

5/5/66

In the memorandum on suit in common name we stated that making unincorporated associations liable on their contracts would make a significant change in existing law. Apart from express or implied statutory authority to make contracts, unincorporated associations have no power to enter into contracts.

An important statutory authority is granted to unincorporated associations to enter into contracts by the California Commercial Code. Commercial Code Section 1201(30) defines "person" as follows:

"Person" includes an individual or an organization.

Commercial Code Section 1201(28) defines "organization" as follows:

"Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

The official Comment to subdivision (28) states:

"Organization." This is the definition of every type of entity or association, excluding an individual as such....

In view of the fact that the Commercial Code treats unincorporated associations the same as legal entities and in view of the special statutes authorizing (by implication) real estate contracts, we believe that proposed Section 22502 (page 9 of pink sheets attached to Memorandum 66-22) will not operate to make any important change in existing law. The proposed section reflects the conclusions of persons who have studied this problem, including the persons who drafted the Uniform Commercial Code.

Respectfully submitted,

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