

## Memorandum 2000-69

### **Uniform Unincorporated Nonprofit Association Act (Background and Draft Tentative Recommendation)**

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At the July 2000 meeting, the Commission requested further background on the nature of unincorporated associations. This memorandum briefly describes the various types of unincorporated association (both nonprofit and for-profit). The memorandum then discusses the differences between these types with respect to the principal issues addressed by the Uniform Unincorporated Nonprofit Association Act ("Uniform Act"):

- Capacity of unincorporated association to sue and be sued in its own name.
- Service of process on an unincorporated association.
- Place of trial where unincorporated association is defendant.
- Liability for contract obligations.
- Liability for torts.
- Property powers of an unincorporated association.
- Disposition of association property on dissolution of association.

Attached to this memorandum is a partial staff draft tentative recommendation that sets out language implementing several decisions made by the Commission at the July meeting. As the Commission considers and decides further issues, the staff draft tentative recommendation will be expanded.

#### TYPES OF UNINCORPORATED ASSOCIATIONS

In *Barr v. United Methodist Church*, 90 Cal. App. 3d 259 (1979), the court stated:

The criteria applied to determine whether an entity is an unincorporated association are no more complicated than (1) a group whose members share a common purpose, and (2) who function under a common name under circumstances where fairness requires the group be recognized as a legal entity. Fairness includes those situations where persons dealing with the association contend their legal rights have been violated. Formalities of quasi-corporate organization are not required.

In *Barr*, these criteria were applied to determine that the United Methodist Church (UMC) was an unincorporated association and subject to suit as such. The court's analysis focused on representations regarding the UMC's status as principal for various church agencies and the fact that the UMC had participated in business enterprises and had previously brought suit in its own name to protect its interests.

Pursuant to the only statutory definition, "unincorporated association" means:

any partnership or other unincorporated organization of two or more persons, whether organized for profit or not, but does not include a government or governmental subdivision or agency.

Corp. Code § 24000. This definition, which was enacted on the Commission's recommendation, has limited application, applying by its terms to Corporations Code Sections 24001-24007 (relating to the liability of an unincorporated association for acts and omissions of its members and agents, the effect of a money judgment against an unincorporated association, and the designation of an agent for service of process on an unincorporated association). Although, this definition includes both for-profit and nonprofit associations, there are provisions that apply only to nonprofit associations or to specific types of for-profit association.

The different types of unincorporated association are described briefly below:

### **Nonprofit Associations**

Corporations Code Section 21000 defines "nonprofit association" as follows:

A nonprofit association is an unincorporated association of natural persons for religious, scientific, social, literary, educational, recreational, benevolent, or other purpose not that of pecuniary profit.

Nonprofit associations include labor unions, political parties, social clubs, religious organizations, environmental societies, athletic organizations, condominium organizations, lodges, and veterans groups. See *Barr*, 90 Cal. App. 3d at 266. Some of these types of organizations are subject to special rules. See, e.g., Corp. Code §§ 21200 & 24001.5 (medical association); Ins. Code §§ 9080-9103 (fraternal fire insurers), 10970-11165 (fraternal benefit societies).

## **For-Profit Associations**

There appear to be eight types of for-profit unincorporated association: partnership, limited liability partnership, limited partnership, limited liability company, joint venture, joint stock company, business trust, and real estate investment trust. These types of for-profit associations are described briefly below.

### *Partnership*

Partnership is the “default” form of for-profit association. With certain exceptions, “the association of two or more persons to carry on as coowners a business for profit forms a partnership, whether or not the persons intend to form a partnership.” Corp. Code § 16202. The principal exception is that an association formed under a statute other than a partnership statute is not a partnership. *Id.* In other words, any association formed to carry on business for profit is a partnership *unless* it is created in some other statutory form. It isn’t clear how this default rule should be applied in the case of common law business entities, such as a joint venture, joint stock company, or business trust. These entities are not formed pursuant to any statute, yet they are recognized by the courts as distinct from a partnership. For the purposes of this memorandum, these common law forms of business organization will be described as having a form distinct from the partnership form (although, as will be explained below, the law of partnership is often applied to these business forms).

The Uniform Partnership Act of 1994 provides a fairly comprehensive scheme regulating the rights and obligations of partners and partnerships. See Corp. Code § 16100 *et seq.*

### *Limited Liability Partnership*

Under certain circumstances, a partnership that provides accountancy, architecture, or legal services may register as a limited liability partnership. Corp. Code § 16951-16962. The distinguishing feature of a limited liability partnership is the limit on a partner’s liability for partnership debts, obligations, or liabilities. Corp. Code § 16306(g). However, a registered limited liability partnership is required to provide security against claims, either through insurance or maintenance of minimum capital. See Corp. Code § 16956.

### *Limited Partnership*

By following specified formalities, a limited partnership may be created. See Corp. Code § 15611 *et seq.* The distinguishing characteristic of a limited

partnership is that there are two types of partners: limited partners and general partners. A limited partner who does not participate in control of the business is not liable for the obligations of a limited partnership. Corp. Code § 15632. The obligations of a general partner, on the other hand, are the same as those of a partner in a regular partnership. Corp. Code § 15643. A limited partnership is governed by the Revised Limited Partnership Act (Corp. Code § 15611 *et seq.*) or, if in existence before the effective date of the Revised Limited Partnership Act, by the Uniform Limited Partnership Act (Corp. Code § 15501 *et seq.*).

#### *Limited Liability Company*

The limited liability company is a relatively new form of unincorporated business organization. It provides its members with the same protection from liability as a corporation, while allowing the members to actively participate in management and control (as in a partnership). In order to form a limited liability company, one must file articles of organization with the Secretary of State. See Corp. Code § 17000 *et seq.*

#### *Joint Venture*

A joint venture is very similar to a partnership, in that members associate as coowners of a business and agree to share profits and losses. However, where a partnership is generally organized to carry on a *continuing* business for a fixed or indefinite period of time, a joint venture is organized to carry out a *single* transaction or series of transactions. For our purposes, this is a distinction without a difference. As noted by the California Supreme Court:

From a legal standpoint, both relationships are virtually the same. ... Accordingly, the courts freely apply partnership law to joint ventures when appropriate.

*Weiner v. Fleischman*, 54 Cal. 3d 476, 482 (1991).

#### *Joint Stock Company*

Like a partnership, a joint stock company is an unincorporated association of individuals for the purpose of carrying on a business and making profits. However, like a corporation, it issues stock representing shares of ownership of the enterprise and these shares are transferable by the owner, without the consent of the other shareholders. A joint stock company is governed by articles of association that prescribe its objects, organization, and the rights and liabilities of its members, and typically provide that its business shall be controlled by selected individuals designated as “directors” or “managers.” 15 Cal. Jur. 3d

Corporations §§ 540-541 (1983). In the absence of express provisions otherwise, the rights and liabilities of members of a joint stock company are determined by the same rules that apply to partnerships. *Old River Farms Co. v. Roscoe Haegelin Co.*, 98 Cal. App. 331 (1929).

#### *Business Trust*

A business trust (sometimes called a “Massachusetts trust”) is a form of business organization where property is conveyed to one or more trustees, in accordance with the terms of a trust instrument, to manage for the benefit of persons holding transferable certificates representing shares of beneficial interest. These certificates, which resemble shares of stock in a corporation, entitle the holders to share ratably in the income of the trust, and on termination of the trust, in the proceeds. See *Goldwater v. Oltman*, 210 Cal. 408 (1930).

In a true business trust, the trustee is not an agent, and is individually liable for contracts entered into as trustee (unless the contract stipulates otherwise), and the shareholders are not liable. However, if the trust agreement gives substantial control over the trust property to the shareholders, such that they are “the principals whose instructions are to be obeyed by their agent who for their convenience holds the legal title to their property,” then a partnership is formed rather than a trust, and partnership law controls. In that case, the shareholders are liable, as partners, for contracts made on their behalf. *Id.*

#### *Real Estate Investment Trust*

A “real estate investment trust” is an “unincorporated association or trust formed to engage in business and managed by, or under the direction of, one or more trustees for the benefit of the holders or owners ... of transferable shares of beneficial interest in the trust estate...” and which meets certain specified criteria relating to qualification by the Commissioner of Corporations and taxation as a real estate investment trust under the federal Internal Revenue Code. See Corp. Code § 23000. Shareholders are not personally liable for liabilities and obligations of the trust. Corp. Code § 23001. Special provisions governing real estate investment trusts can be found at Corporations Code Sections 23002-23006.

#### **Corporations Sole**

The Commission requested that this discussion include a description of corporations sole. A corporation sole is *not* an unincorporated association. It is a special type of corporation that can be formed by a “bishop, chief priest, presiding elder, or other presiding officer of any religious denomination, society,

or church, for the purpose of administering and managing the affairs, property, and temporalities thereof.” Corp. Code §10002. A corporation sole shares many of the attributes of other types of corporation — e.g., filing of articles of incorporation with the Secretary of State, legal entity status for many purposes, perpetual existence. Corp. Code §10000 *et seq.* Because a corporation sole is not an unincorporated association, it is not discussed further in this memorandum.

#### CAPACITY OF UNINCORPORATED ASSOCIATION TO SUE AND BE SUED

At common law, an unincorporated association was not considered a separate legal entity with the capacity to sue and be sued:

Associations ... are not bodies politic or corporations, nor are they recognized by the law as persons. They are mere aggregates of individuals, called for convenience, like partnerships, by a common name. ... such associations cannot sue or be sued. In suits where they are apparently parties, the real parties are the members of the association, who — as in the case of partnerships — are sued by the company name.

*Grand Grove of United Ancient Order of Druids of California v. Garibaldi Grove*, 130 Cal. 116 (1900).

The common law rule has been superseded by statute. Code of Civil Procedure Section 369.5(a), which is based in part on a Commission recommendation, now provides:

A partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name it has assumed or by which it is known.

There appears to be no difference between for-profit and nonprofit associations with respect to their capacity to sue and be sued.

#### SERVICE OF PROCESS ON AN UNINCORPORATED ASSOCIATION

Corporations Code Section 24003, added on the Commission’s recommendation, provides that an unincorporated association may file a form with the Secretary of State, stating its principal place of business and designating an agent for service of process.

If the unincorporated association is a “general or limited partnership,” a summons may be served on the association by delivery of the summons and

complaint to the person designated pursuant to Section 24003 or to the general partner or general manager. Code Civ. Proc. § 416.40(a).

If the association is not a general or limited partnership, a summons may be served on the association by delivery of the summons and complaint to the person designated pursuant to Section 24003 or to the “president or other head of the association, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a general manager, or a person authorized by the association to receive service of process. Code Civ. Proc. § 416.40(b).

If an unincorporated association has not designated an agent, or the designated agent cannot, with reasonable diligence, be found at the specified address a court may authorize service on the association by delivery of the process to a member and mailing of the process to the association’s last known address. Corp. Code § 24007.

Service of process on a joint stock company is governed by the same procedures that apply to a corporation. Code Civ. Proc. § 416.30.

These rules seem to adequately provide for service of process on the different types of unincorporated association, both for-profit and nonprofit.

#### PLACE OF TRIAL WHERE UNINCORPORATED ASSOCIATION IS DEFENDANT

Like a corporation, an association may be sued in a county where “the contract is made or is to be performed, or where the obligation or liability arises, or the breach occurs....” Code Civ. Proc. § 395.5. If the association has filed a statement designating its principal place of business, pursuant to Corporations Code Section 24003, the association may be sued in the county where the designated place of business is located. Code Civ. Proc. §§ 395.2 & 395.5. If an unincorporated association has not designated a principal place of business, the unincorporated association can be sued in any county in which it has a member. *Juneau Spruce Corp. v. ILWU*, 37 Cal. 2d 760 (1951) (construing Code Civ. Proc. § 395). This creates wide latitude for forum shopping, especially where the defendant is a large association with members residing in many counties. It was in response to *Juneau* that the Commission recommended enactment of Section 395.2, allowing an unincorporated association to designate a principal place of business for the purpose of determining venue. See Code Civ. Proc. § 395.2, Comment.

## CONTRACT LIABILITY

With regard to liability of an association's members for contract obligations of the association, there are substantial differences between the law governing different types of unincorporated associations. The different rules are discussed below.

### **Nonprofit Associations**

In *Security First National Bank of Los Angeles v. Cooper*, 62 Cal. App. 2d 653 (1944), the members of an Elks Lodge (an unincorporated association) could be held liable for unpaid rent on their club-house. Quoting *Corpus Juris Secundum*, the court stated that:

Membership, as such, imposes no personal liability for the debts of an association; but to charge a member therewith it must be shown that he has actually or constructively assented to or ratified the contract on which the liability is predicated. If however, a member, as such, directly incurs a debt, or expressly or impliedly authorizes or ratifies the transaction in which it is incurred, he is liable as a principal. So a member is liable for any debt that is necessarily contracted to carry out the objects of the association.

Provision of a club-house was one of the objects of the association. The lease was a reasonable means of accomplishing that object.

Consequently, all who were members of the lodge at the time the lease was executed by the lodge were liable thereon as principals, even though they did not expressly authorize it by appearing at the meeting and voting for the resolution directing its execution.

In response to the *Cooper* decision, certain statutory limitations on the liability of nonprofit associations were enacted. See letter from Assembly Member Charles W. Lyon to Governor Earl Warren (April 26, 1945) (on file with Commission). First, the concept of implied authorization or ratification of an association contract was limited. Corporations Code Section 21102 provides:

No presumption or inference existed prior to September 15, 1945, or exists after that date, that a member of a nonprofit association has consented or agreed to the incurring of any obligation by the association, from the fact of joining or being a member of the association, or signing its by-laws.

There are no cases interpreting Section 21102. Presumably, the provision reverses the rule that a member is liable for any contract merely because the contract is necessary for the objects of the association. However, the section doesn't limit liability based on express authorization. Nor does it seem to limit implied authorization or ratification where the implication is drawn from facts other than "the fact of joining or being a member of the association, or signing its by-laws." For example, under general agency law, a person who knowingly accepts the benefit of the acts of another may be deemed to have ratified those acts, thereby creating a principal-agent relationship. See Civ. Code § 2310 (ratification of agent's act).

The second limitation enacted in response to *Cooper*, was a categorical limit on liability for certain contracts relating to real property. Corporations Code Section 21100 provides:

Members of a nonprofit association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, designing, planning, architectural supervision, erection, construction, repair, or furnishing of buildings or other structures, to be used for the purposes of the association.

Finally, Corporations Code Section 21101 requires that any agreement by a member to assume personal liability for "such a debt" be written and signed:

Any contract by which a member of a nonprofit association assumes any such debt or liability is invalid unless the contract or some note or memorandum thereof, specifically identifying the contract which is assumed, is in writing and signed by the party to be charged or by his agent.

Although the phrase "such a contract" is ambiguous, it probably refers to a contract of a type described in the Section 21100, i.e., a contract relating to specified transactions involving real property.

In addition to the limits enacted in response to *Cooper*, there is a specific limitation on the liability of members of a nonprofit medical association. Corporations Code Section 21200 provides, in part:

The members of that unincorporated association are not individually or personally liable for debts or liabilities contracted or incurred by the association in the acquisition of lands or leases or the purchase, leasing, construction, repairing or furnishing of buildings or other structures to be used for the purposes of the association or for debts or liabilities contracted or incurred by the

association in the carrying out or performance of any of its purposes; provided, that the purposes are [nonprofit purposes].

This is a very broad limitation, as it isn't restricted to transactions involving real property.

### **For-Profit Associations**

The rules governing liability of members in for-profit associations vary depending on the type of association.

#### *Partnership*

In general, partners are individually liable for all partnership obligations. Corporations Code Section 16306(a)-(b) provides:

(a) Except as otherwise provided in subdivisions (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

Subdivision (c), referred to in subdivision (a), limits the liability of partners in a limited liability partnership.

As discussed above, the law governing partnership is also applied to joint ventures, and to "business trusts" that are deemed to be partnerships rather than true business trusts. The members of a joint stock company are also personally liable for company obligations, as if they were partners. See *Old River Farms Co. v. Roscoe Haegelin Co.*, 98 Cal. App. 331 (1929).

#### *Limited Liability Partnership*

Partners in a registered limited liability partnership are generally not individually liable for partnership debts, obligations, or liabilities (with the principal exception of liabilities arising from the partner's own tortious conduct). See Corp. Code § 16306(c).

#### *Limited Partnership*

In a limited partnership, limited partners who do not participate in the control of the business are generally not individually liable for partnership obligations. Corp. Code § 15632. The obligations of a general partner, on the other hand, are the same as if the limited partnership were a regular partnership. Corp. Code § 15643.

### *Limited Liability Company*

In a limited liability company, the members are generally not personally liable for any debt, obligation, or liability of the company. Corp. Code § 17101(a). However, a member may be liable to the same extent that a shareholder in a corporation is liable (e.g., under the alter ego doctrine). Corp. Code §17101(b).

### *Real Estate Investment Trust*

Members of a real estate investment trust are not personally liable for any liabilities, debts, or obligations of the real estate investment trust. Corp. Code § 23001.

### **Summary**

In a nonprofit association, a member is not liable as a consequence of mere membership. However, the member may be liable under principles of agency, where the member has authorized or ratified a contract, either expressly or impliedly. However, no implication of authorization or ratification may be drawn from the fact of membership.

In a partnership (or association to which the law of partnership applies), members of the association are individually liable for obligations of the association. In those business forms specifically established to limit liability (limited liability partnership, limited partnership, limited liability company, and real estate investment trust) rules specific to those forms control.

## TORT LIABILITY

### **Nonprofit Associations**

Members of an nonprofit association are not liable for torts of the association merely as a consequence of membership. *Orser v. George*, 252 Cal. App. 2d 660 (1967). However, a member may be vicariously liable if the member personally authorized the activity that led to the tort. Thus, in *Steuer v. Phelps*, 41 Cal. App. 3d 468 (1974), members of an unincorporated religious organization could be vicariously liable for an accident involving a car owned by the association, based on their personal involvement:

There is evidence that each individual member, rather than an officer, manager, or committee, participated directly in entrusting the car to [the driver] to operate exclusively for purposes of the association. Under the doctrine of respondeat superior, it is elemental that one who entrusts another with the operation of his automobile is liable for the negligent operation of the vehicle, even

though he neither authorized nor approved the driving in a negligent manner.

Historically, a member of an association who was injured by the association could not recover in tort. As discussed in *Marshall v. ILWU*, 57 Cal. 2d 781 (1962):

[The] members of an unincorporated association are engaged in a joint enterprise, and the negligence of each member in the prosecution of that enterprise is imputable to each and every other member, so that the member who has suffered damages through the tortious conduct of another member of the association may not recover from the association for such damage. ... The basic rationale of this rule is that an unincorporated association, whether it be a fraternal organization or a labor union, like an ordinary partnership, has no legal entity or existence apart from its members. In legal effect each member becomes both a principal and an agent as to all other members for the actions of the group itself; and accordingly as a principal he has no cause of action against a co-principal (the group) for the wrongful conduct of their common agent.

The *Marshall* court criticized this rule as an inappropriate application of business partnership concepts to other forms of unincorporated association:

When these concepts are transferred bodily to other forms of voluntary associations such as fraternal organizations, clubs and labor unions, which act normally through elected officers and in which the individual members have little or no authority in the day-to-day operations of the association's affairs, reality is apt to be sacrificed to theoretical formalism.

Ultimately, the court rejected the imputed negligence rule, holding that “a member of a labor union is entitled to sue the union for negligent acts which he neither participated in nor authorized, and that any judgment that he may recover against the union can be satisfied from the funds and property of the union alone.” The court expressly limited its holding to labor unions, “leaving to future development the rules to be applied in the case of other types of unincorporated associations.”

In 1967, acting on the Commission’s recommendation, the Legislature added Corporations Code Section 24001:

(a) Except as otherwise provided by statute, an unincorporated association is liable to a person who is not a member of the association for an act or omission of the association, and for the act or omission of its officer, agent, or employee acting within the

scope of his office, agency, or employment, to the same extent as if the association were a natural person.

(b) Nothing in this section in any way affects the rules of law which determine the liability between an association and a member of the association.

This partially codifies *Marshall*, in that it recognizes that an unincorporated association can be liable for a tort as a separate legal entity. However, it sidesteps the question of whether a member can sue his or her association.

In *White v. Cox*, 17 Cal. App. 3d 824 (1971), the court held that a member of a condominium association could sue the association in tort. In *dicta*, the court stated:

[We] conclude that unincorporated associations are now entitled to general recognition as separate legal entities and that as a consequence a member of an unincorporated association may maintain a tort action against his association.

This appears to have extended the holding in *Marshall* to all unincorporated associations.

### **Partnership**

A partner is liable for the wrongful acts or omissions of a co-partner “acting in the ordinary course of business of the partnership or with authority of the partnership.” Corp. Code § 16305. As discussed above, the law governing partnership is also applied to joint ventures, and to “business trusts” that are deemed to be partnerships rather than true business trusts. The members of a joint stock company are also personally liable for company obligations, as if they were partners.

As discussed above in the context of unincorporated associations, because partners are all co-principals, the liability for one partner’s act may be imputed to all other partners. Consequently, some courts have held that a partner injured by the partnership could not sue, because contributory negligence was imputed to the injured partner. However, this does not appear to be the rule in California. In *Ledgerwood v. Ledgerwood*, 114 Cal. App. 538 (1931), the court held that a passenger injured in an automobile accident could sue the driver, despite the fact that the two were involved in a joint enterprise. The court quoted with approval from a Washington state case (citation omitted):

Where the action is brought against a third party, the rule is that the negligence of one member of the joint enterprise within the

scope of that enterprise will be imputed to the other. ... It does not necessarily follow, however, that that rule should be applied when the action is by one member of the joint enterprise as against the other. When the action is against a third person each member of the joint enterprise is a representative of the other, and the acts of one are the acts of all if they be within the scope of the enterprise. When the action is brought by one member of the enterprise against another, there is no place to apply the doctrine of imputed negligence. To do so would be to permit one guilty of negligence to take refuge behind his wrong.

The same principle was expressed, in *dicta*, in *Roberts v. Craig*, 124 Cal. App. 2d 202 (1954):

The doctrine of imputed negligence is indulged in to protect third persons from loss caused by the joint enterprise. Liability is imposed on all members engaged in a joint enterprise when the action is brought by a third person because the courts have felt that in such a case fairness requires that the joint enterprise should bear the damages caused by the negligence of any member of the enterprise. But this basic cause for the imputation of the negligence of one to another does not exist when one member of the joint enterprise sues another. The better reasoned cases hold that the doctrine of imputed negligence will not be indulged in where the action is between members of the joint enterprise.

### **“Limited Liability” Business Associations**

As discussed above in the context of contractual liability, the special “limited liability” forms of for-profit unincorporated association have their own rules limiting a member’s liability. See Corp. Code §§ 15632 (limited partnership), 16306(c) (limited liability partnership), 17101(a) (limited liability company), 23001 (real estate investment trust).

### **Summary**

A member of a nonprofit association is not liable for torts of the association merely as a consequence of membership. However, a member may be vicariously liable if the member personally authorized the tortious act. An unincorporated association is itself liable for torts, as if it were a person. It appears that a tort action by a member against the association is not barred by the doctrine of imputed negligence.

In a partnership (or association to which the law of partnership applies), a partner is jointly and severally liable for tortious acts or omissions of a copartner

acting in the ordinary course of business of the partnership or with the partnership's authority. Apparently, a tort action by a partner against the partnership is not barred by the doctrine of imputed negligence.

In those business forms specifically established to limit liability (limited liability partnership, limited partnership, limited liability company, and real estate investment trust) rules specific to those forms control.

## PROPERTY POWERS OF UNINCORPORATED ASSOCIATION

### **Common Law**

At common law, an unincorporated association was not a legal entity with the capacity to own property in its own name.

Associations ... are not bodies politic or corporations, nor are they recognized by the law as persons. They are mere aggregates of individuals, called for convenience, like partnerships, by a common name. Such an association cannot, therefore, acquire or hold property, though often said to do so. All the property said to belong to it is in fact the property of its members, and each man's share of it is his own private property, and equally protected by the fundamental laws.

*Grand Grove of United Ancient Order of Druids of California v. Garibaldi Grove*, 130 Cal. 116 (1900).

### **Statutory Development**

In 1911, a statute was enacted providing that unincorporated benevolent or fraternal societies or associations can “purchase, receive, own, hold, mortgage, manage and sell all such real estate and other property as may be necessary for the business purposes and objects of the said society or association ... and also to take and receive by will or deed all property not so necessary, and to hold the same until disposed of within a period of ten years from the acquisition thereof....” Transactions were to be conducted by the presiding officer and recording secretary under seal and pursuant to an authorizing resolution. 1911 Cal. Stat. ch. 572. The staff found nothing in any of the legislative history or case law to explain what is meant by “business purposes and objects” as used in this provision or its successors.

The statute went through a number of modifications over the years. In 1939, it was amended to add leasing, pledging, and encumbering, by deed of trust or otherwise, to the list of authorized transactions. In 1947, it was codified as

Corporations Code Sections 21200-21201. In 1949, labor organizations were added to the list of entities authorized to hold and transact in property. In 1970, these sections were amended again, on the recommendation of the State Bar (and with the support of the California Land Title Association) to expand their application to *all* unincorporated associations.

The 1970 amendments also elaborated the rules governing who can transact on behalf of an unincorporated association:

All conveyances transferring or in any manner affecting the title to real estate owned or held by an unincorporated benevolent or fraternal society or association, or lodge or branch thereof, or labor organization, shall be executed by its presiding officer and recording secretary under its seal after resolution duly adopted by the society, association, lodge, or branch authorizing the conveyance, and in the case of other unincorporated associations for which no specific provision is made by statute shall be executed by (a) its president or other head and secretary, recording secretary, or other comparable officer, or (b) other officers or persons specifically designated by a resolution duly adopted by the association or by a committee or body duly authorized to act by the articles of association or bylaws.

An unincorporated association not otherwise authorized by statute may record in any county in which it owns or has an interest in real property a verified and acknowledged statement, or a certified copy of such statement recorded in another county, setting forth the name of the association, the names of its officers and the title or capacity of its officers and other persons who are authorized on its behalf to execute conveyances of real property owned or held by the association. It shall be conclusively presumed in favor of any bona fide purchaser or encumbrancer for value of real property of the association located in the county in which such statement or certified copy has been recorded that the officers and persons designated in the statement are duly authorized to execute such conveyances unless there is recorded in such county by anyone claiming to be a member of the association a statement, verified and acknowledged by the person executing it, which shall set forth the name of the association, particularly identify the recorded statement of the unincorporated association, and state that such previously recorded statement was recorded without authority or that the officers or other persons designated therein are not so authorized. For the purposes of this paragraph, the definitions of “conveyance” and “purchaser” in Section 15010.5 and the definition of “unincorporated association” in Section 24000 shall apply, except that “unincorporated association” shall not include partnerships.

The principal innovation here is the addition of the second paragraph, establishing a procedure for recording a statement of authority to transact on behalf of the association. Note that the certification procedure expressly does not apply to partnerships, which are subject to a different scheme for certifying authority to transfer partnership property. See Corp. Code §§ 16105, 16302-16304.

In 1972, Sections 21200 and 21201 were renumbered as 20001 and 20002 and moved out of the part titled “Nonprofit Associations” to help clarify that they apply to all unincorporated associations.

It isn’t clear what is meant by the phrases “other unincorporated associations for which no specific provision is made by statute” and “an unincorporated association not otherwise authorized by statute,” as used in Section 20002. They could conceivably mean any of the following:

- (1) An association of a type that is not specifically recognized by statute.
- (2) An association for which no statute provides specific procedures relating to property conveyance.
- (3) An association other than a benevolent or fraternal society or labor organization.

The staff found no case law, treatise, or legislative history discussing the phrases. The staff would like to receive input on the meaning of these phrases and has requested such input in a note in the attached staff draft tentative recommendation.

### **Summary**

An unincorporated association has the power to own property and engage in property transactions, as necessary for its business purposes and objects. An unincorporated association can receive property by will or devise. Certain minimal formalities are required to engage in transactions involving real property (execution by specified officials, as authorized by resolution). Procedures exist for recording a statement of authority naming who can transfer property on behalf of an unincorporated association. This statement offers some protection to bona fide purchasers and encumbrancers.

## DISPOSITION OF ASSOCIATION PROPERTY ON DISSOLUTION OF ASSOCIATION

Distribution of assets on dissolution is another area where the law governing nonprofit associations and for-profit associations is very different. These differences are discussed below:

### **Nonprofit Association**

Section 9 of the Uniform Act provides for the disposition of personal property of an inactive nonprofit association. California has no analogous statutory provision. However, there is case law discussing distribution of the assets of a dissolved unincorporated association. In *Holt v. Santa Clara County Sheriff's Benefit Ass'n*, 250 Cal. App. 2d 925 (1967), the court held that distribution is determined by the association's constitution and bylaws. If the association does not have an applicable provision in its constitution and bylaws, the assets should be distributed to the membership, pro rata.

In *Holt*, the association at issue was a mutual benefit association, designed to provide retirement and death benefits to its members and their families. Since the property of the association was intended to benefit the members, distribution of assets to members seems proper. It is analogous to the rule that allows distribution of the assets to the members of a dissolved mutual benefit nonprofit corporation. See Corps. Code § 8717.

However, if an association is established to serve a charitable purpose, it is likely that the assets could not be distributed to members. In *Los Angeles County Pioneer Society v. Historical Society of Southern California*, 40 Cal. 2d 852 (1953), the court held that the assets of a charitable nonprofit corporation could not be distributed to the association's members on dissolution. The property had been received to further charitable purposes and was held in trust. The attempt to distribute assets to members was a breach of that trust. It is very likely that the same rule would apply to an unincorporated association established for charitable purposes — property acquired to further those purposes could not be used to benefit individual members.

### **For-Profit Associations**

As a general matter, in a for-profit association assets existing at the time of dissolution are apportioned between the members of the association according to their relative share of ownership, as determined by governing statutes and the agreements establishing the association.

On winding up a partnership, an accounting is performed to determine each partner's share of any remaining assets or outstanding liabilities. Corp. Code § 16807. The same law apparently applies to joint ventures. Specific statutes govern distribution of assets of a dissolved limited partnership (Corp. Code § 15684) and limited liability company (Corp. Code § 17353).

On termination of a business trust, any remaining assets are distributed to shareholders in proportion to their ownership of shares. See *Goldwater v. Oltman*, 210 Cal. 408 (1930). The same would presumably be true of a defunct joint stock company or real estate investment trust.

#### STAFF DRAFT TENTATIVE RECOMMENDATION

The attached partial staff draft tentative recommendation is intended to serve as an implementation of the Commission's prior decisions. As further issues are considered and decided, the staff draft tentative recommendation will be updated to include those decisions.

Decisions implemented in the current staff draft include:

- There should be no substantive change to Corporations Code Section 20002 (relating to authority to transfer property). However, in preparing the staff draft, the staff noticed a technical problem (reference to a repealed section), which is corrected in the staff draft. The staff draft also divides the section into subdivisions and paragraphs.
- Code of Civil Procedure Section 369.5 should be revised to clarify that an unincorporated association may participate in administrative proceedings and alternative dispute resolution, as well as judicial proceedings.
- There should be no substantive change to Corporations Code Sections 24003-24007 or Code of Civil Procedure Sections 416.30 & 416.40 (relating to service of process).
- There should be no substantive change to Code of Civil Procedure Sections 395.2 & 395.5 (relating to place of trial).

Respectfully submitted,

Brian Hebert  
Staff Counsel



1 ...

2 **Real Property Transactions Involving Unincorporated Association**

3 Under existing law, an unincorporated association may designate an agent to  
4 execute conveyances of real property on its behalf.<sup>6</sup> If such a designation is  
5 recorded in the county where the property is located, and a statement disputing the  
6 authority of the designated agent has not been recorded in that county:

7 It shall be conclusively presumed in favor of any bona fide purchaser or encumbrancer for value  
8 of real property of the association located in the county in which such statement or certified copy  
9 has been recorded that the officers and persons designated in the statement are duly authorized to  
10 execute such conveyances...<sup>7</sup>

11 This procedure does not apply to partnerships, which are subject to a different  
12 system for certifying authority to transfer partnership property.<sup>8</sup> There do not  
13 appear to be any substantive problems with existing law. However, the  
14 Commission recommends minor technical revisions.<sup>9</sup>

15 ...

16 **PROCEDURAL ISSUES**

17 At common law, an unincorporated association was not recognized as a legal  
18 entity with the capacity to sue and be sued.<sup>10</sup> This raised a number of issues that  
19 have been addressed by the Uniform Act: capacity of an unincorporated  
20 association to sue and be sued as a legal entity separate from its members,<sup>11</sup> the  
21 effect of a judgment against an unincorporated association,<sup>12</sup> service of process on  
22 an unincorporated association,<sup>13</sup> and place of trial where an unincorporated  
23 association is the defendant.<sup>14</sup> All of these issues were addressed in a prior  
24 Commission recommendation.<sup>15</sup> The Commission has reviewed these issues to  
25 determine whether there are any problems with existing law, or whether any  
26 innovations in the Uniform Act might be adopted to improve existing law. The  
27 Commission's conclusions are discussed below:

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6. Corp. Code § 20002.

7. *Id.*

8. See Corp. Code §§ 16105, 16302-16304.

9. See proposed amendment of Corp. Code § 20002, *infra*.

10. *Grand Grove of United Ancient Order of Druids of California v. Garibaldi Grove*, 130 Cal. 116, 119 (1900).

11. Unif. Unincorporated Nonprofit Ass'n Act § 7 (1992).

12. Unif. Unincorporated Nonprofit Ass'n Act § 8 (1992).

13. Unif. Unincorporated Nonprofit Ass'n Act §§ 10 & 13 (1992).

14. Unif. Unincorporated Nonprofit Ass'n Act § 12 (1992).

15. See *Suit by or Against an Unincorporated Association*, 8 Cal. L. Revision Comm'n Reports 902 (1966). Legislation implementing the Commission's recommendation was enacted in 1967. See 1967 Cal. Stat. ch 1324.

1    **Capacity to Sue and Be Sued**

2    Existing law provides that an unincorporated association, whether organized for  
3 profit or not, can sue and be sued in the name it has assumed or by which it is  
4 known.<sup>16</sup> An analogous provision of the Uniform Act provides that a nonprofit  
5 association may “institute, defend, intervene, or participate in a judicial,  
6 administrative, or other governmental proceeding or in an arbitration, mediation,  
7 or any other form of alternative dispute resolution.”<sup>17</sup> The proposed law adopts  
8 the language of the Uniform Act, which clearly states that an unincorporated  
9 association can intervene in litigation and can participate in administrative  
10 proceedings and alternative dispute resolution.<sup>18</sup> This appears to be declaratory of  
11 existing law.<sup>19</sup>

12    ....

13    **Service of Process**

14    Existing law provides a procedure whereby an unincorporated association may  
15 designate an agent for receipt of process, in a document filed with the Secretary of  
16 State.<sup>20</sup> Designation of such an agent is helpful in an organization where lines of  
17 authority may not be clear. However, the designated agent is not the only person  
18 on whom a summons may be served. In a general or limited partnership, a  
19 summons may be served on a general partner or manager.<sup>21</sup> In other  
20 unincorporated associations, a summons may be served on certain specified  
21 officers of the association.<sup>22</sup> If an unincorporated association has not designated an  
22 agent or the agent cannot be found, a court may authorize service on a member.<sup>23</sup>  
23 This is a reasonable system and it does not seem to have created any problems.  
24 The Commission does not recommend any changes to the law governing service  
25 of process on an unincorporated association,

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16. Code Civ. Proc. § 369.5(a).

17. Unif. Unincorporated Nonprofit Ass’n Act § 7(a) (1992).

18. See proposed amendment of Code Civ. Proc. § 369.5, *infra*.

19. Any “person” who has an interest in a matter in litigation or in the success of either of the parties may intervene. Code Civ. Proc. § 387. For the purposes of the Code of Civil Procedure, “person” includes an unincorporated association. See *Oil Workers International Union, CIO v. Superior Court*, 103 Cal. App. 2d 512, 570 (1951) (construing Code Civ. Proc. § 17). Similarly, any “person” may be a party in an administrative adjudication, including a “public or private organization or entity of any character.” Gov’t Code § 11405.70 (defining “person” for purposes of administrative adjudication provisions of Administrative Procedure Act)

20. Corp. Code §§ 24003-24007.

21. Code Civ. Proc. § 416.40(a).

22. Code Civ. Proc. § 416.40(b). See also Code Civ. Proc. § 416.30 (service of summons on joint stock company).

23. Corp. Code § 24007.

1 **Place of Trial**

2 Under the general rule that trial is proper in the county in which the defendant  
3 resides, an unincorporated association can be sued in any county in which one of  
4 its members resides.<sup>24</sup> This creates wide latitude for forum shopping, especially  
5 when suing an association with numerous members statewide, such as a religious  
6 organization or labor union. However, an unincorporated association can avoid  
7 this problem by designating its principal place of business in a document filed with  
8 the Secretary of State.<sup>25</sup> In a suit against an unincorporated association that has  
9 designated its principal place of business, trial is proper in the county where the  
10 principal place of business is situated.<sup>26</sup> There do not appear to be any problems  
11 with the law governing place of trial and the Commission does not recommend  
12 any changes to that law.

13 ...

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24. *Juneau Spruce Corp. v. ILWU*, 37 Cal. 2d 760 (1951) (construing Code Civ. Proc. § 395).

25. Corp. Code § 24003.

26. Code Civ. Proc. § 395.2 & 395.5.

## PROPOSED LEGISLATION

**Note.** As an aid to understanding the proposed changes, all Provisions governing the Subjects addressed by this recommendation have been included below, regardless of whether the Commission is proposing a change to a particular Section. Sections that would not be added, amended, or repealed under the proposed law are indicated as “unchanged.”

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1 PROPOSED LEGISLATION

2 **Code Civ. Proc. § 369.5 (amended). Proceedings involving unincorporated association**

3 SEC. \_\_\_\_ . Section 369.5 of the Code of Civil Procedure is amended to read:

4 369.5. (a) A partnership or other unincorporated association, whether organized  
5 for profit or not, ~~may sue and be sued~~ may institute, defend, intervene, or  
6 participate in a judicial, administrative, or other governmental proceeding or in an  
7 arbitration, mediation, or any other form of alternative dispute resolution, in the  
8 name it has assumed or by which it is known.

9 (b) A member of the partnership or other unincorporated association may be  
10 joined as a party in an action against the unincorporated association. If service of  
11 process is made on the member as an individual, whether or not the member is also  
12 served as a person upon whom service is made on behalf of the unincorporated  
13 association, a judgment against the member based on the member's personal  
14 liability may be obtained in the action, whether the liability is joint, joint and  
15 several, or several.

16 **Comment.** Section 369.5 is amended to clarify the range of judicial and quasi-judicial  
17 proceedings in which an unincorporated association may be a party or otherwise participate. This  
18 is declaratory of existing law. The amendment is drawn from the Uniform Unincorporated  
19 Nonprofit Association Act. See Unif. Unincorporated Nonprofit Ass'n Act § 7(a) (1992).

20 **Code Civ. Proc. § 395.2 (unchanged). Place of trial in action against unincorporated**  
21 **associations**

22 395.2. If an unincorporated association has filed a statement with the Secretary  
23 of State pursuant to Section 24003 of the Corporations Code listing its principal  
24 office in this state, the proper county for the trial of an action against such  
25 unincorporated association is the same as it would be if the unincorporated  
26 association were a corporation and, for the purpose of determining such county,  
27 the principal place of business of the unincorporated association shall be deemed  
28 to be the principal office in this state listed in the statement.

29 **Code Civ. Proc. § 395.5 (unchanged). Place of trial in action against corporation or**  
30 **association**

31 395.5. A corporation or association may be sued in the county where the contract  
32 is made or is to be performed, or where the obligation or liability arises, or the  
33 breach occurs; or in the county where the principal place of business of such  
34 corporation is situated, subject to the power of the court to change the place of trial  
35 as in other cases.

36 **Code Civ. Proc. § 416.30 (unchanged). Service of summons on joint stock company or**  
37 **association**

38 416.30. A summons may be served on a joint stock company or association by  
39 delivering a copy of the summons and of the complaint as provided by Section  
40 416.10 or 416.20.

1 **Code Civ. Proc. § 416.40 (unchanged). Service of summons on unincorporated association**

2 416.40. A summons may be served on an unincorporated association (including  
3 a partnership) by delivering a copy of the summons and of the complaint:

4 (a) If the association is a general or limited partnership, to the person designated  
5 as agent for service of process as provided in Section 24003 of the Corporations  
6 Code or to a general partner or the general manager of the partnership;

7 (b) If the association is not a general or limited partnership, to the person  
8 designated as agent for service of process as provided in Section 24003 of the  
9 Corporations Code or to the president or other head of the association, a vice  
10 president, a secretary or assistant secretary, a treasurer or assistant treasurer, a  
11 general manager, or a person authorized by the association to receive service of  
12 process;

13 (c) When authorized by Section 15700 or 24007 of the Corporations Code, as  
14 provided by the applicable section.

15 **Corp. Code § 20002 (amended). Conveyance of real property of unincorporated association**

16 SEC. \_\_\_\_\_. Section 20002 of the Corporations Code is amended to read:

17 20002. (a) All conveyances transferring or in any manner affecting the title to  
18 real estate owned or held by an unincorporated ~~benevolent or fraternal society or~~  
19 ~~association, or lodge or branch thereof, or labor organization,~~ association shall be  
20 executed in the following manner:

21 (1) In a benevolent or fraternal society or association, or lodge or branch of such  
22 a society or association, or in a labor organization, by its presiding officer and  
23 recording secretary under its seal after resolution duly adopted by the society,  
24 association, lodge, or branch authorizing the conveyance, ~~and in the case of other~~  
25 ~~unincorporated associations for which no specific provision is made by statute~~  
26 ~~shall be executed by (a).~~

27 (2) In an unincorporated association for which no specific provision has been  
28 made by statute, by its president or other head and secretary, recording secretary,  
29 or other comparable officer, or (b) by other officers or persons specifically  
30 designated by a resolution duly adopted by the association or by a committee or  
31 body duly authorized to act by the articles of association or bylaws.

32 (b) An unincorporated association not otherwise authorized by statute may  
33 record in any county in which it owns or has an interest in real property a verified  
34 and acknowledged statement, or a certified copy of such statement recorded in  
35 another county, setting forth the name of the association, the names of its officers  
36 and the title or capacity of its officers and other persons who are authorized on its  
37 behalf to execute conveyances of real property owned or held by the association. It  
38 shall be conclusively presumed in favor of any bona fide purchaser or  
39 encumbrancer for value of real property of the association located in the county in  
40 which such statement or certified copy has been recorded that the officers and  
41 persons designated in the statement are duly authorized to execute such  
42 conveyances unless there is recorded in such county by anyone claiming to be a

1 member of the association a statement, verified and acknowledged by the person  
2 executing it, which shall set forth the name of the association, particularly identify  
3 the recorded statement of the unincorporated association, and state that such  
4 previously recorded statement was recorded without authority or that the officers  
5 or other persons designated therein are not so authorized. For the purposes of this  
6 paragraph, the definitions of “conveyance” and “purchaser” in Section 15010.5  
7 and the definition of “unincorporated association” in Section 24000 shall apply,

8 (c) For the purposes of subdivision (b):

9 (1) “Conveyance” means every written instrument by which any estate or  
10 interest in real estate is created, aliened, mortgaged, or encumbered, or by which  
11 the title to any real property may be affected, other than a will.

12 (2) “Purchaser” means a person acquiring an interest under a “conveyance” as  
13 defined in paragraph (1).

14 (3) “Unincorporated association” has the meaning provided in Section 24000,  
15 except that “unincorporated association” shall not include partnerships.

16 **Comment.** Section 20002 is amended to make two nonsubstantive changes: (1) The section is  
17 divided into subdivisions and paragraphs. (2) An obsolete reference to former Section 15010.5 is  
18 replaced with the substance of the former provisions that were referred to.

19 ☞ **Note.** The Commission would like to receive input on two issues:

20 (1) It isn’t clear what is meant by the phrases “other unincorporated associations for which no  
21 specific provision is made by statute” and “an unincorporated association not otherwise  
22 authorized by statute,” as used in Section 20002. They could mean conceivably mean any of the  
23 following:

- 24 • An association of a type that is not specifically recognized by statute.
- 25 • An association for which no statute provides specific procedures relating to property  
26 conveyance.
- 27 • An association other than a benevolent or fraternal society or labor organization.

28 The Commission would like to receive information regarding the proper meaning of these  
29 phrases.

30 (2) The staff draft preserves the effect of existing law with respect to the definitions provided in  
31 subdivision (c). However, it may be appropriate to generalize these definitions so that they apply  
32 to the entire section, rather than being limited in their application to subdivision (b). The  
33 Commission would like to receive input on the merits of generalizing the definitions.

34 **Corp. Code § 24003 (unchanged). Statement designating place of business and agent for**  
35 **service of process**

36 24003. (a) An unincorporated association may file with the Secretary of State on  
37 a form prescribed by the Secretary of State a statement containing either of the  
38 following:

39 (1) A statement designating the location and complete address of the  
40 association’s principal office in this state. Only one such place may be designated.

41 (2) A statement (i) designating the location and complete address of the  
42 association’s principal office in this state in accordance with paragraph (1) or, if  
43 the association does not have an office in this state, designating the complete

1 address of the association to which the Secretary of State shall send any notices  
2 required to be sent to the association under Sections 24005 and 24006, and (ii)  
3 designating as agent of the association for service of process any natural person  
4 residing in this state or any corporation that has complied with Section 1505 and  
5 whose capacity to act as an agent has not terminated.

6 (b) If a natural person is designated as agent for service of process, the statement  
7 shall set forth the person's complete business or residence address. If a corporate  
8 agent is designated, no address for it shall be set forth.

9 (c) Presentation for filing of a statement and one copy, tender of the filing fee,  
10 and acceptance of the statement by the office of the Secretary of State constitutes  
11 filing under this section. The Secretary of State shall note upon the copy of the  
12 statement the file number and the date of filing the original and deliver or send the  
13 copy to the unincorporated association filing the statement.

14 (d) At any time, an unincorporated association that has filed a statement under  
15 this section may file a new statement superseding the last previously filed  
16 statement. If the new statement does not designate an agent for service of process,  
17 the filing of the new statement shall be deemed to revoke the designation of an  
18 agent previously designated. A statement filed under this section expires five years  
19 from December 31 following the date it was filed in the office of the Secretary of  
20 State, unless previously superseded by the filing of a new statement.

21 (e) Delivery by hand of a copy of any process against the unincorporated  
22 association (1) to any natural person designated by it as agent, or (2) if the  
23 association has designated a corporate agent, to any person named in the last  
24 certificate of the corporate agent filed pursuant to Section 1505 at the office of the  
25 corporate agent shall constitute valid service on the association.

26 (f) For filing a statement as provided in this section, the Secretary of State shall  
27 charge and collect the fee prescribed in paragraph (1) of subdivision (b) of Section  
28 12191 of the Government Code for filing a designation of agent.

29 **Corp. Code § 24004 (unchanged). Statement handling**

30 24004. (a) The Secretary of State shall mark each statement filed under Section  
31 24003 with a consecutive file number and the date of filing. He or she may destroy  
32 or otherwise dispose of any such statement four years after the statement expires.  
33 In lieu of retaining the original statement, the Secretary of State may retain a copy  
34 thereof in accordance with Section 14756 of the Government Code.

35 (b) The Secretary of State shall index each statement filed under Section 24003  
36 according to the name of the unincorporated association as set out in the statement  
37 and shall enter in the index the file number and the address of the association as set  
38 out in the statement and, if an agent for service of process is designated in the  
39 statement, the name of the agent and, if a natural person is designated as the agent,  
40 the address of that person.

41 (c) Upon request of any person, the Secretary of State shall issue a certificate  
42 showing whether, according to the records of the office of the Secretary of State,

1 there is on file on the date and hour stated therein, any presently effective  
2 statement filed under Section 24003 for an unincorporated association using a  
3 specific name designated by the person making the request. If such a statement is  
4 on file, the certificate shall include the information required by subdivision (b) to  
5 be included in the index. The fee for the certificate is as set forth in Section 12183  
6 of the Government Code.

7 (d) When a statement has expired under subdivision (d) of Section 24003, the  
8 Secretary of State shall enter that fact in the index together with the date of the  
9 expiration.

10 (e) Four years after a statement has expired, the Secretary of State may delete the  
11 information concerning that statement from the index.

12 **Corp. Code § 24005 (unchanged). Statement of resignation of agent or revocation of**  
13 **designation**

14 24005. (a) An agent designated by an unincorporated association for the service  
15 of process may file with the Secretary of State a written statement of resignation as  
16 such agent which shall be signed and execution thereof shall be duly  
17 acknowledged by the agent. Thereupon the authority of the agent to act in such  
18 capacity shall cease and the Secretary of State forthwith shall give written notice  
19 of the filing of the statement by mail to the unincorporated association at its  
20 address as set out in the statement filed by the association.

21 (b) Any unincorporated association may at any time file with the Secretary of  
22 State a revocation of a designation of an agent for service of process. The  
23 revocation is effective when filed.

24 (c) Notwithstanding subdivisions (a) and (b), service made on an agent  
25 designated by an unincorporated association for service of process in the manner  
26 provided in subdivision (e) of Section 24003 is effective if made within 30 days  
27 after the statement of resignation or the revocation is filed in the office of the  
28 Secretary of State.

29 **Corp. Code § 24006 (unchanged). Notice of expiration**

30 24006. Between the first day of October and the first day of December  
31 immediately preceding the expiration date of a statement filed under Section  
32 24003, the Secretary of State shall send by first class mail a notice, indicating the  
33 date on which the statement will expire and the file number assigned to the  
34 statement, to the unincorporated association at its address as set out in the  
35 statement. Neither the failure of the Secretary of State to mail the notice as  
36 provided in this section nor the failure of the notice to reach the unincorporated  
37 association shall continue the statement in effect after the date of its expiration.  
38 Neither the state nor any officer or employee of the state is liable for damages for  
39 failure to mail the notice as required by this section.

1 **Corp. Code § 24007 (unchanged). Service of process on unincorporated associations in**  
2 **certain cases**

3 24007. If designation of an agent for the purpose of service of process has not  
4 been made as provided in Section 24003, or if the agent designated cannot with  
5 reasonable diligence be found at the address specified in the index referred to in  
6 Section 24004 for delivery by hand of the process, and it is shown by affidavit to  
7 the satisfaction of a court or judge that process against an unincorporated  
8 association cannot be served with reasonable diligence upon the designated agent  
9 by hand or the unincorporated association in the manner provided for in Section  
10 415.10 or 415.30 of the Code of Civil Procedure or subdivision (a) of Section  
11 415.20 of the Code of Civil Procedure, the court or judge may make an order that  
12 service be made upon the unincorporated association by delivery of a copy of the  
13 process to any one or more of the association's members designated in the order  
14 and by mailing a copy of the process to the association at its last known address.  
15 Service in this manner constitutes personal service upon the unincorporated  
16 association.  
17