion have been established, the court shall order the plaintiff to furnish security.

(b) The security shall be in an amount equal to the probable reasonable expenses, including attorney's fees [and, in the case of the nonprofit corporation, expenses for which the nonprofit corporation may become liable pursuant to Section ____], that the prevailing moving party has shown it will have incurred by the conclusion of the action.

(c) The amount of the security shall not exceed fifty thousand dollars (\$50,000) in the aggregate for all defendants.

Comment. Section 5832 is based on portions of subdivision (d) of Section 800 of the General Corporation Law. The grounds of the motion are stated in Section 5831. Subdivision (a) of Section 5832 differs from subdivision (d) of Section 800 in that it does not contain specific provisions for taking evidence since it is contemplated that general law regarding noticed motions applies. Hence, at the hearing, the usual showing is by affidavits or declarations, although the court may receive oral and documentary evidence as well. 4 B. Witkin, California Procedure, Proceedings Without Trial, §§ 24-25, at 2693-2694 (2d ed. 1971).

Subdivision (b) makes clear that, in order to have recourse to the security, the nonprofit corporation must be a prevailing moving party. See Section 5836; compare Section 800. [Section ____, referred to in this subdivision, provides for indemnification of officers, directors, and agents of the nonprofit corporation.]

Subdivision (c) provides a maximum amount of security that may be required of the plaintiff and is the same as the limit provided by subdivision (d) of Section 800.

101/161

§ 5833

Substance Tentatively
Approved March 1976

§ 5833. Increase or decrease of security; noticed motion; maximum amount

5833. (a) The amount of the security initially determined may be increased or decreased by the court, after further hearing upon noticed motion, if the court determines that the security has or may become inadequate or excessive.

(b) The court may not in any event increase the total amount of the security beyond fifty thousand dollars (\$50,000) in the aggregate for all defendants.

Comment. Section 5833 is the same in substance as a portion of subdivision (d) of Section 800 of the General Corporation Law. See Comment to Section 5832.

405/436

§ 5834

Staff Draft

§ 5834. Time for furnishing security; effect of failure to furnish

5834. (a) The plaintiff required to furnish security or increase the amount of the security shall do so not later than 20 days after service of the court's order or within such other reasonable time as the court may order.

(b) If the plaintiff does not comply with subdivision (a), the action shall be dismissed as to the defendant in whose favor the order requiring the security was made.

Comment. Section 5834 is based on a portion of subdivision (d) of Section 800 of the General Corporation Law but makes a clarifying change and an addition. Subdivision (a) provides that the plaintiff has 20 days within which to furnish security where the court does not specify some other reasonable time. Section 800 provides only for a reasonable time to be set by the court. Subdivision (a) also makes clear that the time limit for furnishing the security applies where an order increasing the amount of the security is made pursuant to Section 5833. If the court authorizes the undertaking to be decreased under Section 5833, compliance by the plaintiff is optional.

Subdivision (b) is the same in substance as a portion of subdivision (d) of Section 800.

405/434

§ 5835

Staff Draft

§ 5835. Stay of proceedings

5835. If a motion is filed pursuant to this article, no pleadings need be filed by the nonprofit corporation or any other defendant and the prosecution of the action is thereby stayed until 10 days after the motion is denied or, if granted, until 10 days after the required security has been furnished and the defendant has been given written notice thereof.

Comment. Section 5835 continues the provisions of subdivision (f) of Section 800 of the General Corporation Law for an automatic stay for 10 days and for postponement of the filing of pleadings by the defendants but varies in several respects. Section 5835 provides that, where the motion for security is granted, the 10-day stay period runs from the

time when security is furnished and the defendant has received notice thereof. Where the motion is granted but the plaintiff fails to furnish security within the allotted time, the action is dismissed. See Section 5834.

405/435

§ 5836

Tentatively Approved
March 1976

§ 5836. Recourse to security

5836. The prevailing moving party shall have recourse to the security upon the termination of the action in an amount determined by the court at a hearing upon noticed motion.

Comment. Section 5836 is based on a portion of subdivision (d) of Section 800 of the General Corporation Law. Section 5836, however, makes clear that only parties who prevailed on the motion may have recourse to the security and that the court makes its determination on noticed motion.

405/437

§ 5837

Tentatively Approved
March 1976

§ 5837. Effect of court's determinations

5837. The determinations of the court under this article have no effect on the determination of any issues on the merits of the action.

Comment. Section 5837 is the same in substance as a portion of subdivision (d) of Section 800 of the General Corporation Law.

100/933

§ 5838

Staff Draft

§ 5838. Bond to avoid motion proceedings

5838. If at any time the plaintiff posts a good and sufficient bond in the aggregate amount of fifty thousand dollars (\$50,000) to secure the reasonable expenses, including attorney's fees, of the parties entitled to make a motion pursuant to this article, the plaintiff shall be deemed to have complied with this article and with any order for security made hereunder. Any pending motion for security shall be dismissed and no further or additional bond or other security may be required.

Comment. Section 5838 is the same in substance as subdivision (e) of Section 300 of the General Corporation Law.

100/968

§ 5839

Staff Draft

§ 5839. Exception to security for defendant's expenses

5839. If an action is brought pursuant to this chapter by at least 50 members or at least 10 percent of the members, whichever number is smaller, the plaintiffs shall not be required to furnish security for the defendant's expenses.

Comment. Section 5839 permits plaintiffs who meet the stated numerical requirements to avoid having to furnish security for the defendant's expenses under this article. This section has no predecessor in California law but is similar to Section 7765 of the Pennsylvania Corpo-

ration Not-for-profit Code. Of course, all such plaintiffs must satisfy the requirements of Article 1 (commencing with Section 5810) and Article 2 (commencing with Section 5820) of this chapter.

Note. This section was considered at the March 1976 meeting, but no decision was reached.

Tentatively Approved
March 1976

Article 4. Discontinuation of Derivative Action

§ 5840. Discontinuation of action; court approval

5840. An action brought pursuant to this chapter shall not be dismissed, discontinued, compromised, or settled without the approval of the court.

Comment. Section 5840 codifies the rule stated in Ensher v. Ensher, Alexander & Barsoom, Inc., 187 Cal. App.2d 407, 9 Cal. Rptr. 732 (1960).

Tentatively Approved
March 1976

CHAPTER 9. AMENDMENT OF ARTICLES

Article 1. Purposes of Amendments

§ 5910. Permissible amendments of articles

5910. (a) By complying with the provisions of this chapter, a non-profit corporation may amend its articles from time to time, in any and as many respects as may be desired, so long as its articles as amended contain only such provisions as it would be lawful to insert in original articles filed at the time of the filing of the amendment.

(b) It is the intent of the Legislature in adopting this section to exercise to the fullest extent the reserve power of the state over non-profit corporations and to authorize any amendment of the articles covered by subdivision (a) regardless of whether any provision contained in the amendment was permissible at the time of the organization of the nonprofit corporation.

Comment. Section 5910 is the same in substance as Section 900(a) (General Corporation Law). It supersedes former Sections 3600-3602, which were applicable to nonprofit corporations through former Section 9305.

Tentatively Approved
March 1976

§ 5911. Amendments to delete initial directors and initial agent

5911. Notwithstanding Section 5910, a nonprofit corporation shall not amend its articles to alter the statement in the original articles of the name and address of an initial director or the name and address of the initial agent for service of process except to correct an error in the statement or to delete either statement after the nonprofit corporation has filed a statement under Section 6502.

Comment. Section 5911 is the same in substance as Section 900(b) (General Corporation Law). It supersedes former Section 3603, which was applicable to nonprofit corporations through former Section 9305. A correction of an error in the articles may be made by a certificate of correction. See Article 2 (commencing with Section 5050) of Chapter 1.

Note. The content of Section 6502 has not yet been precisely determined.

Tentatively Approved
March 1976

§ 5912. Extension of corporate existence

5912. (a) A nonprofit corporation formed for a limited period may at any time subsequent to the expiration of the term of its corporate existence, if it has continuously acted as a nonprofit corporation and conducted activity as such, extend the term of its existence by an

amendment to its articles removing any provision limiting the term of its existence and providing for perpetual existence.

(b) The certificate of amendment shall set forth that the nonprofit corporation continuously acted as a nonprofit corporation and conducted activities as such from the expiration of its term of corporate existence to the date of the amendment.

(c) For the purpose of the adoption of an amendment described in subdivision (a), persons who have been functioning as directors of the nonprofit corporation shall be considered to have been validly elected even though their election may have occurred after the expiration of the original term of the corporate existence.

(d) If the filing of the certificate of amendment providing for perpetual existence would be prohibited by the provisions of Article 4 (commencing with Section 5240) of Chapter 2 if it were original articles, the Secretary of State shall not file the certificate unless by the same or a concurrently filed certificate of amendment the articles of the nonprofit corporation are amended to adopt a new available name.

Comment. Section 5912 is the same in substance as Section 909 (General Corporation Law). It supersedes former Sections 3700-3703, which were applicable to nonprofit corporations through former Section 9305.

Unlike the former provisions, Section 5912 applies only to extensions of corporate existence made after expiration of the nonprofit corporation's term of existence; extensions prior to expiration are made pursuant to the general amendment provisions of this chapter. The vote required to amend the articles to extend corporate existence is the vote required for other amendments to the articles. Contrast former Section 3701.

Not Approved; See Minutes
March 1976

§ 5913. Amendment of articles of charitable corporation

5913. If a nonprofit corporation holds assets on a charitable trust or is organized for charitable purposes, the nonprofit corporation shall give written notice to the Attorney General of any proposed amendment of the articles to alter any of the following provisions:

- (a) The name of the nonprofit corporation.
- (b) The purposes for which the nonprofit corporation is organized.
- (c) The law under which the nonprofit corporation is organized.

Comment. Section 5913 is new. Compare former Section 3602(b) (limitation on amendment of articles to exist under a law other than the law under which a corporation was organized or exists). It is designed to assist the Attorney General in enforcement of its supervisory duties over charitable trusts.

Note. Further information concerning the meaning of subdivision (c) is necessary.

Tentatively Approved
March 1976

Article 2. Adoption and Approval of Amendments

§ 5920. Vote required in articles

5920. Notwithstanding any other provision of this article, where the articles set forth a provision requiring the vote of a larger proportion or all of the members or any class of members, or a larger proportion or all of the directors, than is otherwise required by this article for approval of any amendment of the articles or amendments of particular kinds or for particular purposes, the amendment shall be adopted only with the approval so required.

Comment. Section 5920 supersedes the last paragraph of former Section 3632, which was applicable to nonprofit corporations through former Sections 9303 and 9305. See Section 5251(b)(2) (permitted contents of articles).

Note. AB 2849 (clean-up bill) would add a new provision to require that any provision of the articles imposing a larger than ordinary vote requirement for corporate action may be amended only by the same larger than ordinary vote. We will follow the progress of the proposed amendment.

368/239

§ 5921

Not Approved; See Minutes
March 1976

§ 5921. Adoption of amendments before members admitted

5921. Before any members have been admitted or where the nonprofit corporation has, in fact, no members other than the persons constituting

its board of directors, an amendment of the articles may be adopted by a writing signed by a majority of the directors.

Comment. Section 5921 supersedes provisions applicable to non-profit corporations by former Section 3630 through former Section 9305. For a comparable provision, see Section 901 (General Corporation Law).

Unlike the former provision, Section 5921 permits adoption of amendments by directors rather than incorporators and permits adoption by majority rather than two-thirds vote.

Note. The need for this section should be reviewed in light of the general provisions relating to directors exercising the rights of members where there are no other members.

368/240

§ 5922

Not Approved; See Minutes
March 1976

§ 5922. Adoption of amendments by board and members

5922. (a) An amendment of the articles may be adopted if approved by the board and by the members entitled to vote thereon. Approval of the members may be either before or after the approval of the board.

(b) Approval of the members shall be by a majority of the votes cast but in no case by a vote of less than two-thirds of a quorum required for a meeting of members.

Comment. Section 5922 continues and clarifies the portion of the first paragraph of former Section 3632 that related to nonprofit corporations. For a comparable provision, see Section 902(a) (General Corporation Law). The phrase "approved by (or approval of) the board" is defined in Section 5151.

Note. The Comment should cross-refer to the quorum provisions.

999/312

§ 5923

Tentatively Approved
March 1976

§ 5923. Adoption of amendments by board alone

5923. Notwithstanding Section 5922, the following amendments may be adopted with approval of the board alone:

- (a) An amendment deleting the name and address of an initial director.
- (b) An amendment deleting the name and address of the initial agent for service of process.

Comment. Section 5923 is the same in substance as Section 902(c) (General Corporation Law). An amendment described in this section may not be made unless the nonprofit corporation has filed a statement under Section 6502. See Section 5911. The phrase "approval of the board" is defined in Section 5151.

Note. Subdivision (b) of Section 902 (General Corporation Law) permits amendment by approval of the board alone in cases of corporations organized prior to August 14, 1929; the staff has not been able to discern the reason for this provision but plans to communicate with the State Bar Committee concerning it.

368/243

§ 5924

Tentatively Approved
March 1976

§ 5924. Adoption of amendments by policymaking committee

5924. (a) If the bylaws of a nonprofit corporation so provide and if consistent with the articles, any member action required for the adoption of an amendment to the articles may be taken by the vote of at least two-thirds of the members of a policymaking committee.

(b) The policymaking committee shall be created by the members of the nonprofit corporation to represent and act for the members in this matter, with or without authority to represent and act for the members in other matters. Only members of the nonprofit corporation who are representative of the membership shall serve on the committee.

Comment. Section 5924 continues former Section 3632.5, adding the requirement that the committee members be representative.

Note. Whether the term "vote" is used properly here as a defined term is to be investigated.

368/244

§ 5925

Tentatively Approved
March 1976

§ 5925. When class vote required

5925. (a) A proposed amendment of the articles or bylaws must be approved by vote of not less than a majority of the votes cast by members of a class, whether or not the class is entitled to vote thereon by provisions of the articles or bylaws, if the amendment would adversely affect the property, voting, or other rights or interests of the members of the class to a greater extent than members of other classes.

(b) In addition to approval by a class as provided in subdivision (a), a proposed amendment of the articles or bylaws must also be approved as required by statute.

Comment. Section 5925 is new; for a comparable provision, see Section 903 (General Corporation Law).

Subdivision (a) requires a class vote in cases where an amendment of the articles or bylaws would adversely affect members of a particular class to a greater extent than members of other classes. Such an amendment might have an adverse effect either directly through restrictions on class rights and privileges or indirectly through increase of rights and privileges of other members or creation of new memberships that will have the effect of diluting the rights of the class members.

Subdivision (b) makes clear that class approval of adverse amendments is not alone sufficient for adoption of the amendments. The amendments must meet the other statutory requirements for approval. See, e.g., Sections [9400] (adoption of bylaw amendments) and 5922 (adoption of articles amendments).

368/245

§ 5930

Tentatively Approved
March 1976

Article 3. Certificates of Amendment

§ 5930. Certificate of amendment

5930. Upon adoption of an amendment of the articles, the nonprofit corporation shall file a certificate of amendment.

Comment. Section 5930 supersedes former Section 3670, which was applicable to nonprofit corporations through former Section 9305.

Note. The staff has not yet collected cases for inclusion in the Comment relating to the effect of delay or failure to file certificates of amendment.

368/246

§ 5931

Tentatively Approved
March 1976

§ 5931. Contents of certificate of amendment

5931. The certificate of amendment shall consist of an officers' certificate, which shall state the following:

(a) The wording of the amendment or amended articles in accordance with Section 5932.

(b) That the amendment was approved by the required number of directors in accordance with Article 2 (commencing with Section 5920). If the amendment is one which may be adopted by the board alone, a statement of the facts entitling the board alone to adopt the amendment.

(c) If the amendment is one for which the approval of the members is required, the applicable one of the following:

(1) That the amendment was approved by the required number of members in accordance with Article 2 (commencing with Section 5920).

(2) That the amendment was approved by the required number of members of a representative policymaking committee in accordance with Section 5925.

(3) If the amendment was one for which the approval of a class of members was also required, in addition to the information in paragraph (1) or (2), that the number of members of the class voting in favor of the amendment equaled or exceeded the vote required.

Comment. Section 5931 is comparable to Sections 905 and 906 (General Corporation Law). It supersedes former Sections 3671 and 3672, which were applicable to nonprofit corporations through former Section 9305. Section 5931 omits some of the requirements of the former sections for the contents of the certificate of amendment, including a statement of the time and place of the meeting at which the resolution adopting the amendment was approved and the number of members voting in favor of the resolution. The phrase "officers' certificate" is defined in Section 5173.

Note. Section 905 of the business corporations law provides an exception for amendments of the articles pursuant to a merger; we will deal with this when we consider mergers.

368/247

§ 5932

Tentatively Approved
March 1976

§ 5932. Certificate of amendment to establish wording of amendment

5932. The certificate of amendment shall establish the wording of the amendment or amended articles by one or more of the following means:

(a) By stating that the articles shall be amended to read as therein set forth in full.

(b) By stating that any provision of the articles, which shall be identified by the numerical or other designation given it in the articles or by stating the wording thereof, shall be stricken from the articles or shall be amended to read as set forth in the certificate.

(c) By stating that the provision set forth therein shall be added to the articles.

Comment. Section 5932 is the same in substance as a portion of Section 907 (General Corporation Law). It supersedes former Section 3631, which was applicable to nonprofit corporations through former Section 9305.

368/248

§ 5933

Tentatively Approved
March 1976

§ 5933. Effect of filing certificate of amendment

5933. (a) Upon filing the certificate of amendment, the articles are amended in accordance with the certificate.

(b) A copy of the certificate of amendment, certified by the Secretary of State, is prima facie evidence of the performance of the conditions necessary to the adoption of the amendment.

Comment. Section 5933 is the same in substance as Section 908 (General Corporation Law). It continues former Section 3673, which was applicable to nonprofit corporations through former Section 9305.

368/249

§ 5940

Tentatively Approved
March 1976

Article 4. Restatement of Articles

§ 5940. Restated articles

5940. A nonprofit corporation may restate in a single certificate the entire text of its articles as amended by filing an officers' certificate entitled "Restated Articles of Incorporation of _____ (insert name of nonprofit corporation)."

Comment. Section 5940 is the same in substance as Section 910(a) (General Corporation Law). It continues a portion of the first paragraph of former Section 3800, which was applicable to nonprofit corporations through former Section 9305.

368/250

§ 5941

Tentatively Approved
March 1976

§ 5941. Contents of restated articles

5941. The certificate of restated articles shall set forth the articles as amended to the date of the certificate except that:

(a) The certificate shall omit the signatures of the initial directors and, after the nonprofit corporation has filed a statement under Section 6502, the names and addresses of the initial directors and of the initial agent for service of process. Such omissions are not alterations or amendments of the articles.

(b) The certificate may also itself alter or amend the articles in any respect, in which case the certificate must comply with Article 3 (commencing with Section 5930).

Comment. Section 5941 is the same in substance as Section 910(a) (General Corporation Law). It supersedes a portion of the first paragraph of former Section 3800, which was applicable to nonprofit corporations through former Section 9305. Unlike the former provision, Section 5941 requires the restated articles to omit the signatures of initial directors and the names and addresses of initial directors and initial agent for service of process.

Note. Section 910(a) of the business corporations law permits the restated articles to omit provisions of agreements of merger (other than amendments to the articles of the surviving corporation). We will consider this matter in connection with merger generally.

The content of Section 6502 has not yet been precisely determined.

368/251

§ 5942

Tentatively Approved
March 1976

§ 5942. Approvals required for restated articles

5942. (a) If the certificate of restated articles does not itself alter or amend the articles in any respect, it shall be approved by the board and shall be subject to the provisions of this chapter relating to an amendment of the articles which may be adopted by the board alone.

(b) If the certificate of restated articles does itself alter or amend the articles, it shall be subject to the provisions of this chapter relating to the amendment or amendments so made.

Comment. Section 5942 is the same in substance as Section 910(b) (General Corporation Law). It supersedes the second paragraph of former Section 3800, which was applicable to nonprofit corporations through former Section 9305. The phrase "approved by the board" is defined in Section 5151.

368/252

§ 5943

Tentatively Approved
March 1976

§ 5943. Effect of restated articles

5943. Restated articles filed pursuant to this article shall supersede for all purposes the original or previously restated articles and all amendments filed prior to the filing of the restated articles.

Comment. Section 5943 is the same in substance as Section 910(d) (General Corporation Law). It supersedes former Section 3802, which was applicable to nonprofit corporations through former Section 9305.

Note. The meaning of the phrase "for all purposes," and its effect on the original date of incorporation, have not yet been ascertained.

405/998

§ 6510

Substance Tentatively Approved
March 1976

CHAPTER 15. RECORDS AND REPORTS

Article 1. Books and Records Generally

§ 6510. Required books and records

6510. Each nonprofit corporation shall keep:

- (a) Adequate and correct books and records of account.
- (b) Minutes of the proceedings of its members, board, and committees of the board.
- (c) A record of its members, which shall include (1) the name and address of each member, (2) where a member may hold more than one membership, the number of memberships held by each member, (3) where there is more than one class of memberships, the class of each membership held by each member, and (4) the date when the holder became a holder of record of each membership.
- (d) A record of the termination of each membership, together with the date of termination, so long as such a record is necessary to determine those members entitled to vote or otherwise to participate in the affairs of the nonprofit corporation.
- (e) A record of the holders of capital certificates, which shall include (1) the name and address of each holder, (2) the number and amount of capital certificates held by each holder, and (3) the date when the holder became a holder of record of each capital certificate.

Comment. Section 6510 is comparable to the first sentence of Section 1500.

Subdivision (c) is drawn from Section 1500 and from Section 621(a) of the New York Not-for-Profit Corporation Law. Subdivision (c)(4),

which requires that the record of members show the date when the member became the holder of record of the membership, is taken from the New York section; this is a new requirement for nonprofit corporations, and no comparable requirement is found in Section 1500.

Subdivision (d), which requires that a record of termination of memberships be retained so long as such a record is needed for the purposes of the nonprofit corporation, is drawn from former Section 9606 which applied to nonprofit corporations. However, Section 9606 apparently required that the record of termination of memberships be retained forever.

The record of the date when a member became a holder of record and the record of termination of memberships are required primarily so that the record of members will be sufficient to determine the members as of any relevant record date. See Section [provision comparable to Section 701 of the General Corporation Law].

Subdivision (e) is new. For the provisions relating to capital certificates, see Sections [to be supplied later].

Policy Issues:

- (1) Should the record of termination of memberships, and date of termination, be continued as provided in subdivision (d)? Decision: Yes.
- (2) Should the section impose a new requirement that the record indicate the date when each member became a holder of record? Decision: Yes.

Background: Memorandum 76-26

Cross-Reference:

Bylaws, place where kept, § 5213

Note: The provision relating to capital certificates will be retained only if the Commission determines to provide for capital certificates. This matter has not yet been considered.

405/756

§ 6511 - subdivision (a)

Tentatively Approved
March 1976

§ 6511 - subdivision (b)
Staff draft - not previously
considered

§ 6511. Form of records; place where kept

6511. (a) The minutes shall be kept in written form. The other books and records required by Section 6510 shall be kept either in written form or in any other form capable of being converted into written form.

(b) The records described in subdivisions (c) and (d) of Section 6510 shall be kept by the nonprofit corporation at its principal executive office or at the office office of its registrar.

Comment. Subdivision (a) of Section 6511 is the same in substance as the last two sentences of Section 1500. Sections 6510 and 6511 supersede former Section 9606 which required every nonprofit corporation to keep a "membership book." Nothing in this article prevents a nonprofit corporation from continuing to keep its record of members in a membership book. However, Section 6511 permits the membership record to be kept in any other written form or in any other form capable of being converted into written form. Whatever the form of the membership record, the record must be sufficient to determine the information required by subdivisions (c) and (d) of Section 6510 as of any relevant record date. See Section [provision comparable to Section 701 of General Corporation Law].

Subdivision (b) is consistent with Section 1500.

Cross-Reference:

Duty to convert records into written form, § 6612

Tentatively Approved
March 1976

§ 6512. Information to assessor

6512. Upon request of an assessor, a domestic or foreign nonprofit corporation owning, claiming, possessing, or controlling property in this state subject to local assessment shall make available at the nonprofit corporation's principal office in California or at a place mutually acceptable to the assessor and the nonprofit corporation a true copy of the records relevant to the amount, cost, and value of all property that it owns, claims, possesses, or controls within the county.

Comment. Section 6512 is the same in substance as Section 1506.

Policy Issue:

Is this section needed for nonprofit corporations? Decision: Yes

Background: Memorandum 76-26

Tentatively Approved
March 1976

§ 6513. Liability for false report, record, or entry

6513. An officer, director, employee, or agent of a nonprofit corporation who does any of the following is liable jointly and severally for all the damages resulting therefrom to the nonprofit corporation or to any person injured thereby who relied thereon or to both:

(a) Makes, issues, delivers, or publishes any report, circular, certificate, financial statement, balance sheet, public notice, or document respecting the nonprofit corporation or its memberships, assets, liabilities, capital, activities, revenues, receipts, or accounts which is false in any material respect, knowing it to be false, or participates in the making, issuance, delivery, or publication thereof with knowledge that the same is false in a material respect.

(b) Makes or causes to be made in the books, minutes, records, or accounts of a nonprofit corporation any entry which is false in any material particular knowing such entry is false.

(c) Removes, erases, alters, or cancels any entry in any books or records of the nonprofit corporation, with intent to deceive.

Comment. Section 6513 is the same in substance as Section 1507 except for changes made to reflect the fact that a nonprofit corporation does not issue shares of stock.

Background: Memorandum 76-26

Tentatively Approved
March 1976

Article 2. Annual Report; Financial Statements

§ 6520. Annual report required unless bylaws otherwise provide

6520. Except to the extent the bylaws otherwise provide, a nonprofit corporation is subject to the requirements of Sections 6521 to 6526, inclusive.

Comment. Section 6520 makes the provisions of this article relating to annual reports applicable to nonprofit corporations except to the extent the bylaws contain inconsistent provisions. Thus, for example, the bylaws may dispense entirely with the requirement of an annual report or may provide for an annual report that contains different or more or less information than is required by this article. Likewise, the bylaws may require that a copy of the annual report be mailed to each member rather than be presented at the annual meeting of members as required by this article. As to the application of this article to foreign nonprofit corporations, see Section 6530 and Section [2115].

Background: Memorandum 76-26

Cross-Reference:

Bylaws, provisions concerning annual report, § ____ [provision based on Section 212(b)(8)]

Tentatively Approved
March 1976

§ 6521. Presentation of annual report

6521. The board shall prepare and present at the annual meeting of members an oral or written annual report as provided in this article. The annual report, if written, shall be filed with the records of the nonprofit corporation. Either a copy or a summary of the annual report shall be entered in the minutes of the proceedings of the annual meeting of members.

Comment. Section 6521 requires an annual report unless this requirement is waived in the bylaws. See Section 6520. Section 6521 is comparable to subdivision (a) of Section 1501, which applies to business corporations, but the provision authorizing waiver of the annual report requirement for business corporations is limited to a corporation with less than 100 holders of records of its shares. Any nonprofit corporation may waive the requirement of an annual report by an appropriate provision in its bylaws and, unlike the comparable provision of Section 1501, the authority to waive the requirement of an annual report is not limited to nonprofit corporations with less than a specified number of members.

Former Section 9402 (General Nonprofit Corporation Law) provided that the bylaws of a nonprofit corporation might make provision for the making of annual reports and financial statements to members, but this was not a mandatory requirement. As to charitable corporations, see the Comment to Section 6528.

Section 6521 requires the annual report to be presented at the annual meeting of members and, if written, to be filed with the records of the corporation, and either a copy or summary thereof entered in the minutes. These requirements are drawn from Section 519 of the New York Not-for-Profit Corporation Law except that the New York section requires a written annual report whereas Section 6521 permits an oral annual

report as well. The requirement of Section 1501 that a copy of the annual report of a business corporation be sent to each shareholder is not carried over into the nonprofit corporation law in order to avoid the expense of duplicating and mailing copies of the annual reports to all the members of the nonprofit corporation. However, nothing in this article prevents the nonprofit corporation from sending each member a copy of its annual report; and, if the nonprofit corporation prepares and presents a written annual report at the annual meeting of members, the nonprofit corporation is required by Section 6525 to send a copy to any member who makes a written request for one. In addition, even if the bylaws dispense with the requirements of this article, Section 6527 provides a procedure whereby five percent or more of the members may obtain comparable information.

Background: Memorandum 76-26

Cross-References:

Bylaws, provisions concerning annual reports, [provision comparable to § 212(b)(8)] nonprofit corporation without members; § 6526 (f)

406/250

§ 6522

Substance Tentatively Approved
March 1976

§ 6522. Annual report; financial information

6522. (a) As used in this section, "report date" means a date

which is the end of a 12-month fiscal period terminating not more than 12 months prior to the date of the annual meeting.

(b) The annual report shall show all of the following:

(1) The assets and liabilities, including trust funds, of the nonprofit corporation as of the report date.

(2) The major changes in assets and liabilities, including trust funds, during the 12-month period ending on the report date.

(3) The revenue or receipts of the nonprofit corporation, both unrestricted and restricted to particular purposes, for the 12-month period ending on the report date.

(4) The expenses or disbursements of the nonprofit corporation, for both general and restricted purposes, during the 12-month period ending on the report date.

(c) The statements required by subdivision (b) shall be accompanied by a report thereon of independent accountants or, if there is no such report, the certificate of authorized officer of the nonprofit corporation that such statements were prepared without audit from the books and records of the nonprofit corporation.

Comment. Section 6522 adopts the substance of provisions of Section 519 of the New York Not-for-Profit Corporation Law. Subdivision (c), which is not found in the New York law, is the same in substance as the last portion of subdivision (a) of Section 1501.

Policy Issue:

Is the New York language appropriate for use in Section 6522? Decision: Yes.

Definitions:

Independent accountant § [comparable to Section 113]

to Comparable Provisions:

- Section 1501(a)
- New York Not-for-Profit Corporation Law § 519
- Pennsylvania Nonprofit Corporation Law § 7555

Background: Memorandum 76-26

lead non-profits...

regulatory...

the Department of...

the Department of...

As a result...

406/251

§ 6523

Tentatively Approved
March 1976

§ 6523. Annual report; membership information

6523. The annual report shall include a statement of the number of members of the nonprofit corporation as of a specified date not more than 12 months prior to the date of the annual meeting.

Comment. Section 6523 is drawn from a similar requirement of Section 519 of the New York Not-for-Profit Corporation Law.

Comparable Provisions:

New York Not-for-Profit Corporation Law § 519

Pennsylvania Nonprofit Corporation Law § 7555

Background: Memorandum 76-26

406/252

§ 6524

Approved

Not Approved

§ 6524. Additional required information

6524. The annual report shall also include:

Note. This section will contain provisions comparable to subdivision (b) of Section 1500 if such provisions are determined to be appropriate after the subject matter of those provisions has been considered

406/253

§ 6525

Tentatively Approved
March 1976

§ 6525. Providing member with copy of annual report

6525. If a written annual report was prepared and presented to the immediately preceding annual meeting of members, the nonprofit corporation shall mail a copy of the annual report to any member who makes a written request for one.

Comment. Section 6525 reflects the same policy as is reflected in subdivision (d) of Section 1501 (business corporation required to mail shareholder copy of fiscal information upon written request).

NEW YORK STATE LEGISLATIVE COUNCIL
ALBANY, NEW YORK

Tentatively Approved
March 1976

§ 6526. Corporation having no members

6526. The board of a nonprofit corporation having no members shall direct the chief executive officer and chief fiscal officer to present at the annual meeting of the board a report in accordance with this article, but omitting the information required by Section 6523. This report shall be filed with the minutes of the annual meeting of the board.

Comment. Section 6526 is the same in substance as a provision of Section 519 of the New York Not-for-Profit Corporation Law.

Comparable Provisions:

New York Not-for-Profit Corporation Law § 519

Pennsylvania Nonprofit Corporation Law § 7555

Background: Memorandum 76-26

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 08-14-2011 BY 60322 UCBAW/STP/STP

Substance Tentatively Approved
March 1976

§ 6527. Members' right to obtain fiscal information

6527. (a) If the nonprofit corporation did not prepare and present a written annual report to the last immediately preceding annual meeting of members in compliance with Sections 6521 to 6524, inclusive, any member authorized in writing by members holding not less than five percent of the voting power may make a written request to the nonprofit corporation for a statement containing the information specified in Section 6522 that would have been included in the annual report if one had been prepared and presented to the immediately preceding annual meeting of members.

(b) Any member authorized in writing by members holding not less than five percent of the voting power may make a written request to the nonprofit corporation for a statement containing information comparable to that specified in Section 6522 for a period specified in the request ending not more than 30 days prior to the date of the request. Unless the nonprofit corporation and the member making the request otherwise agree, the period specified in the request shall commence immediately upon the end of the period covered by the annual report or the report referred to in subdivision (a) and shall be for a period of three months or a multiple of three months.

(c) Except as provided in subdivision (d), the nonprofit corporation shall deliver or mail to the member making the request the statement or statements requested within 30 days after the nonprofit corporation receives the request.

(d) In lieu of providing the requested statements, the nonprofit corporation may, within 10 days after it receives the request, respond to the request by delivering or mailing to the member making the request a statement that the nonprofit corporation elects to open its books and records of account to inspection under Chapter 16 (commencing with Section 6610) of Division 2 of the Corporations Code and that such books and records of account will be made available to the member or his agent or attorney for inspection during usual business hours at an address specified in the statement. This subdivision applies only if the address specified in the statement is in this state.

(e) The statements referred to in subdivisions (a) and (b) shall be accompanied by a report thereon, if any, by an independent accountant engaged by the nonprofit corporation or the certificate of an authorized officer of the nonprofit corporation that such statements were prepared without audit from the books and records of the nonprofit corporation.

(f) A copy of the statements prepared pursuant to subdivisions (a) and (b) shall be kept on file in the principal office of the nonprofit corporation for 12 months, and they shall be exhibited at all reasonable times to any member demanding an examination of them. A copy of the statements shall be mailed to any member requesting a copy upon payment by the member of such reasonable charge as the nonprofit corporation may impose to cover the cost of reproducing the copy of the statements and mailing the copy to the member.

Comment. Section 6527 is comparable to subdivisions (c), (d), and (e) of Section 1501, but there are significant differences between Section 6527 and the comparable provisions of Section 1501.

Subdivisions (a), (b), and (c) are very similar to the first two sentences of subdivision (c) of Section 1501. No provision similar to

subdivision (d) is found in Section 1501; this subdivision is included in recognition of the fact that a nonprofit corporation frequently will not prepare fiscal statements with the regularity of business corporations.

Subdivision (e) is the same in substance as subdivision (e) of Section 1501. Subdivision (f) is similar to subdivision (d) of Section 1501 except that a nonprofit corporation is permitted to impose a reasonable charge to cover the cost of reproducing and mailing copies of fiscal statements. No charge is authorized, however, under subdivision (c) to cover the cost of providing the member who made the original request with the statement or statements requested. The nonprofit corporation is permitted to impose a charge for subsequent copies of statements so that possible abuse of the right to obtain subsequent copies can be limited. Absent a charge, it is possible that each of the members who give the original written authorization (five percent or more of the voting power) might make such requests, probably in the original written authorization, and thus impose an undue financial burden on the nonprofit corporation.

Policy Issues:

Do members of nonprofit corporations need a method of obtaining fiscal information similar to that provided members of business corporations under Section 1501? Decision: Yes.

Is the five-percent-of-members-authorization requirement appropriate as a condition for requiring the nonprofit corporation to prepare the necessary fiscal statements? Decision: Yes.

Should the nonprofit corporation be permitted to elect to open its books and records of account to inspection as an alternative to providing the requested statements? Decision: Yes.

Should this election be limited to cases where the books and records of account are open to examination in California? Staff recommendation: Yes.

Should the nonprofit corporation be permitted to charge members for copies of statements provided pursuant to this section (the member making the original request is not charged for the statement)? Decision: Yes.

Background: Memorandum 76-26

405/964

\$ 6528

Tentatively Approved
March 1976

§ 6528. Reports to Attorney General not affected

6528. Nothing in this article relieves a nonprofit corporation from the requirements of Section 12586 of the Government Code. If the report sent to the Attorney General in compliance with the requirements of Section 12586 of the Government Code includes the information required by this article, that report shall be deemed to satisfy the requirements of this article if a copy of the report sent to the Attorney General is entered in the minutes of the proceedings of the annual meeting of members.

Comment. Section 6528 makes clear the relationship of the requirements of this article and the requirement imposed by Government Code Section 12586 that reports be made to the Attorney General by charitable corporations and those which hold property in trust or accept property to be used for a charitable purpose. Nothing in this article relieves such a corporation from complying with the requirement imposed by Government Code Section 12586 that the corporation make the reports required by the Attorney General. However, if the report made by such a corporation to the Attorney General includes the information required by this article, a separate report need not be prepared in order to comply with the requirements of this article.

Policy Issue:

Is this section necessary? Decision: Yes

405/965

§ 6529

Substance Tentatively Approved
March 1976

§ 6529. Judicial enforcement

6529. (a) The superior court of the proper county shall enforce the duty of making the annual report required by this article; but, unless the member seeking to enforce that duty made a written demand to the nonprofit corporation for such compliance not less than 30 days prior to the date of the annual meeting, the court shall enforce the duty of making the annual report by requiring the nonprofit corporation to do both of the following:

(1) Prepare a written report that satisfies the requirements of this article for an annual report for such annual meetings and deliver such report to the member within such time as the court specifies.

(2) Not more than 10 days after delivery of the written report to the member, enter a copy of the report in the minutes of the proceedings of the annual meeting at which the annual report should have been presented.

(b) In addition to the penalties provided for in Section 7200, the superior court of the proper county shall enforce the duty of making and mailing or delivering the statements required by Section 6527 and, for good cause shown, may extend the time therefor.

(c) In any action or proceeding under this section, the court may award an amount to reimburse the member for reasonable expenses incurred by the member, including reasonable attorney's fees, in connection with such action or proceeding if the court determines both of the following:

(1) Prior to commencing the action or proceeding, the member made a written demand to the nonprofit corporation that it comply with the requirements of this article, specifying the specific action demanded of the nonprofit corporation.

(2) The nonprofit corporation willfully failed without justification to comply with such demand within a reasonable time.

Comment. Section 6529 is based on subdivisions (f) and (g) of Section 1501.

405/966

§ 6529.5

Not Approved

§ 6529.5. Application of article

6529.5. This article applies to any domestic nonprofit corporation and also to a foreign nonprofit corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

Comment. Section 6529.5 is the same in substance as subdivision (h) of Section 1501. The application of this article is not limited to the foreign nonprofit corporations described in Section 6529.5. See Section [provision comparable to Section 2115].

Note. The Commission has deferred consideration of this section until the provision comparable to Section 2115 has been considered.

Article 3 (§ 6530 et. seq.)
Not Approved

**Article 3. Statement Identifying Corporate Officers and
Principal Office; Designation of Agent for Service**

§ 6530. Applicable filing period defined

6530. For the purposes of this article, the applicable filing period for a nonprofit corporation is the calendar quarter during which its original articles were filed and the immediately preceding calendar quarter.

Comment. Section 6530 is the same as the first sentence of Section 1502(c).

Note. Former Section 3301 (last paragraph) contains a definition of "nonprofit corporation" that may include some nonprofit corporations that will not be covered by the new statute. This matter will need to be reviewed when the scope of the statute has been determined and a broader definition of "nonprofit corporation" provided here so that the scope of the existing statute will be retained.

§ 6531. Statement identifying officers, principal office, and principal activity

6531. Within 90 days after the filing of its original articles and annually thereafter during the applicable filing period each year, every nonprofit corporation shall file, on a form prescribed by the Secretary of State, a statement containing all of the following:

- (a) The presently authorized number of its directors.
- (b) The name and complete business or residence address of each of its incumbent directors.
- (c) The name and complete business or residence address of its chief executive officer, secretary, and chief financial officer.
- (d) The street address of its principal executive office.
- (e) If the address of its principal executive office is not in this state, the street address of its principal office in this state, if any.
- (f) A statement of the general type of activity which constitutes the principal activity of the nonprofit corporation (for example, church, country club, trade association, higher educational institution, airplane club).

Comment. Section 6531 is the same in substance as Section 1502(a). Revisions have been made to reflect the fact that the corporation is a nonprofit corporation.

Section 6531, like Section 1502, requires that the statement be filed annually rather than each five years as was the case under former Section 3301. Although former Section 3301 required a filing only once every five years, it also required a filing of a new statement every time there was any change of officers. Under Section 6531, although the statement must be filed annually, the additional requirement that a new statement be filed each time there is any change in officers has not

been continued. This additional requirement was one that easily could be overlooked by the nonprofit corporation. The annual filing requirement is a more effective method of assuring that accurate information concerning the corporation is on file with the Secretary of State. The possibility that the annual filing requirement will be overlooked by the nonprofit corporation is minimized because Section 6536 requires that the Secretary of State mail the necessary form for compliance to the nonprofit corporation approximately three months prior to the close of the filing period.

Policy Issue:

Should the annual filing requirement be applied to nonprofit corporations? Recommendation: Yes.

Background: Memorandum 76-36.

406/468

§ 6532

§ 6532. Designation of agent for service

6532. The statement required by Section 6531 shall also designate, as the agent of such nonprofit corporation for the purpose of service of process, any natural person residing in this state or a corporation which has complied with Section 1505 and whose capacity to act as such agent has not terminated. If a natural person is designated, the statement shall set forth such person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

Comment. Section 6532 is the same in substance as Section 1502(b). Unlike former Section 3301(a), the designation of an agent for service is mandatory rather than permissive. One of the changes made by the new business corporations law is that the designation of an agent for service is now mandatory; formerly, designation of an agent for service was permissive under former Section 3301(a).

Policy Issue:

Should designation of an agent for service of process be mandatory?
 Recommendation: Yes.

Background: Memorandum 76-36.

968/639

§ 6533

§ 6533. Filing new statement when information changes

6533. Whenever any of the information required by Section 6531 changes, the nonprofit corporation may file a current statement containing all of the information required by Sections 6531 and 6532. In order to change its agent for service of process or the address of the agent, the nonprofit corporation shall file a current statement containing all the information required by Sections 6531 and 6532.

Comment. Section 6533 is the same in substance as the first two sentences of Section 1502(d).

986/640

§ 6534

§ 6534. Statement of resignation as agent; notice to corporation

6534. An agent designated for service of process pursuant to this article or [to be supplied later] may file a signed and acknowledged written statement of resignation as such agent. Thereupon, the authority of the agent to act in such capacity shall cease and the Secretary of State forthwith shall give written notice of the filing of the statement of resignation by mail to the nonprofit corporation addressed to its principal executive office.

Comment. Section 6534 is the same in substance as Section 1503.

Cross-Reference: "Acknowledged" defined, § 5149.

§ 6535. When designation of new agent required.

6535. If a natural person who has been designated agent for service of process pursuant to this article or [to be supplied later] dies or resigns or no longer resides in the state or if the corporate agent for such purpose resigns, dissolves, withdraws from the state, forfeits its right to transact intrastate business, has its corporate rights, powers, and privileges suspended, or ceases to exist, the nonprofit corporation shall forthwith file a designation of a new agent conforming to the requirements of this article or [to be supplied later].

Comment. Section 6535 is the same in substance as Section 1504.

§ 6536. Renewal forms

6536. The Secretary of State shall mail a form for compliance with this article to each nonprofit corporation approximately three months prior to the close of the applicable filing period. The form shall state the due date of the statement and shall be mailed to the last address of the nonprofit corporation according to the records of the Secretary of State. Neither the failure of the Secretary of State to mail the form nor the failure of the nonprofit corporation to receive it is an excuse for failure to comply with this article.

Comment. Section 6536 is the same in substance as the last three sentences of Section 1502(c).

§ 6537. New statement supersedes previous statement; disposal of superseded statement

6537. (a) Whenever the nonprofit corporation files a statement pursuant to this article, it supersedes any previously filed statement and the statement in its articles as to the agent for service of process and the address of the agent.

(b) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this article after it has been superseded by the filing of a new statement.

Comment. Subdivision (a) of Section 6537 is the same in substance as the last sentence of Section 1502(d); subdivision (b) is the same in substance as Section 1502(e).

§ 6538. Providing public with copies of statements

6538. (a) A copy of the statement filed by a nonprofit corporation pursuant to this article shall be made available to the public upon request. For furnishing a copy of any such statement, the Secretary of State shall charge and collect a fee of one dollar (\$1).

(b) This article shall not be construed to place any person dealing with the nonprofit corporation on notice of, or under any duty to inquire about, the existence or content of any statement filed pursuant to this article.

Comment. Section 6538 continues the substance of the last three sentences of the sixth paragraph of former Section 3301. Only the last of the three sentences referred to was carried over into the new business corporations law. See Section 1502(f). However, subdivision (a) of Section 6538, which continues the substance of the two sentences not carried over into the new business corporations law, is useful in providing notice as to the fact that a copy of the statement may be obtained and is necessary to provide a fee for the furnishing of the copy.

Policy Issue:

Should subdivision (a) be included, this provision having been omitted in the new business corporations law? Recommendation: Yes.

Background: Memorandum 76-36.

968/645

§ 6539

§ 6539. No fee required

6539. The statement filed under this article shall be filed without fee.

Comment. Section 6539 continues the substance of the last sentence of the seventh paragraph of former Section 3301. The policy expressed in the section is consistent with Government Code Section 12210, which was added to the Government Code by the act that enacted the new business corporations law, and provides: "The fee for filing the statement pursuant to Section 1502 of the Corporations Code is five dollars (\$5) for a stock corporation and there is no fee for a nonstock corporation."

Policy Issues:

Should not there be a fee for the filing of a statement by a non-profit corporation? Recommendation: Yes.

Does the fact that an annual filing is to be required justify imposition of a fee? Recommendation: Yes.

Backgrounds: Memorandum 76-36.

§ 6540. Procedure upon failure to file statement

6540. (a) Upon the failure of a nonprofit corporation to file the statement required by this article, the Secretary of State shall mail a notice of such delinquency to the nonprofit corporation. The notice shall also contain information concerning the application of this article and advise the nonprofit corporation of the penalty imposed by Section 25936 of the Revenue and Taxation Code for failure to timely file the required statement after notice of delinquency has been mailed by the Secretary of State. If, within 60 days after the mailing of the notice of delinquency, a statement pursuant to this article has not been filed by the nonprofit corporation, the Secretary of State shall certify the name of such nonprofit corporation to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the nonprofit corporation a penalty of two hundred fifty dollars (\$250) pursuant to Section 25936 of the Revenue and Taxation Code.

(c) The penalty herein provided shall not apply to a nonprofit corporation which on or prior to the date of certification pursuant to subdivision (a) has dissolved or has been merged into another corporation.

(d) The penalty herein provided shall not apply to any nonprofit corporation, the corporate powers, rights, and privileges of which have been suspended by the Franchise Tax Board pursuant to Section 23301 or 23001.5 of the Revenue and Taxation Code more than six months prior to the last day of the filing period pursuant to this article and which the corporate powers, rights, and privileges have not been revived on or

prior to the last day of the filing period. The Secretary of State need not mail a form pursuant to Section 6536 nor a notice of delinquency pursuant to this section to a nonprofit corporation whose corporate powers, rights, and privileges have been suspended more than six months prior to the last day of the filing period and which corporate powers, rights, and privileges have not been revived on or prior to such last day of the filing period.

(e) If, after certification pursuant to subdivision (a) the Secretary of State finds the required statement was filed before the expiration of the 60-day period after mailing of the notice of delinquency, the Secretary of State shall promptly decertify the name of the nonprofit corporation to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the nonprofit corporation pursuant to Section 25936 of the Revenue and Taxation Code.

Comment. Section 6540 is the same in substance as Section 2204.

406/173

§ 6710

CHAPTER 17. SERVICE OF PROCESS

Article 1. Manner of Service Generally

§ 6710. Additional method for serving domestic corporation

6710. In addition to the provisions of Chapter 4 (commencing with Section 413.10) of Title 5 of Part 2 of the Code of Civil Procedure, process may be served upon domestic nonprofit corporations as provided in this chapter.

Comment. Sections 6710 to 6732 are the same in substance as Sections 1700-1702 of the Corporations Code. Section 1702, as proposed to be amended by Assembly Bill 2849 of the 1975-76 Regular Session, has been used in preparing this chapter. The following table shows the source of each section in this chapter.

<u>Section</u>	<u>Source (Corp. Code Sections)</u>
6710	1700
6720	1701
6730	1702(a)
6731	1702(b) (first two sentences)
6732	1702(c)

Article 2. Service on Designated Agent

§ 6720. Service on designated agent for service

6720. Delivery by hand of a copy of any process against the nonprofit corporation (a) to any natural person designated by it as agent or (b), if a corporate agent has been designated, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of such corporate agent shall constitute valid service on the nonprofit corporation.

Comment. See the Comment to Section 6710.

Article 3. Service on Secretary of State§ 6730. Service on Secretary of State

6730. If an agent for the purpose of service of process has resigned and has not been replaced or if the agent designated cannot with reasonable diligence be found at the address designated for delivery by hand of the process, and it is shown by affidavit to the satisfaction of the court that process against a domestic nonprofit corporation cannot be served with reasonable diligence upon the designated agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20 or subdivision (a) of Section 415.30 of the Code of Civil Procedure or upon the nonprofit corporation in the manner provided in subdivision (a), (b), or (c) of Section 416.10 or subdivision (a) of Section 416.20 of the Code of Civil Procedure, the court may make an order that the service be made upon the nonprofit corporation by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant or deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing such service. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.

Comment. See the Comment to Section 6710.

§ 6731. Notice to corporation

6731. Upon the receipt of any such copy of process, the Secretary of State shall give notice of the service of the process to the nonprofit corporation at its principal executive office, by forwarding to

such office, by registered mail with request for return receipt, the copy of the process or, if the records of the Secretary of State do not disclose an address for its principal executive office, by forwarding such copy in the same manner to the last designated agent for service of process who has not resigned. If the agent for service of process has resigned and has not been replaced and the records of the Secretary of State do not disclose an address for its principal executive office, no action need be taken by the Secretary of State.

Comment. See the Comment to Section 6710.

§ 6732. Record of service; certificate of Secretary of State as evidence

6732. (a) The Secretary of State shall keep a record of all process served upon the Secretary of State under this article and shall record therein the time of service and the Secretary of State's action with reference thereto.

(b) The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the nonprofit corporation, and the forwarding of such process pursuant to this article, shall be competent and prima facie evidence of the matters stated therein.

Comment. See the Comment to Section 6710.

Tentatively Approved
February 1976

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 is the same in substance as the first sentence of Section 2004 (General Corporation Law). It 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. 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 the same in substance as 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).

Tentatively Approved
February 1976

§ 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 is the same in substance as Section 2005 (General Corporation Law). It continues provisions applicable to non-profit corporations by former Section 5001 through former Section 9800. "Financially responsible persons" includes financially responsible corporations. See Section 18 ("person" includes "corporation").

Tentatively Approved
February 1976

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

7032. Unless otherwise provided in this division, assets held by a nonprofit corporation shall be distributed on dissolution 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 or bylaws 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 1963 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

§ 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. 838 (1953).

404/363

§ 7034

Substance Tentatively
Approved February 1976

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

7034. (a) Those assets held by a nonprofit corporation on a charitable trust and all of the assets held by a nonprofit corporation organized for charitable purposes shall be disposed of on dissolution in conformity with the purposes of the charitable trust or the charitable purposes for which the nonprofit corporation was organized.

(b) Except as provided in subdivision (c), the disposition required in subdivision (a) shall be made by decree of the superior court of the

proper county in proceedings to which the Attorney General is a party. The decree shall be made upon petition therefor by the Attorney General or, upon thirty days' notice to the Attorney General, by any person concerned in the dissolution.

(c) The disposition required in subdivision (a) may be made without the decree of the superior court, subject to the rights of persons concerned in the dissolution, if the Attorney General makes a written waiver of objections to the disposition.

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 for charitable purposes 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. 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) continues the provision of former Section 9801 that required a court decree of distribution. The decree is made upon petition therefor by the Attorney General or by an interested party after 30 days' notice to the Attorney General. It should be noted that, although the Attorney General is a party to the court proceeding, the ultimate responsibility for the proper application of the standard of subdivision (a) rests with the court. In re Veterans' Industries, Inc., supra.

Subdivision (c) is new. It permits disposition of charitable assets without court decree upon waiver of objections by the Attorney General. A nonprofit corporation may seek a court decree even though the Attorney General has waived objections, and the waiver of objections binds only the Attorney General and not other interested parties, such as the donor or other potential distributees.

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

The question whether a scheme such as that provided in this section should be applied to mergers and sales of assets is deferred until consideration of those subjects.

404/359

§ 7035

Tentatively Approved
February 1976

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

Note. Provisions relating to a plan of distribution, if any, have not yet been drafted.

404/934

§ 7035.5

§ 7035.5. Plan of distribution

[NOT YET DRAFTED]

404/358

§ 7036

Tentatively Approved
February 1976

§ 7036. Deposit of distribution to creditors, members, and other persons

7036. (a) This section applies to a creditor, member, or other person entitled to assets of a nonprofit corporation in all of the following cases:

(1) The person is unknown or fails to accept a payment or distribution.

(2) The person cannot be found after diligent inquiry.

(3) The existence or amount of the person's claim is contingent, contested, or not determined.

(4) The ownership of the person's membership is in dispute.

(b) In cases described in subdivision (a), the nonprofit corporation may deposit the payment or distribution or the maximum amount of the claim with the State Treasurer or with a bank or trust company in this state in trust for the benefit of the person lawfully entitled thereto. The payment or distribution shall be paid over by the depository to the lawful owner, the owner's representative, or assigns upon satisfactory proof of title.

(c) For the purpose of providing for the transmittal, receipt, accounting for, claiming, management, and investment of all amounts deposited in the State Treasury under the provisions of subdivision (b), the deposit 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 the same in substance as Section 2008 (General Corporation Law). Subdivisions (a) and (b) continue provisions applicable to nonprofit corporations by former Sections 5009 and 5010 through former Section 9800. Subdivision (c) continues provisions applicable to nonprofit corporations by former Section 5011 through former Section 9800.

Not Approved; See Minutes
February 1976

§ 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 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 by any one or more creditors of the nonprofit corporation, whether or not they have reduced their claims to judgment, to enforce the liability under subdivision (a) against any or all members receiving the distribution.

(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 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 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 is the same in substance as Section 2009 (General Corporation Law). It continues provisions applicable to nonprofit corporations by former Section 5012 through former Section 9800. 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 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.

Tentatively Approved
February 1976

APPENDIX

DIVISION 2. NONPROFIT CORPORATIONS

PART 1. GENERAL NONPROFIT CORPORATION LAW

CHAPTER 1. GENERAL PROVISIONS

Corporations Code § 9000 (repealed)

9000. This part shall be known and may be cited as the General Nonprofit Corporation Law.

Comment. Former Section 9000 is continued in Section 5000.

Tentatively Approved
February 1976

Corporations Code § 9001 (repealed)

9001. The provisions of this part apply to every nonprofit corporation now existing or hereafter formed, unless the corporation is expressly exempted from the operation thereof, or there is a special provision applicable to the corporation inconsistent with the provisions of this part, in which case the special provision prevails.

Comment. Section 9001 is continued in Section 5102.

Tentatively Approved
February 1976

Corporations Code § 9002 (repealed)

9002. The provisions of the General Corporation Law, Division 1 of this title, apply to corporations formed under this part, except as to matters specifically otherwise provided for in this part.

Comment. Section 9002 is not continued. The new General Nonprofit Corporation Law, Division 2 (commencing with Section 3000) of Title 1, provides a complete set of rules governing nonprofit corporations and does not incorporate by reference the General Corporation Law. See Section 5102 (scope of division).

Tentatively Approved
February 1976

CHAPTER 2. FORMATION AND BYLAWS

Article 1. Purposes

Corporations Code § 9200 (repealed)

9200. A nonprofit corporation may be formed by three or more persons for any lawful purposes which do not contemplate the distribution of gains, profits, or dividends to the members thereof and for which individuals lawfully may associate themselves, such as religious, charitable, social, educational, or cemetery purposes, or for rendering services, subject to laws and regulations applicable to particular classes of nonprofit corporations or lines of activity. Carrying on business at a profit as an incident to the main purposes of the corporation and the distribution of assets to members on dissolution are not forbidden to nonprofit corporations, but no corporation formed or existing under this part shall distribute any gains, profits, or dividends to any of its members as such except upon dissolution or winding up.

Comment. The portion of the first sentence of former Section 9200 relating to the purposes for which a nonprofit corporation may be formed is superseded by Section 5210; the portion relating to the number of incorporators is superseded by Section 5220.

The portion of the second sentence of former Section 9200 permitting carrying on business at a profit is superseded by Section 5235; the portion precluding distributions to members of gains, profits, or dividends as such is continued in Section 5236(a); the portion permitting distribution of assets on dissolution or winding up is continued in Section 5236(b).

Tentatively Approved
February 1976

Corporations Code § 9201 (repealed)

9201. A nonprofit corporation may be formed under this part for the purpose of defraying or assuming the cost of professional services of licentiates under any chapter of Division 2 (commencing with Section 500) of the Business and Professions Code or of rendering any such services, but it may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) At least one-fourth of all licentiates of the particular profession residing in California become members.

(b) Membership in the corporation and an opportunity to render professional services upon a uniform basis are available to all licensed members of the particular profession.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the particular professional board whose licentiates have become members, finding compliance with the requirements of subdivisions (a), (b), and (c).

Any such nonprofit corporation shall be subject to supervision by the particular professional board under which its members are licensed and shall also be subject to Section 9305.

Comment. Former Section 9201 is continued in Section 5211.

968/719

Corp. Code § 9201.1

Tentatively Approved
February 1976

Corporations Code § 9201.1 (repealed)

9201.1. Any nonprofit corporation formed under Section 9201 which defrays or assumes some portion or all of the costs of refractions or eye appliances shall offer an equal opportunity to render professional services upon a uniform basis to all licentiates expressly authorized by law to render such services.

Comment. Former Section 9201.1 is continued in Section 5211.

968/718

Corp. Code § 9201.2

Tentatively Approved
February 1976

Corporations Code § 9201.2 (repealed)

9201.2. Nonprofit corporations may be formed under this part for the purposes of administering a system or systems of defraying the cost of professional services of attorneys, but any such corporation may not engage directly or indirectly in the performance of the corporate purposes or objects unless all of the following requirements are met:

(a) The attorneys furnishing professional services pursuant to such system or systems are acting in compliance with the Rules of Professional Conduct of the State Bar of California concerning such system or systems.

(b) Membership in the corporation and an opportunity to render pro-

professional services upon a uniform basis are available to all active members of the State Bar.

(c) Voting by proxy and cumulative voting are prohibited.

(d) A certificate is issued to the corporation by the State Bar of California, finding compliance with the requirements of subdivisions (a), (b) and (c).

Any such nonprofit corporation shall be subject to supervision by the State Bar of California and shall also be subject to Section 9309.

Comment. Former Section 9201.2 is continued in Section 9212.

992/935

Corp. Code § 9202

Tentatively Approved
February 1976

Corporations Code § 9202 (repealed)

9202. A nonprofit corporation may be formed for the purpose of incorporating any existing unincorporated association or organization. As used in this part "unincorporated association" includes but is not limited to society, library, school, college, club, church, trustees of a charitable trust, and chamber of commerce.

Comment. Former Section 9202 is continued in Section 5213.

Tentatively Approved
February 1976

Corporations Code § 9203 (repealed)

9203. A nonprofit corporation may be formed 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.

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

The seal of the subordinate body shall be its corporate seal.

Comment. Former Section 9203 is continued in Section 5214.

Tentatively Approved
February 1976

Article 2. Articles of Incorporation

Corporations Code § 9300 (repealed)

9300. The articles of incorporation shall set forth:

- (a) The name of the corporation.
- (b) The specific and primary purposes for which it is formed.

This requirement shall not be deemed to preclude a statement of general purposes or powers or to restrict the right of the corporation to engage in any other lawful activity.

(c) That the corporation is organized pursuant to the General Nonprofit Corporation Law or pursuant to Part 1 of Division 2 of Title 1 of the Corporations Code.

(d) The county in this state where the principal office for the transaction of business of the corporation is located.

(e) The names and addresses of three or more persons who are to act in the capacity of directors until the selection of their successors. These persons may be given such titles as are deemed appropriate, but they shall be subject to all laws of this state relating to directors except as otherwise provided in this part. The number of persons so named constitutes the number of directors of the corporation, until changed by an amendment to the articles or, unless the articles otherwise provide, by a bylaw adopted by the members. However, the articles or, unless the articles provide otherwise, a bylaw duly adopted by the members, may state that the number of directors shall be not less than a stated minimum (which in no case shall be less than five) nor more

than a stated maximum (which in no case shall exceed such stated minimum by more than three); and in the event that the articles or bylaws permit such an indefinite number of directors, the exact number of directors shall be fixed, within the limits specified in the articles or bylaws, by a bylaw or amendment thereof duly adopted by the members or by the board of directors. In the event the articles provide for an indefinite number of directors, unless the articles provide otherwise, such indefinite number may be changed, or a definite number fixed without provision for an indefinite number, by a bylaw duly adopted by the members.

(f) If an existing unincorporated association is being incorporated, the name of the existing unincorporated association.

Comment. Section 9300 is superseded by Section 5250. Subdivision (a) is continued in Section 5250(a). Subdivision (b) is superseded by Section 5250(b). Subdivision (c) is continued in Section 5252(b). Subdivision (d) is not continued. The first two sentences of subdivision (e) are continued in Section 5250(c); the remainder of subdivision (e) is continued in Section _____. Subdivision (f) is continued in Section 5213.

101/144

Corp. Code § 9301

Tentatively Approved
February 1976

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 5101 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 § 9302 (repealed)

9302. The articles or by-laws may provide for the number and tenure of office of the directors and may specify their powers, duties, compensation, and the manner in which they shall be chosen and removed from office.

Nota. This section has not yet been disposed of.

Tentatively Approved
March 1976

Corporations Code § 9303 (repealed)

9303. The articles of incorporation may state any desired provision for the regulation of the affairs of the corporation in a manner not in conflict with law, including any restrictions authorized by Article 2, Chapter 1, Part 8, Division 1, Title 1 of this code upon the power to amend the articles of incorporation.

Comment. Former Section 9303 is superseded by Sections 5251 and 5920.

Tentatively Approved
February 1976

Corporations Code § 9304 (repealed)

9304. (a) Except in the case of the incorporation of an unincorporated association provided for in subdivision (b) hereof, each person named in the articles to act in the capacity of a first director shall, and any other person desiring to associate with those persons in the formation of the corporation may, personally sign the articles of incorporation. All signatures thereto shall be personally acknowledged before an officer designated by the laws of this State as one before whom an acknowledgment may be made. Any certificate of acknowledgment taken without the State shall be authenticated by the certificate of an officer having the requisite official knowledge of the qualification of the officer before whom the acknowledgment was made when taken before any officer other than a notary public or a judge or clerk of a court of record having an official seal.

(b) In the case of the incorporation of an unincorporated association, the articles of incorporation shall be subscribed and execution thereof personally acknowledged before an officer authorized to take acknowledgments by the presiding officer or acting presiding officer and the secretary or clerk or similar officer of the association or by at least a majority of its governing board or body, and there shall be attached thereto the affidavit of the subscribing officers, board or body that the association has duly authorized its incorporation and has authorized said officers, board or body to execute the articles of incorporation.

Comment. The first sentence of subdivision (a) of former Section 9304 is superseded by Section 5221; the second and third sentences are not continued. Subdivision (b) is continued in Section 5213 with the exception of the acknowledgment requirement which is not continued.

992/932

Corp. Code § 9304.5

Tentatively Approved
February 1976

Corporations Code § 9304.5 (repealed)

9304.5. If the articles conform to law, the Secretary of State shall file them in his office and shall endorse the date of filing thereon. The corporate existence begins upon the filing of the articles and continues perpetually unless otherwise expressly provided by law.

A copy of the articles certified by the Secretary of State and bearing the endorsement of the date of filing in this office shall be filed in the office of the county clerk of the county in which the corporation is to have its principal office and in the office of the county clerk of each county in which the corporation requires ownership of any real property.

Comment. The first sentence of former Section 9304.5 is continued in Section 5120. The second sentence is continued in Section 5222. The third sentence is not continued.

368/253

Corp. Code § 9305

Tentatively Approved
March 1976

Corporations Code § 9305 (repealed)

9305. Articles of incorporation of nonprofit corporations shall be amended in the same manner as provided in Title 1, Division 1, Part 8, Chapter 1 of this code.

Comment. Section 9305 is superseded by Chapter 9 (commencing with Section 5910) of Division 2.

368/254

Corp. Code § 9306

Tentatively Approved
March 1976

Corporations Code § 9306 (repealed)

9306. Any nonprofit cooperative corporation formed under former Title 22, Part 4, Division 1, of the Civil Code may amend its articles to provide that the voting power, property rights, and interests of its members shall be equal or unequal, and if unequal, to set forth a general rule by which the voting power and property rights and interests of each member shall be determined and fixed.

Comment. Section 9306 is not continued. Any nonprofit cooperative corporation formed under former Title 22, Part 4, Division 1, of the Civil Code is "deemed organized and existing under and by virtue of the general corporation law of the State of California." Cal. Stats. 1931, Ch. 869, § 1, at 1840. The General Corporation Law permits the amendments referred to. Section 900.

Article 3. BylawsCorporations Code § 9400 (repealed)

9400. Bylaws may be adopted, amended or repealed by any of the following:

(a) By the written consent of members entitled to exercise a majority of the voting power, or by the vote of a majority of a quorum at a meeting of members duly called for the purpose according to the articles or bylaws.

(b) Except as provided in subdivision (c), by the board of directors, subject to the power of the members to change or repeal the bylaws.

(c) A bylaw or bylaw amendment fixing or changing the authorized number of directors may be adopted only by the members and may not be adopted by the board of directors except where the articles or bylaws provide for an indefinite number of directors pursuant to subdivision (e) of Section 9300.

However, the articles or bylaws may require the vote or written consent of members entitled to exercise a greater fraction or percentage of the voting power for the amendment or repeal of bylaws generally, or of particular bylaws, or for the adoption of new bylaws than would otherwise be required under this section. The articles or a bylaw adopted by the members may limit or restrict the power of the directors to adopt, amend, or repeal bylaws, or may deprive them of the power.

Note. This section has not yet been disposed of.

Corporations Code § 9401 (repealed)

9401. The by-laws of a nonprofit corporation may make provisions for:

(a) The time, place, and manner of calling, giving notice of, and conducting regular and special meetings of members or directors, which may be held outside the State. The by-laws may dispense with notice of all regular members' and directors' meetings.

(b) The requirements of a quorum of directors or members, which may be greater or less than a majority.

(c) Subject to any provisions in the articles, the number, time and manner of choosing, qualifications, terms of office, official designations, powers, duties, and compensation of the directors and other officers.

(d) The appointment and authority of executive or other committees of the board of directors.

Note. This section has not yet been disposed of.

Tentatively Approved
February 1976

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). Subdivision (d) is continued in Section 5263(a).

Note. The staff has not yet disposed of subdivision (e).

101/146

Corp. Code § 9403

Tentatively Approved
February 1976

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.

406/121

Corp. Code § 9404

Corporations Code § 9404 (repealed)

9404. All by-laws shall be recorded in a book which shall be kept in the principal office of the corporation.

Note. This section has not yet been disposed of.

CHAPTER 3. DIRECTORS AND MANAGEMENT

Corporations Code § 9500 (repealed)

9500. Except as otherwise provided by the articles of incorporation or the by-laws, the powers of a nonprofit corporation shall be exercised, its property controlled, and its affairs conducted by a board of not less than three directors.

Note. This section has not yet been disposed of.

Corporations Code § 9501 (repealed)

9501. Every nonprofit corporation may:

- (a) Sue and be sued.
- (b) Make contracts.
- (c) Receive property by devise or bequest, subject to the laws regulating the transfer of property by will, and otherwise acquire and hold all property, real or personal, including shares of stock, bonds, and securities of other corporations.
- (d) Act as trustee under any trust incidental to the principal objects of the corporation, and receive, hold, administer, and expend funds and property subject to such trust.
- (e) Convey, exchange, lease, mortgage, encumber, transfer upon trust, or otherwise dispose of all property, real or personal.

(f) Borrow money, contract debts, and issue bonds, notes, and debentures, and secure the payment or performance of its obligations.

(g) Pay the reasonable value of services rendered in this state to the nonprofit corporation before January 1, 1975, and not previously paid, by any person who performed such services on a full-time basis under the direction of a religious organization in connection with the religious tenets of the organization. Such person shall have relied solely on the religious organization for his or her financial support for a minimum of five years. A payment shall not be made if such person or religious organization waives the payment or receipt of compensation for such services in writing. Payment may be made to such religious organization to reimburse it for maintenance of any person who rendered such services and to assist it in providing future support and maintenance; however, payment shall not be made from any funds or assets acquired with funds donated by or traceable to gifts made to the nonprofit corporation by any person, organization or governmental agency other than the members, immediate families of members and affiliated religious organizations of the religious organization under whose direction the services were performed.

(h) Do all other acts necessary or expedient for the administration of the affairs and attainment of the purposes of the corporation.

Comment. Former Section 9501 is superseded by Section 5230. The provisions of former Section 9501 are continued in Section 5230 with the exception of subdivision (g) which has not been continued since it is special legislation having only a retroactive effect. See I. H. Ballantine & G. Sterling, California Corporation Laws 788.10 n.42 (4th ed. 1975).

Corporations Code § 9501.1 (repealed)

9501.1. Every nonprofit corporation, during any period or periods such corporation is deemed to be a "private foundation" as defined in Section 509 of the Internal Revenue Code of 1954 as amended by Section 101 of the Tax Reform Act of 1969 (all references in this section to the Internal Revenue Code shall refer to such code as amended by such act), shall distribute its income for each taxable year (and principal, if necessary) at such time and in such manner as not to subject such corporation to tax under Section 4942 of such code (as modified by paragraph (3) of subsection (1) of Section 101 of the Tax Reform Act of 1969), and such corporation shall not engage in any act of self-dealing as defined in subsection (d) of Section 4941 of such code (as modified by paragraph (2) of subsection (1) of Section 101 of the Tax Reform Act of 1969), retain any excess business holdings as defined in subsection (c) of Section 4943 of such code, make any investments in such manner as to subject such corporation to tax under Section 4944 of such code, or make any taxable expenditure as defined in subsection (d) of Section 4945 of such code (as modified by paragraph (5) of subsection (1) of Section 101 of the Tax Reform Act of 1969).

This section shall apply to any such corporation and any provision contained in its articles of incorporation or other governing instrument inconsistent with this section or to the contrary thereof shall be without effect.

Note. This section has not yet been disposed of.

406/123

Corp. Code § 9502

Corporations Code § 9502 (repealed)

9502. Unless otherwise provided in the articles or by-laws, any vacancy in the board of directors caused by death, resignation, or any disability shall be filled by a majority of the remaining members thereof, though less than a quorum.

Note. This section has not yet been disposed of.

406/124

Corp. Code § 9503

Corporations Code § 9503 (repealed)

9503. Subject to any provisions of the articles or by-laws, meetings of directors of nonprofit corporations shall be called and held as may be ordered by the directors.

Note. This section has not yet been disposed of.

406/125

Corp. Code § 9503.1

Corporations Code § 9503.1 (repealed)

9503.1. If the articles of incorporation or bylaws so provide, any action required or permitted to be taken by the board of directors under any provision of this division may be taken without a meeting, if all members of the board shall individually or collectively consent in

writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the board. Such action by written consent shall have the same force and effect as a unanimous vote of such directors. Any certificate or other document filed under any provision of this division which relates to action so taken shall state that the action was taken by unanimous written consent of the board of directors without a meeting, and that the articles of incorporation or bylaws, as the case may be, authorize the directors to so act, and such statement shall be prima facie evidence of such authority.

Note. This section has not yet been disposed of.

406/126

Corp. Code § 9504

Corporations Code § 9504 (repealed)

9504. Directors of a nonprofit corporation are not personally liable for the debts, liabilities, or obligations of the corporation.

Note. This section has not yet been disposed of.

Not Approved; See Minutes
February 1976

Corporations 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.

Note. This section is to be reviewed for coordination with the Uniform Supervision of Trustees for Charitable Purposes Act.

CHAPTER 4. MEMBERS

Corporations Code § 9600 (repealed)

9600. Subject to any provisions of the articles or by-laws, meetings of members of nonprofit corporations shall be called and held as may be ordered by the directors or by members holding not less than one-tenth of the voting power of members.

Note. This section has not yet been disposed of.

100/971

Corp. Code § 9601

Tentatively Approved
March 1976

Corporations Code § 9601 (repealed)

9601. Unless the articles or by-laws provide otherwise, every member of a nonprofit corporation is entitled to one vote and may vote or act by proxy. The manner of voting may be by ballot, mail, or any reasonable means provided in the articles or by-laws. No member may cumulate his votes unless the articles or by-laws so provide.

Comment. The portion of the first sentence of former Section 9601 providing one vote per member is continued in Section 5700(a); the portion authorizing proxy voting is continued in Section 5705. The second sentence is continued in Section 5700(b). The last sentence is superseded by Section 5708.

101/147

Corp. Code § 9602

Tentatively Approved
February 1976

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 rules 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 superseded by Section 5406.

101/148

Corp. Code § 9603

Tentatively Approved
February 1976

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.

992/931

Corp. Code § 9604

Tentatively Approved
February 1976

Corporations Code § 9604 (repealed)

9604. If an unincorporated association is incorporated under this part, the members of the association shall be members of the corporation so created, unless they file their dissent in writing with the secretary thereof.

Comment. Former Section 9604 is continued in Section 5213.

101/149

Corp. Code § 9605

Tentatively Approved
February 1976

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.

101/198

Corp. Code § 9606

Tentatively Approved
March 1976

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. Section 9606 is superseded by subdivisions (c) and (d) of Sections 6510 and 6511. Section 9606 apparently contemplates a book in which entries will be entered by hand. In order that a person can examine the book and ascertain the current members, it is necessary to provide in the statute that the date of termination of memberships be entered in the book. The concept of a membership book is an obsolete one in modern times when data processing equipment or mechanical methods can be used to store and reproduce membership lists. Accordingly, the concept of the membership book is not continued in the new General Non-profit Corporation Law. Instead, Section 6511 adopts the provision of the General Corporation Law that the books and records (other than minutes) may be kept in written form or in any other form capable of

being converted into written form. Nothing in Section 6511 will prevent a nonprofit corporation from continuing to keep a membership book if it so desires. However, the book will need to contain the information required by subdivisions (c) and (d) of Section 6510.

101/134

Corp. Code § 9607

Tentatively Approved
February 1976

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.

101/135

Corp. Code § 9608

Not Approved; See Minutes
February 1976

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.

101/136

Corp. Code § 9609

Tentatively Approved
February 1976

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.

101/137

Corp. Code § 9610

Tentatively Approved
February 1976

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.

Tentatively Approved
February 1976

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.

CHAPTER 5. MERGER AND CONSOLIDATION

Corporations Code § 9700 (repealed)

9700. The provisions of the General Corporation Law contained in Article 1 (commencing with Section 4100) of Chapter 3 of Part 8 of Division 1 of this title, apply to mergers and consolidations of corporations formed under this part, except as to matters specifically otherwise provided for in this chapter.

Note. This section has not yet been disposed of.

Corporations Code § 9701 (repealed)

9701. An agreement to merge or consolidate shall be approved by the members of each corporation. Where the members have equal voting rights, the agreement shall be approved by a resolution adopted by the vote of a majority of the members or be approved by the written consent of two-thirds of the members; or where the members have unequal voting rights, the agreement shall be approved by a resolution adopted by the vote of members entitled to exercise a majority of the voting power or be approved by the written consent of members entitled to exercise two-thirds of the voting power. This section shall be applicable regardless of any limitations or restrictions on the voting power of any class or classes of membership.

Note. This section has not yet been disposed of.

Corporations Code § 9702 (repealed)

9702. Where the members act by vote, such votes shall be cast at a meeting duly called upon notice of the time, place, and purpose thereof, duly given to each member at least 20 days prior to the date of the meeting, except that such notice may be waived as provided in Section 2209. Unless the notice is waived, there shall be mailed with such notice a statement of the general terms of the proposed agreement.

Note. This section has not yet been disposed of.

Corporations Code § 9703 (repealed)

9703. The articles of incorporation may require the vote or written consent of a greater percentage or fraction of the members than would otherwise be required under this chapter, in cases where the members have equal voting rights, or may require the vote or written consent of members entitled to exercise a greater percentage or fraction of the voting power than would otherwise be required under this chapter, in cases where the members have unequal voting rights. In no case may the articles prohibit any merger or consolidation authorized by this chapter or by Chapter 3 (commencing with Section 4100) of Part 8 of Division 1 of this title.

Note. This section has not yet been disposed of.

Tentatively Approved
February 1976

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 5801.

Comment. Section 9800 is superseded by Chapters 18 (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.

Tentatively Approved
February 1976

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.

404/127

Corp. Code § 9802

Tentatively Approved
February 1976

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 3214.